

# ICA-EU Partnership Legal Framework Analysis Regional report: Asia-Pacific

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## Abbreviations

ACO	ASEAN Cooperative Organization
BIPL	British Indian Pattern of Cooperatives
CAFJ	Cooperative Act of Fiji
CCANZ	Companies Act of New Zealand
CDA	Cooperative Development Authority
CETF	Cooperative Education and Training Fund
CNLAUS	Cooperative National Law of Australia
CWA	Cooperative Working Act
EU	European Commission
FSA	Financial Services Agency
FSC	Farmers Specialized Cooperatives
FTC	Fair Trade Commission
HRD	Human Resource Development
ICA	International Cooperative Alliance
ICAAP	International Cooperative Alliance Asia and Pacific
ILO	International Labour Organization
IPSANZ	Industrial and Provident Societies Act of New Zealand
JCC	Jordan Cooperative Commission
JCOCC	Joint Congressional Oversight Committee
LFA	Legal Framework Analysis
MAFRA	Ministry of Agriculture, Food, and Rural Affairs
MAFF	Ministry of Agriculture, Forestry and Fisheries
METI	Ministry of Economy, Trade and Industry
MHLW	Ministry of Health, Labour and Welfare
MOALI	Ministry of Agriculture, Livestock and Irrigation
MOF	Ministry of Finance
MOHA	Ministry of Home Affairs
NSW	New South Wales
PNG	Papua New Guinea
RMA	Royal Monetary Authority
SAARC	South Asian Association for Regional Cooperation
SME	Small and Medium Enterprises
UNDP	United Nations Development Programme

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## I. INTRODUCTION

Cooperatives benefit from regulations that acknowledge their specificities and ensure a level playing field with other types of business organisations. The research falls within the scope of the knowledge-building activities undertaken within the partnership for international development signed in 2016 between the European Commission and the International Cooperative Alliance (ICA), which aims to strengthen the cooperative movement and its capacity to promote international development worldwide. It demonstrates that the absence of a supportive legal framework for cooperatives, or the presence of a weak or inadequate legal framework, can negatively impact cooperatives and their evolution. In contrast, the existence of supportive regulations can foster cooperatives' creation and strengthening, acting as a driver of sustainable development. For this reason, further knowledge and evaluation of cooperative legislation will become a tool for ICA members, cooperators worldwide, and other key stakeholders such as policymakers and cooperative legal scholars. With greater knowledge and access to a global, country-based legal framework analysis, ICA members can advance their advocacy and recommendations on the creation or improvement of legal frameworks, document the implementation of cooperative legislation and policies, and monitor their evolution.

The main objectives of the legal framework analysis are to:

- to evaluate whether the national legislation in acquire general knowledge of the national cooperative legislation and of its main characteristics and contents, with particular regard to those aspects of regulation regarding the identity of cooperatives and its distinction from other types of business organisations, notably the for-profit shareholder corporation (the *sociedad anónima lucrativa* in Spanish; the *société anonyme à but lucratif* in French).
- to evaluate whether the national legislation in place supports or hampers the development of cooperatives, and is therefore “cooperative friendly” or not, and the degree to which it may be considered so, also in comparison to the legislation in force in other countries of the ICA region (or at the supranational level).
- to provide recommendations for eventual renewal of the legal frameworks in place in order 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 favourable to cooperatives, also in consideration of their specific identity.

ICA Regional Office for Asia Pacific has engaged the services of (Mr.) Upali Herath, who has more than 40 years of experience in cooperative practice as a Registrar of Cooperative Societies, Head of National Cooperative council of Sri Lanka, ICA Regional Advisor for Asia and the Pacific on Consumer Cooperation and HRD, a National Consultant for ILO and UNDP, member of the Presidential Commission on Cooperative Movement of Sri Lanka, Managing Director of the Cooperative Insurance Company of Sri Lanka and Country Director for Swedish Cooperative Centre, for compiling the Regional LFA Report.

This report is purely based on the findings of the sub-regional reports and reflects as an attempt to synthesize the information into broad conclusions and recommendations for taking follow up action at the next stage. Sub-Regional expert opinions are extracted, evaluated in terms of the guidelines and the opinions are made. It is basically a synthesis of the main findings of the sub-Regional Repots, reinforced by the information obtained from the national reports. In addition, there are some information added by the Regional Consultant, whenever there was a gap in the said reports on certain subjects. Mainly, the comments on cooperative friendliness of national legislation are influenced by the subjective remarks by the sub regional consultants. Main input on the topics by the Sub-Regional Consultants is acknowledged with gratitude.

The sub-Regional Reports were compiled by following experts:

	SUB-REGION	NAME OF EXPERT	DESIGNATION
i)	Central Asia	Mr. Bakir Urkinbayev	Former Advisor to the Chairman, Union of Consumer cooperatives of Kazakhstan, Almaty (International relations, legal expert)
ii)	East Asia	Mr. Akira Kurimoto	Professor, Institute for Solidarity-based Society, Hosei University, Japan & Chair, ICA-AP Research Committee
iii)	Middle East	Mr. Amer Madi	International Development Consultant & Managing Partner, AL-Sahel Company for Institutional Development and Communication, Palestine
iv)	Oceania and Pacific	Ms. Ann Apps	Lecturer & External Engagement Co-ordinator, Newcastle Law School, University of Newcastle, Australia
v)	South Asia	Mr. Upali Herath	former Commissioner of Cooperative Development & Registrar of Cooperative societies, Sri Lanka and former CEO, National Cooperative Council (NCC), Sri Lanka
vi)	South East Asia	Mr. Robby Tulus	Co-founder, Credit Union Counselling Central Organization (CUCO), Indonesia & former Regional Director ICA-AP

## I. Overview of the countries covered: Asia and Pacific region

Regional report has been prepared as a synthesis of the sub-regional reports, while filling the gaps of their reports within the guidelines provided by the ICA-AP. Sub-regional reports were based on the reports of selected countries, from the national consultants and information collected by sub-regional experts as well. The details of authorship are as follows:

**Table 1: Details of the Country Report Formulation.**

SUB REGION	COUNTRY	NATIONAL REPORT CONSULTANT / EXPERT INPUT
Central Asia	Kazakhstan	Mr. Bakir Urkinbayev
Central Asia	Kyrgyz Republic	Mr. Bakir Urkinbayev
East Asia	China	ICAAP team
East Asia	Japan	Mr. Akira Kurimoto
East Asia	Mongolia	Mr. Tsagaan Myagmar-Ochir
East Asia	Republic of Korea (South Korea)	Mr. Akira Kurimoto
Middle East	Lebanon	Ms. Jamale Osta
Middle East	Jordan	Mr. Amer Madi
Middle East	Palestine	Mr. Amer Madi

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Oceania and Pacific	Kiribati	Mr. Waimauri Nawaia
Oceania and Pacific	New Zealand	Ms. Ann Apps
Oceania and Pacific	Papua New Guinea	Mr. Ricky Manus (Asst.)
Oceania and Pacific	Vanuatu	Ms. Jane Gereva
South East Asia	Indonesia	Mr. Untung Tri Basuki Mr. Suroto Ph (Asst.) Mr. Ilham Nasai (Asst.)
South East Asia	Malaysia	Mr. Robby Tulus
South East Asia	Myanmar	Mr. Kyaw Thu Win
South East Asia	Philippines	Mr. Cresente Paez
South East Asia	Singapore	Mr. Robby Tulus
South East Asia	Thailand	Mr. Robby Tulus
South East Asia	Vietnam	Ms. Yen Pham, Vietnam Co-operative Alliance
South Asia	Bangladesh	Mr. Morshed Mannan
South Asia	Bhutan	<i>Legal Services Division of the Ministry of Agriculture and Forests, Bhutan</i>
South Asia	India	Dr. T. Paranjothi
South Asia	Maldives	Mr. Maaz Shareef (Asst.)
South Asia	Nepal	Mr. Ramesh Badal
South Asia	Sri Lanka	Mr. W. Upali Herath

\*Asst – Assisted with inputs from.

With regards to the input by ICA member organisations, there were few stated in some country reports and sub-regional reports, but without reference to names. The consultants have stated that these comments have been taken into account while making their reports.

## II. ASIA PACIFIC REGION – BACKGROUND OF REGIONAL COOPERATIVE LAWS

### Regional Context

There is no Regional Cooperative Legislation in place. Due to the vicissitude of the geopolitical and economic diversities, no attempt has been made for a common law in the region. The ICA Asia and Pacific Regional Office has rich experience of consolidation of cooperative policies through Regional Ministers Conferences conducted once every 4 years, with follow up studies on the recommendations, which has resulted in common understanding of the cooperative identity and principles as well as legal requirements. Adaptation and transformation of cooperative legislation has been rather slower than expected.

Kazakhstan, which came under the review, shows that the current cooperative laws are based on different types of cooperatives such as agricultural cooperatives, producer cooperatives and consumer cooperatives. There has not been an attempt to introduce common or a framework law for all types of cooperatives. Kyrgyzstan has introduced a unified law overseeing all types of cooperatives. In addition, a separate law has been introduced for credit cooperatives. Unified law has shown a growth in cooperative system as against specific laws for different types of cooperatives.

It has been found that there is a flaw in legislation by not making the feasibility study as a norm for registration and also insufficient or ambiguous dealing with the collective property for producer cooperatives.

Constitution of both countries do not have reference to the cooperative system; and the definition is provided in the Civil Codes.

In the case of East Asia, all countries have introduced specific laws depending on the type of cooperatives, as led by the experience of Japan. Early Japanese cooperatives were under a common law for cooperatives, which was changed after the 2<sup>nd</sup> World War, when new government system was adopted. The exception in this case in South Korea which has adopted a framework law for cooperatives and to some extent, Mongolia as well.

**Table 2: Diverse legal systems of co-operatives in 4 countries**

	JAPAN	SOUTH KOREA	CHINA	MONGOLIA
Co-operative laws	10+ co-operative laws	8 co-operative laws plus Framework Act on Co-operatives	Farmer Specialized Co-operative Act	Co-operative Act, Credit and Saving Co-operative Act
Regulating ministries	MAFF, METI, MHLW, FSA etc.	MAFRA, MOEF, FTC etc.	Min. of Agriculture	Min. of Agriculture, Fin. Regulator
Types of co-operatives	Agriculture, Fishery, Forestry Consumer, Social, Bank, SMEs etc.	Agriculture, Fishery, Forestry Consumer, Social, Bank, SMEs etc.	Agriculture	Agriculture, Bank etc.
Competition law	Exempted	Exempted	-	Exempted
Corporation tax law	Lower rate	Lower rate	Exempted	Same rate

(Kurimoto, 2020)



Due to the specificity of cooperative types regulated by specific laws, it appears that the types of cooperatives have been restricted in comparison to former British colonies in South Asia, where more than 30 types of cooperatives are present. In South Asia, cooperatives with pure social purposes too are present such as Welfare Cooperative Societies and Better Living cooperatives.

Except in the case of Chinese cooperative system, one could find a symbiotic relationship among the laws of other East Asian countries, through which we could extract common parameters for a regional guide to legislation. However, this requires a further in-depth study.

Cooperative enterprises in the Middle East have emerged from common ethnic Arab communities, who have common religious and cultural traditions, hence it would be easy to assimilate common characteristics of cooperatives. Sharia traditions and Takaful characteristics are common in the daily lives of people. Other ethnic groups with other religions are minorities.

The League of Arab States is the regional organisation created by Arab countries, but institutionally it appears to have no influence on cooperative legislation.

South East Asia consists of countries with different standards of development from high income Singapore to low income Myanmar with others belong to middle income countries. Likewise, there has been diversity of colonization by British (Malaysia, Myanmar, Singapore), Dutch (Indonesia), Spanish (Philippines) and wide influence of USA (Philippines) and China (Vietnam) on politics and economies. With such an influence came the cooperative traditions and legislation too. Thailand, though was not a colony, was influenced by British Indian model of cooperatives and the legislation.

Association of South East Asian Nation (ASEAN) formed by South East Asian Nations promotes intergovernmental co-operation and facilitates economic, political, security, military, educational, and socio-cultural integration among its members and other countries in Asia. The ASEAN Cooperative Organisation (ACO) formed in 1977 among the cooperatives of ASEAN member countries, has within its objectives as the implementation of Cooperative Principle of 'Cooperation among Cooperatives'. It is confined to exchange of experiences among ASEAN nations only. After being dormant, it was re-activated in 1992, and now there is a proposal for the monitoring of cooperative trade network among the south Asian countries through ACO.

ASEAN countries have taken different approaches for formulating laws, influenced by the external forces as stated above, which could be considered as an obstacle. Treatment of the governments on cooperatives is another factor, which hinder such an attempt to have a sub-regional legislation for ASEAN countries in spite of their consolidation as a sub-region through ASEAN organisation and ACO.

Another positive factor for aiming at a model law is the democratic traditions maintained by ASEAN countries (except recent military government of Myanmar) which is a pre-condition for a cooperative system with autonomy and independence.

South Asia has been a sub-region one time colonised by the British Empire; hence the features of colonial administration and its legacy have common features. Cooperatives in these countries have been regulated by British Indian model of cooperative legislation. Although the law has been subject to changes due to later developments in the political systems and the economic policies, there are common characteristics in the legislation of these countries.

The countries under review in Oceania too are colonised under the British Empire during 19<sup>th</sup> century and got their independence in 20<sup>th</sup> century. Therefore, it is evident the influence of country administration and the cooperative systems by the British. However, there is no regional law formulated. It is also found that the current laws are applied basically in the large islands and the small islands as parts of these countries continue to function under the traditional systems. However, these traditional societies and ethnic groups are giving way for disintegration of families and tribal or clan systems which results in growing individualism.

There is a regional association organised in the region titled Pacific Islands Forum (PIF) aiming at bringing peace, harmony, security, social inclusion and prosperity to the region by fostering cooperation between governments, collaboration with international agencies, and by representing the interests of its members. Their priorities include climate change and disaster risk management; ocean management and conservation; access to information and communication technologies; and the sustainable management of fisheries. However, there has not been activities in the field of cooperative enterprise such as introducing a regional model law.

In addition, all these countries are members of the Commonwealth of Nations.

There are some issues that needs attention such as different levels of economic development experienced from the industrialised country of Australia to an under-developed country such as Papua New Guinea. On the other hand, there are common features of cooperatives inherited from the cooperative principles and values that are universal to be considered. In addition, there is a possibility of adapting a common national law format for all types of cooperatives.

### Overview of national contexts

Some sub-regional studies have not adhered to the specific guidelines on a lay out provided, hence, the classification of information tend to have gaps. Notwithstanding this omission, an attempt is made to provide information in a common table.

**Table 3: Existing legal frameworks of Asia-Pacific Region**

CONSTITUTION	GENERAL COOPERATIVE LAW/ PROVISIONS	SPECIAL COOPERATIVE LAW/ PROVISIONS	ABSENCE OF COOPERATIVE LAW	EXPLICIT REFERENCE TO THE ICA STATEMENT ON THE COOPERATIVE IDENTITY
<b>Central Asia – Kazakhstan</b>				
No special reference to cooperatives	No common general law	There are special laws on production, consumer and agricultural cooperatives.	Not applicable	There is no specific reference to ICA principles, but mentions are provided on voluntary entrance and disaffiliation, democratic governance, mutual assistance and protection of the members’ interests
<b>Central Asia – Kyrgyzstan</b>				
No special reference to cooperatives	Unified law on cooperatives of 2004 updated in 2018.	Law on credit unions of 1999	Not applicable	There is no specific reference to ICA principles, but mentions are provided on voluntary entrance and disaffiliation, democratic governance, mutual assistance and protection of the members’ interests

East Asia - Japan				
No special provisions in the constitution	No common general law	10+ specific laws for different types of cooperatives- agriculture, consumer, fisheries, SME, credit, Shinkin banks, labour, tobacco growers, forest owners, Norinchukin bank regulated by different Ministries	Not applicable	There is no explicit reference to ICA principles
East Asia - China				
Article 8 of the constitution recognizes the cooperative enterprises	No common general law on cooperatives	Farmer specialized cooperative Act and other sectors under collective socialist economy as per the Constitution	Only farmers' organizations have a special legislation.	There is no explicit reference to ICA principles
East Asia – South Korea				
No special provisions in the constitution	No common general law on cooperatives applied. Framework Act on Cooperatives of 2011 is in place but not applicable for existing cooperatives – this is the general law on cooperatives and applicable prospectively and not to cooperatives registered under sector-specific legislation.	Specific laws have been formulated from time to time for specific coops such as agriculture, fisheries, tobacco producers, forestry, SME, credit, consumer & social welfare	Not applicable	Universal cooperative principles are found enshrined in the law; however, specific and explicit mention of the ICA identity statement is missing.
East Asia – Mongolia				
No special provisions in the constitution	General law on cooperatives was formulated in 1995	Credit & Savings Act of 2011 formulated for financial cooperatives	Not applicable	There is no explicit reference to ICA principles
Middle East - Jordan				
No special reference to cooperatives	General law on cooperatives formulated in 1997	No law on specific categories	Not applicable	Few principles are mentioned in law
Middle East - Lebanon				
No special reference to cooperatives	General law prevails as per decrees in 1964 and 1972 with amendments	No law on specific categories of coops	Not applicable	Few cooperative principles stated in different decrees
Middle East – Palestine				
No special provisions in the constitution	General law of 2017 on cooperatives prevails	No law on specific categories of coops	Not applicable	Cooperative law gives reference to all cooperative principles and explicitly mentions the ICA identity statement.

South East Asia – Indonesia				
No special provisions in the constitution	General law titled Omnibus Law of 2020 is in place along with Cooperative law No. 17 of 2012	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
Oceania and Pacific - Fiji				
No special provisions in the constitution	General law on cooperative prevails	No law on specific categories of coops	Not applicable	There is no explicit reference to ICA principles
Oceania and Pacific - Australia				
No special provisions in the constitution	General law on cooperatives prevails along with certain special laws	Special laws on cooperative companies	Not applicable	There is a general reference to cooperative principles
Oceania and Pacific – Kiribati				
No special provisions in the constitution	General law on cooperatives along with special law on credit cooperatives	Special law on credit cooperatives	Not applicable	No specific reference to Coop Identity Statement
Oceania and Pacific –Papua New Guinea				
No special provisions in the constitution	General law on cooperative prevails	No law on specific categories of coops	Not applicable	No specific reference to Coop Identity Statement
Oceania and Pacific – New Zealand				
No special provisions in the constitution	General law (Cooperative Companies Act of 1996) along with the Industrial and Provident Societies Act 1908	Where relevant the <i>Industrial and Provident Societies Act 1908</i>	Not applicable	No specific reference to Coop Identity Statement
Oceania and Pacific –Vanuatu				
No special provisions in the constitution	General law on cooperative prevails	No law on specific categories of coops	Not applicable	General reference to cooperative principles
South East Asia - Philippines				
South East Asia - Myanmar	Common general law is in place for covering all types of cooperatives	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
South East Asia - Myanmar				
Article No. 36 of the Constitution recognizes cooperatives as an economic force	Common general law of 1992 is in place	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles

South East Asia – Vietnam				
No special provisions in the constitution	General Law on Cooperatives is operational since 2012	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
South East Asia – Malaysia				
No special provisions in the constitution	General Law on Cooperatives is operational since 2007	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
South East Asia – Singapore				
No special provisions in the constitution	General Law on Cooperatives is operational since 1979 with the amendments in 2008 & 2018	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
South East Asia – Thailand				
Under section 75 of the Constitution, the State undertakes to promote, support, protect and stabilize the system of various types of co-operatives.	General Law on Cooperatives is operational since 1928 with the amendments in 1968, 1999 & 2010	There are no special laws on cooperatives	Not applicable	There is no explicit reference to ICA principles
South Asia – Bangladesh				
Cooperative ownership has been recognised.	General law on cooperatives (2001) along with special law on credit cooperatives	Special law on credit cooperatives	Not applicable	Cooperative principles are referred in the section on Societies which may be Registered
South Asia - Bhutan				
No reference to cooperatives	General law on cooperatives (2001)	There are no special laws on cooperatives	Not applicable	Coop law recognises universally accepted cooperative principles.
South Asia – India				
Fundamental right to form cooperatives assured in the constitution	General laws on cooperatives in the state governments and the central government	Self-Reliant Act on cooperatives adopted in some States Company Act has made provisions for Producer Cooperatives	Not applicable	Cooperative principles per se are not stated, but the explanations are given as a Schedule to the Act, in keeping in line with the Cooperative Principles of 1966
South Asia – Maldives				
No special provisions in the constitution	General law (2007) on cooperative prevails	There are no special laws on cooperatives	Not applicable	There is no reference to Cooperative Principles in the Act, although the provisions have been attempted to be reflective on the principles

South Asia – Nepal				
Constitution of 2015 has recognised Cooperatives as one of the economic pillars along with Public & Private sector	General Law on cooperatives (2017) prevails	There are no special laws on cooperatives	Not applicable	Norms, Values & cooperative principles are mentioned in the preamble and explained in the definitions.
South Asia – Sri Lanka				
No special provision in the Constitution for cooperatives	General Law on cooperatives (1972) with amendments in 1983 & 1992 prevails	Legislation is common to all types of cooperatives.	Not applicable	Societies that are formed in accordance with cooperative principles are to be registered, but the principles are not specified.

## Specific elements of the cooperative law

### *Definition and objectives of cooperatives*

#### **1.1 Central Asia Sub Region:**

The republics of Kazakhstan and Kyrgyzstan have common characteristics of cooperatives being previous socialist regimes, in spite of Kyrgyzstan having Unified law. They treat cooperatives as commercial enterprises with the exception of their ability to function as non-profit organization as they wish. The purpose too could be 'profit recovery' or 'non-profit making'. In Kyrgyzstan, it's definition is "a voluntary amalgamation of individuals and/or legal entities formed on the basis of membership to satisfy financial and other needs by arrangement of joint activity set forth in its charter on democratic basis and by pooling of share contributions by its members"

In Kazakhstan, cooperatives come under the Civil Code, and due to the absence of specific cooperative legislation, the distinction from the other sectors is unclear. However, it distinguishes cooperatives from other enterprises as pursuing income recovery as the main goal of the activity.

The minimum number of members required for a forming cooperative in Kazakhstan is 2 and in Kyrgyzstan it is 7.

In both countries the cooperatives observe the principles of voluntary entrance and disaffiliation, democratic governance, mutual assistance and protection of the members' interests, availability of information on the activities of the consumer cooperative for all its members.

In both countries, cooperatives are meant for serving members interest rather than functioning in the open market and in Kazakhstan, consumer cooperatives operate as non-profit organization merely service the members' consumer needs. Members are allowed to provide labour for which they receive a remuneration.

There are provisions in the law to regulate members in special articles, which state that cooperatives are created at the expense of property (share) contributions to perform certain functions related to meet the interests of their members. Creating awareness of members on the aspects of cooperative governance has been the cause of declining status of Kazakhstan cooperatives.

The cooperatives are supposed only to transact with members. Also there are no provisions to set up cooperatives with social objectives. In Kazakhstan, the establishment of cooperatives is limited to the enterprises of consumer, production and agriculture only. In Kyrgyzstan, unified law allows any type of cooperatives to be established.

## 1.2 East Asia Sub-Region:

East Asian Region has two main ideologies behind cooperatives: firstly, the countries influenced by former socialist thinking such as China and secondly, the countries influenced by the West such as Japan and South Korea. Mongolian cooperative law is of recent origin, partly influenced by German law for general type of cooperatives whereas financial cooperatives are influenced by Canadian law. These ideologies provide core of the practices than the definitions.

In Mongolia, a cooperative is defined as “a legal person established by individuals on a voluntary basis for the purpose of satisfaction of their social and cultural needs, governed and supervised in a democratic manner and conducting its business based on common ownership of its members.” In China, the definition is closer to ICA statement: The law states that cooperatives are independent and autonomous organizations, should be democratically managed, and that their primary aim is to serve the interests of their members.

In Mongolia, cooperatives are formed for the purpose of satisfaction of their social, economic, and cultural needs, governed and supervised in a democratic manner and conducting its business based on common ownership of its members. There have been latest revisions to the cooperative law in Mongolia as of early May 2021, which have been approved by the country's Parliament.

Minimum number of members should be 9 for all cooperatives.

The law on Chinese cooperatives states that cooperatives are independent and autonomous organizations, should be democratically managed, and that their primary aim is to serve the interests of their members.

Minimum number of members of a cooperative in China is 10 except credit cooperatives which should be 100 members.

In China, the cooperatives are allowed to function as limited liability corporates or unlimited liability corporates. Companies are limited liability ventures. In a joint cooperative venture, profits can be allocated according to the partners' discretion and do not have to be proportional to the investments made by the partners.

As China has enterprise specific cooperative law dominated by the Farmer Specialized Co-operatives Act (FSCA) came into force in 2007, the types of cooperative are limited to specific enterprises such as agricultural, industrial, credit and consumer only.

There are exclusions from law such as insurance and banking cooperatives and some supply and marketing cooperative systems too are to be recognized.

Japan does not have a specific definition of a cooperative within the legal framework. However, Japan has explanations for different types of cooperatives in its corresponding sectoral laws.

The objective of cooperatives has been stated as maximum service to its members and not-for-profit making. Japanese cooperatives are only transacting with the members, hence do not deal with non-members by law. As the agricultural law aims at improvement of the agricultural productivity and the raising up of the economic and social position of farmers, through facilitation of agricultural co-operative organization, and thereby contribution to the development of national economy, the cooperatives are allowed to trade with non-members up to 20-25% and health services to 100%.

Japanese cooperatives have strong member guidance service in place supporting lifelong planning in agricultural cooperatives. Special training organizations have been set up for members and employees. Agricultural cooperative movement supports international cooperation through the Institute for Development of Agricultural Cooperatives in Asia (IDACA).

Neighborhood group (HAN) system of the consumer cooperatives, which consists of small member groups as a part of the governing system conduct members' communication system for creating awareness and education in current affairs. In addition, members have the facility of better living centres for health and vocational training for members run by cooperatives.

Japanese cooperatives are also aiming at community services through an organization called Welfare Federations of Agricultural Cooperatives especially in the area of health services.

Minimum number of members in Japanese cooperatives should be 20.

South Korean cooperatives definition of 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" since South Korea is served by specific cooperatives laws depending on types of cooperatives, the definition is worded in such a manner to be consistent to laws.

The link the cooperatives have with the community in addition to members, has been incorporated into the definition of 'social cooperative' 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 but that is not run for profit." A social cooperative can engage in the programs for contributing to the renewal of local communities, programs for providing the disadvantaged class with social services in the areas of welfare, medical service, or environment, programs to provide jobs for the disadvantaged class, projects entrusted by the central government or a local government and other projects contributing to the promotion of public service.

The symbiotic relationship of cooperative members with the community has been explained in the Framework Act as "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"

The Agricultural Cooperatives Act, 1961 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.

As prescribed in the Act the main business should be at least 40 percent of the total amount of the entire business of a cooperative.

Consumer cooperatives are allowed only to transact with members. Although provisions for banking and insurance have not been provided in a specific cooperative law, cooperatives are allowed to have their own arrangements for such facilities within their own organizations.

The distinction between the cooperatives and private enterprises is expressed in legislation based on the character of voluntary participation with members' equality in control by one member one vote concept of control. There are other rules governing the disposal of surplus, which is varying from country to country, which are different from that of private companies. Minimum number of members of a cooperative in South Korea is 20.

### 1.3 Middle East Asia Region

By and large the definition of a cooperative in middle east context is member focused. In Lebanon, the definition has been "*any non-profit association composed of persons, having a variable capital, established according to the provisions of the present law whose objectives is the improvement of the socio-economic conditions of its members by joining their efforts according to the general principles of cooperation*". The minimum number of members is 10. The Decree-law in Palestine, which was developed in cooperation with the ILO, defines a cooperative as "*a social-economic entity established by at least 15 members who volunteer to meet their common needs and aspirations through their own contributions, joint ownership,*



*management and democratic oversight.*” In Jordan, the cooperatives are referred as non-governmental organisations. The minimum number of members should be 15. Jordan with the support of the International Labour Organisation, had recently launched its national strategy for the cooperative movement in July 2021, which seeks to strengthen the role of cooperatives in enhancing decent work and productivity in different economic sectors in the country.

The objectives and purpose of cooperatives are not defined in Jordan’s Cooperatives Law or the Cooperative Society’s Charter, leaving it to members to decide. Model by law provides the purpose as ‘fostering cooperation and cooperative work among its members and those individual and groups with whom it engages with to improve their social, economic and cultural conditions’ These laws do not have any explicit legal provision that a cooperative is obligated to transact with its members. Restrictions on what activities cooperative can engage in are enforced through restrictions explicitly mentioned in the model bylaws, which the office of the Registrar makes available to different types of cooperatives who approach it for registration. For instance, these bylaws prohibit non-housing cooperatives from engaging in real-estate development and housing projects altogether.

Palestine Decree of 2017 defines a cooperative as “a social-economic entity established by at least 15 members who volunteer to meet their common needs and aspirations through their own contributions, joint ownership, management and democratic oversight. ”

However, Palestinian cooperative law explicitly does not provide differentiation of cooperatives from the private companies, except that the incorporation of ICA Statement on Cooperative Identity Statement in law makes the inference on the identity of cooperatives.

Palestine law promotes member participation in the business activities by providing for mandatory minimum payment of 25% of the surplus to members, while not making members to transact with the cooperative compulsorily. The cooperatives could transact with non-members too.

The cooperatives in Palestine have no restriction by law, to engage in any business, which they decide to carry out.

Member promotion in Cooperatives in the Middle East is not a statutory obligation of a cooperative, hence the members understanding and the sense of ownership is weak. Heavy input of promoting cooperatives in these countries by the governments such as Jordan has not been a natural development of cooperatives.

As agriculture has been the key player in cooperatives in the Middle East, community linkage has been strong and in war torn areas such as Lebanon and Palestine, cooperatives have engaged in social rehabilitation activities though not specified in law as mandatory.

Being served by a legislation common to all types of cooperatives, there are no exceptions in carrying out cooperative activities in any type of enterprise.

IN the sub-regional legislation, the cooperative is distinguished from other types of enterprises having individuals voluntarily forming the corporate having one member one vote concept.

#### **1.4 South East Asia Sub-Region**

The cooperative legislation in Indonesia formulated in 1992 prior to 1995 ICA Cooperative Identity Statement define cooperative as a body corporate and not as a voluntary organization of persons. Government has undertaken the key responsibility for promotion of cooperatives. Cooperative Society Law of 1992 in Myanmar defines that Society means a Primary Co-operative Society, Co-operative Syndicate, Union of Cooperative Syndicates or Central Cooperative Society registered under the Law (of cooperatives); In the Philippines, Republic Act 9520, also known as the “Philippine cooperative code of 2008”, defines a 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.”; in Vietnam, The definition leans more towards '*collective organisations*', as an institution: “Co-operative is a collective economic organization based on self- control, self-responsibility, equality and democracy in management of co-operative.”

The distinction of cooperatives from other sectors emerges from the character of organization specified in the legislation, which normally endorses voluntary participation based on equality, notwithstanding the number of shares held, and using one member one vote for decision making.

In the law of Indonesia, the objectives of the cooperatives are simply stated as to increase members' welfare whereas in Myanmar, main legislation does not state any objective leaving it for the bylaw of the cooperative society. Philippine law states that the objective of every co-operative is to help improving the quality of life of its members. As per the Vietnamese law, co-operatives are established on a voluntary basis by and for members to meet their needs in a democratic manner.

When it comes to transactions with members, laws do not specify any conditions or restrictions of transactions, except in Vietnam, where the government could intervene in making members obligatory to transact with their cooperatives. Thus, these cooperatives are not falling within the class of cooperatives with limited active members.

Four countries under purview of this study generally allow transactions with non-members by law. But in Indonesia, credit cooperatives are not allowed to have credit transactions with non-members. In the Philippines too the law does not allow cooperatives to transact with non-members in credit, housing and workers' cooperatives.

In Indonesia, although cooperatives are allowed to enter into any enterprise, there sectoral laws such as Banking and Insurance subordinating cooperative law. i.e. licensing and regulatory functions are vested with respective government authorities. Such principle is applied in the Region as a whole.

### 1.5 South Asia Sub-Region

Although the law does not provide a clear statement on the definition of a cooperative, the subsequent provisions infer that Bangladeshi co-operative societies align with the ICA's definition of co-operatives, in terms of being a voluntary, autonomous association of persons, serving the common needs of members and being democratically managed. Cooperative Society law of Bhutan defines cooperatives as “Co-operative means an association of persons united voluntarily to meet their common economic needs and aspirations through a jointly owned and effectively governed enterprise” Multi-State Cooperative Act of 2002 in India identifies cooperatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment.

Maldivian Cooperative Societies Act of 2007(Article 2) identifies cooperatives through principles of formation:

a) A Co-operative society shall be an independent society, formed by the people of the community, for the community with the intention of promoting the economic and social wellbeing of the members of that community.

b) The Society leaders shall be members of the Society. The management and powers of the society must be derived from the members and within the members. In this respect the society shall be managed and run by members elected within the society on a democratic manner.

c) Membership must be open for any and all persons in the community without regard for discrimination.

d) The Society's shares shall be equal among members without any exceptions.

e) The society's share capital needs to be increased, then it shall do so at the annual general meeting. The resolution to increase the share capital has to be passed by 60 percent majority.”

Multi-state Cooperative Societies Act of 2002, India defines cooperatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy.

Nepal Act of 1992 on cooperatives identifies cooperative associations and societies based on the mutual support and cooperativeness for the economic and social development of the general public consumers by the farmers, craftsperson (Kaligadh), class of people with low capital and low income, laborers, landless and unemployed people or social workers of the country;

Cooperative law of Sri Lanka does not provide a definition of a cooperative, but identifies societies based on their purposes: a society which has as its object, the promotion of the economic, social or cultural interests of its members in accordance with co-operative principles.

The purpose of Bangladesh cooperatives has been cited as socioeconomic and cultural emancipation of the people.

India does not specify the objectives of cooperative societies in Union government laws but allows it to be defined at the State level legislation as the subject of cooperatives is devolved to States. It is also worthy to note that the National Cooperative Development Corporation Act (NCDC), 1962 is also a central Act which had provided for the establishment of NCDC, the union Government's cooperative development and financing body. Nepal cooperatives have been established for the purpose of mutual economic benefit of members.

Although Bangladesh cooperatives are expected to transact with members basically, they could take action for inclusive village development beyond members' interests. However, they are prevented by law from accepting deposits and carrying out credit transactions with non-members. There is no compulsion in law for members for transacting with their cooperatives.

In India, members in co-operatives are obligated to do business with the co-operatives after the 97<sup>th</sup> Constitutional Amendment Act 2011. It is obligatory to transact business as well as attend the General Body meetings. The amendment dealt with issues related to effective management of co-operative societies in the country.

However, in the South Asian Sub-Region, there is no restriction in doing business with non-members except credit business in cooperatives. Except in the case of India, members do not have compulsion to have transactions with their cooperatives resulting in silent membership. However, in the case of Sri Lankan law, the cooperatives are allowed to fix marketing of produce by members with their cooperatives as wished by the general body. In order to keep membership, it would become mandatory.

There is an element of associate membership in the case of India and Sri Lanka who would enjoy all privileges of a member except voting power, in order to accommodate the business partnerships with cooperatives by individuals or institutions. Even other cooperatives are also allowed to be associate members.

There has been no emphasis for cooperatives with purely social objectives, except the fact they are allowed to be registered by law and there are such cooperatives already in place. No incentives are given by the government for such cooperatives either.

Practically all countries in the Region have certain restrictions on carrying out banking, insurance and certain industries by cooperatives with their obligation to obtain licenses from respective government regulators such as central banks and insurance regulators and are abided by the rules under their legislation. There is a legal issue already seen in Sri Lanka for cooperative rural banks to use the term 'Bank' without a license by the Central Bank of Sri Lanka.

## **1.6 Oceania and Pacific Sub-Region**

Definition of a cooperative in the sub region is not exactly that of the Cooperative Identity Statement but have certain characteristics except in New Zealand:

- **Vanuatu:** any society for carrying on any industry, business or trade *in accordance with co-operative principles*;
- **Kiribati:** business is designed *to promote the economic interests of its members, in accordance with co-operative principles*;
- **Papua New Guinea:** a co-operative desire to promote common economic and social interest in accordance with *co-operative principles*;
- **Australia:** The proposed co-operative must be designed to function under the co-operative principles;
- **Fiji:** A co-operative shall in its operations observe the *principles* that (section goes on to list the co-operative principles as per the ICA Co-operative Identity Statement);
- **New Zealand:** No reference to cooperative principles.

Difference between cooperatives and companies is not specified by law but the inferences are shown in the fundamentals of the functioning of cooperatives provided in law such as purpose and the equality in decision making through 'one member one vote' concept.

Fiji has an elaborate statement on the purpose of a cooperative: *A co-operative aim at promoting the economic and social interests of its members by providing effective services which the members need and can make use of and further that the main purpose of a co-operative is not maximization of profits but service to members and a co-operative shall operate according to sound business principles.* No other country in the sub-Region has an elaboration likewise.

In regard to the definition of cooperatives Fiji presents a most updated statement in law: *'making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate'*.

Out of countries in Oceania, Australia recognizes economic as well as social cooperatives titled them as distributing cooperatives and non-distributing cooperatives under the National Law Application Act of 2013. Their definition goes as: A distributing co-operative is a co-operative that is not prohibited from giving returns or distributions on surplus or share capital. A non-distributing co-operative is a co-operative that is prohibited from giving returns or distributions on surplus or share capital to members, other than the nominal value of shares (if any) at winding up. However, minimum membership remains as 5 persons for both cooperatives and for a cooperative group as 2 cooperatives.

Australia, being a country having cooperatives devolved into states, has deferent statements under state cooperative laws. In Victoria the definition has been 'A co-operative is a democratic organization, owned and controlled by its members for a common benefit. Co-operatives are traditionally based on values of self-help, self-responsibility, equality and solidarity.' However, Co-operatives National Law Application Act 2013 acts as a bridging legislation for cooperatives.

In order to promote member benefits, the laws in Kiribati and Vanuatu, prohibit transactions with non-members. Further, they restrict excessive credit provide to other cooperatives and also borrowings. In South Asia, British model has a reference to maximum credit limit of a cooperative to be decided by the general body so that such restrictive mechanisms could be decided by the membership.

In order to sustain motivated membership with the cooperative, most laws in the Sub-Region have provided for patronage refunds, distribution of surplus, and rebates. Dividends on share capital, however, is stated as limited practically in all laws, in order to ensure safeguards and re-generation of capital for a robust business entity. Thus the profit maximization too is discouraged.

Introduction of a reserve fund has been a concept introduced by the British, which is practiced in South Asia, and other commonwealth countries in the Asia Pacific Region. In certain legislation, the Fund is divisible only at the liquidation of a cooperative. This was an attempt to build up a sustainability of the cooperative.

## Establishment, Cooperative Membership and Governance

### 2.1 Central Asia Sub-Region

Kazakhstan has a simple process of holding an assembly by minimum of two persons, who decide on the Charter (bylaw) of the cooperative and request for registration from a judiciary would be able to get the registration. Law does not specify register for cooperatives. The same process is there in Kyrgyzstan, with the exception of minimum membership should be 7.

Joining the cooperative is voluntary and any person suitable under the Charter would be able to join the cooperative society and also free to withdraw at any time.

In the case of Kyrgyzstan, the persons having common needs of production, agriculture or consumer services may get together and form an organization committee, who drafts a charter for the cooperative on the basis of the guidelines given in the law and obtain approval of the members. With the resolutions of adoption of bylaws and the request for registration, the application with necessary documents as stipulated by law is sent to the respective justice agencies for registration. Any refusal for registration could be challenged in the court of law.

Grounds for liquidating a cooperative such as falling the number of members to lower than the expected under the law is unclear in the legislation, while the decision is vested in the general body. In the case of Kyrgyzstan, where the minimum number of members is 50, the power under the law given to the elected council is transferred to the general meeting.

In both countries, any individual having qualifications to become a member could apply to the board of management, who reviews it and get approval from the general body for membership. Once the member joined the cooperative s/he is entitled to get his/her members book, which is used for transactions. Membership is open and voluntary. The law is extensive in providing details on the procedure for termination and expulsion of members.

Withdrawal from the membership is provided in law as to how the liability of a members is recovered and also the pay out in form of dividends are calculated for settling accounts for withdrawal.

In addition to full-pledged membership the law provides for admitting 'associate members'. Associated members of cooperatives may be individuals and legal entities regardless of the organizational and legal form and type of ownership who have made share contributions to the cooperative on which they receive dividends, but have no right to vote, except in the cases provided by the Law. While having all other benefits and rights as a member, an associate member would not be entitled for voting at the general meetings.

Members are expected to attend the general meetings and participate in decision making by casting one member one vote irrespective of number of shares s/he holds. It is mandatory in the law. Members could be represented by another person holding power of attorney, which is not allowed some countries like in South Asia, in order to preserve the participatory role of members.

Annual general meetings are mandatory by law, while special general meetings too are authorized in law.

In both countries, the cooperative members can appeal against decisions and actions of the executive, control and other bodies of the consumer cooperative at a general meeting or in court.

In both countries, the Governing system is consists of the General Body, Board of Management elected by the General Body, Executive (Chairperson and/or Manager) and the Audit Committee elected at the General Meeting. There is no provision for appointing non-members to the board of management either as independent directors or executive directors.

In Kyrgyzstan, Losses inflicted to the cooperative as a consequence of bad faith performance of their duties by the members of the cooperative management, and conclusion of a transaction which resulted in unjust enrichment of the cooperative members, and in the instances of violation of the legislation of the Kyrgyz Republic and the charter of the cooperative by them, must be indemnified to the cooperative in the court procedure. In these cases, persons who caused harm shall bear liability envisaged by legislation of the Kyrgyz Republic.

The existing laws in Kazakhstan and Kyrgyzstan clearly provide for the self-control of the cooperative through the creation of a supervisory board, an audit commission, and the involvement of an independent auditing company. It is also indicated that any member of the cooperative may request an audit of the financial activities of the cooperative, and in case of refusal can seek judicial redressal.

**2.2 East Asia Sub Region**

China, Japan and South Korea have cooperative legislations specifying the authority for registering cooperatives, whereas in Mongolia, it is the National Registry for registration of cooperatives. Except Mongolia, other countries under review have specific laws for each type of cooperatives. There are no special provisions for register of cooperatives.

Minimum number of members for a cooperative society in the Sub Region is as follows:

Japan:	<b>20</b>	
China:	<b>05</b>	
South Korea:	<b>20</b>	
Mongolia:	<b>09</b>	Credit coops: <b>20</b>

As per the Mongolian cooperative law, when a cooperative membership fallen below 20, such a cooperative society should be dissolved.

Japanese agriculture law allows subsidiaries under cooperative societies.

Once the approval for the establishment of a cooperative has been given by the administrative authorities within 2 months of filing the application, District legal Affairs Bureau registers it.

In South Korea too, the approval to set up a cooperative society has to be given under the specific cooperative law and when it comes to social cooperatives that come under the Framework Act on Cooperatives, 2012, the approval should come from the Ministry of Economy and Finance. Cooperatives under general cooperative law only reports the articles of association to the authorities for registration. Normally common model for articles of association (bylaw) is provided for adaptation by the government. Each Registry Office has a cooperative register.

In China, the cooperatives under Farmers’ Specialized Cooperative Law,2007, the application for registration with the bylaws approved by the membership of a minimum number of 5, should be filed with the Administrative Office for Industry and Commerce.

Membership in the cooperatives is open and voluntary for the persons who abide by the by laws of the cooperative society. In addition, any government agency or a civil organization except the government department for administration also could become members of a cooperative society. However, law restricts to provide a minimum of 80% of members should be farmers.

Farmers’ Specialized Cooperative Law,2007 of China provides that members who make considerably large capital contributions or who effect considerably large amounts (volumes) of transactions with the cooperative may, according to the stipulations of the charter, enjoy the right to extra votes. The total number of extra votes of the cooperative shall not exceed 20 percent of the total number of the members’ basic votes. Each time a membership assembly is convened, the members present at the assembly shall be informed of those members who enjoy the right to extra votes and the number of extra votes they each enjoy. This is the exceptional proportional voting which is practiced in certain countries.



In FSCs whose number of members is less than 20, only one company or government-affiliated agency or civil society organization can become a member. In those FSCs whose number exceeds 20, the number of companies, government-affiliated agencies and civil society organizations (legal entities) that can become members cannot exceed 5 % of the total number of members. On the other hand, the amount of capital a member may hold is not limited by the Act: this is a matter left to the by-laws.

China allows a representative system for general meetings when the number of members exceed 150.

If a member in Chinese Specialized Farmers' cooperative wishes to resign from the cooperative, s/he should give notice 3 months prior to the date of resignation and in the case of an institutional member it should be 5 months before the resignation. The notice is accepted these times before the end of fiscal year. They are allowed to receive the value of share and the dividends or benefits due to him/her after settling any dues to the cooperative society inclusive of the losses of the cooperative in proportion to his shares.

In addition to the general body who makes policy decision, committees are not mentioned in the main law, leaving it to be decided in the bylaw. Board of management is elected at the general meeting of members and the Chairperson would function as the legal representative for the cooperative.

Japanese cooperatives follow the representative system allowed in law since the membership large due to the merger of cooperatives in Agriculture and Consumer cooperatives mainly. Representatives are basically representing the common economic interest of members having similar vocations.

Qualification for membership is spelled out in the bylaws and not in the main law in Japan: (i) Farmer, (ii) The individual who has the address in the area of the agricultural cooperative or one who has continued to receive supply of the goods and services concerning its enterprise from the cooperative and can appropriately use the cooperative facilities, (iii) The agricultural cooperative, and (iv) Agricultural organizations. Hence, Japanese cooperatives allow institutional members in primary cooperative societies.

In addition, associate membership is also allowed who are stakeholders of the cooperative society.

Consumer cooperatives adopt a different system of membership with qualifications: (i) Persons who have residence in the fixed area, (ii) Persons who are engaged in the occupation, (iii) Students in case of the cooperative in universities and schools. Institutional members or associate members are not allowed.

South Korean cooperative law has elaborated the qualifications and the admission of members, who are supposed to acquire minimum of one share for membership. No member is allowed to acquire more than 30% of the total number of share of the cooperative society. Membership is open and voluntary and one could withdraw at his/her will. South Korea too has the concept of associate membership without voting powers. Only fullpledged members have one member one vote, whereas the associate members do not have voting rights.

South Korean cooperative governance system is composed of the general body, the board of directors and the auditors elected at the general meetings. One third of the directors are nominated externally to acquire specialisation in society activities.

Representative system for general system is allowed, when the number of members exceed 500.

Board of Management and the auditors are elected at the general meetings, except one third of the board of directors are elected from the executive staff of consumer cooperative societies. In agriculture cooperative law too, 3 executive directors with one specialised in banking are represented at the board level. In 2015, a new clause was added obligating agricultural cooperatives to elect more than half of directors from certified farmers or those who have practical business skills such as marketing. In general, these executive directors undertake the implementation of business plans and legal matters while others looking after the policy matters and long term directions of the cooperative society.

The board of directors and the management supervisory committee which was introduced in 1996 aiming to strengthen the governance structure. The latter may be set up as an option by the provisions in bylaws, while it is an obligatory condition in the agricultural cooperative federations undertaking banking or insurance activity and other federations with 500 or more Regular members. It is composed of more than 5 members elected at the general assembly, of which one fourth may not be Regular members. Supervisory committee supersedes the Board of Directors in the administrative and business matters, since they are elected by the general body.

Agricultural cooperatives accepting member's savings and those conducting insurance activity (all federations, cooperatives whose amount of savings and liability reserves exceeds JPY 5 billion) must have more than one auditor who are neither members nor executives while one full-time auditor must be elected among auditors in larger cooperatives.

In Mongolia, all cooperatives should register at the National Registry under the Civil Code, and obtain a license to function in respective business areas from the relevant authorities- Financial Regulatory Commission, veterinary authorities, and mining authorities etc. Cooperatives must submit two signed copies of their 'Charter of Cooperative', a list of promoters and their personal identification information, and the meeting minutes which state the election of the managing board and auditing board for consideration for registration. Minimum number of members should be 9.

If the membership falls below the minimum number, such cooperatives are dissolved as per the law.

Members are free to leave their cooperative voluntarily and get re-admitted to a cooperative. Withdrawal from membership is permitted on the following grounds: by members' own request, change in residence making cooperative activity impossible for the members, transfer of shares to another, and death of a member. Members must give a written notice of intention to withdraw at least three months prior to the end of the fiscal year for the cooperative.

Governing systems in cooperatives in Mongolia consists of the general body, board of directors and the auditors elected at the general meeting of members.

### **2.3 Middle East Sub Region**

Jordan cooperative Charter of 2016 has established Jordan Cooperative Corporation (JCC) as the regulator of cooperatives, under which the registration of cooperatives takes place. Jordan has a common law for all types of cooperatives. By law, the cooperatives are allowed to transact with non-members. The minimum number of members for a cooperative is 15. Preparatory committee of 3 members could initiate registration process, for which the application should consist of the bylaw (articles of incorporation) and the details of members and finances accrued from the founding members. They should prepare articles of incorporation, get the approval of it at the inaugural meeting and obtain the authorization from the JCC according to the Article 3D of the Cooperative Societies Charter. A standard form of articles of incorporation (model bylaws) is provided by the JCC in all types of cooperatives in Jordan. Minimum provisions that should be included in the Articles of Association are provided in the Charter.

There is provision in law for the amalgamation of two or more cooperatives.

The membership in Jordan is open and voluntary as per the law, and any application having qualifications laid down in the bylaw should not be rejected by the Board of Directors. In the event of any rejection the applicants are empowered to appeal to the general body of the cooperative society.

The members have one vote per one member at the meetings. General assembly is the highest authority in the governing system. General body elects the Board of Directors and a Surveillance Committee (oversight committee) to oversee the work of the management and considered to be above the Board. Law allows the general assembly to appoint any other committees they desire.

A cooperative can be dissolved when the cooperative is unable to take remedial action to maintain the minimum number of members stipulated in the law (15) and on which basis it was registered.



Lebanon cooperatives are regulated by 3 pieces of legislation, which incorporate all types of cooperatives. Hence the registration undertaken by one authority, registration is done by the General Directorate of Cooperatives, who maintains the register of cooperatives. The steps for registration are as follows:

1. Registration of a request at the local office of the directorate general of cooperatives,
2. Preparation of the feasibility study.
3. Once the study is approved, the project of a bylaw will be prepared.
4. Decision of establishment is taken and sent to be published officially.
5. Approval of the bylaw by the Director General of Cooperatives.
6. Registration of the cooperative.

The minimum number of members a cooperative should have is 10. Dropping the membership less than minimum number of members tend to lose the registration of the cooperative society.

As the membership is open and voluntary, a member could leave the cooperative after settlement of accounts from both parties. Any rejection for giving membership to a person who is qualified, could be appealed through the General Directorate to the general body of the cooperative society.

Cooperative law adopts the principle of one member one vote for decision making at the general meetings of the cooperative society. However, a member cannot hold more than one fifth the number of shares of the cooperative society.

There are three different entities that run the cooperatives each having its own duties as specified in the law. These entities are the General Assembly, the Board of directors and the Control Committee.

The general body is empowered to approve change business plans, elect the board of directors and other committees, election of members for the committees and decide on the properties of the cooperative.

In addition to the elected directors the Board can appoint another director as may be necessary, who is either a member or non-member.

In Palestine, the minimum number of members a cooperative should have is 15. If the number has come down, the cooperative society is liable for termination of the registration.

In order to get the registration of a cooperative by the government, the promoters are required submit the following:

1. A completed and duly signed standard application form.
2. Proposed Articles of Association and Bylaws.
3. Minutes of the meeting of founders, including their names and the names of authorized signatories for administrative, financial and registration purposes.
4. A clear definition of the cooperative enterprise, including an economic feasibility study of this enterprise.
5. A form that includes the names and basic socio-economic data of all the founding members.
6. A bank receipt showing deposit by the cooperative of the total value of equity shares in the cooperative and the membership fees by all founding members.

Palestine cooperatives follow the principle of open and voluntary membership, and the membership is given to the persons more than 18 years of age. Thus, the school cooperatives are deprived of registration. Members rights and obligations are not written into the main law, thus transferring it to the bylaws.

Members are given one member one vote status in decision making at the cooperative meetings.

Cooperative governance system consists of a general body, board of directors and a surveillance committee appointed by the general body. General body is also allowed to appoint other committees at their discretion.

Executive system and the structure are allowed to be decided by individual cooperatives under their bylaws.

The law decrees provide penalties up to 5000 Jordanian Dinars (currency conversion - approximately 605 Euros as on August 2021) and 2 years imprisonment for the directors and employees who commit offences such as: misuse and misallocation of cooperative assets, including for personal gain; obstructing audit or investigation activities; falsifying or misrepresenting information on cooperative performance; misuse of authority or position within the cooperative for self-advancement and personal gain; and taking decisions or actions in circumvention of the Decree-law and the cooperative bylaws.

## 2.4 Oceania and Pacific Sub Region

In all countries under review in the Oceania Pacific Sub Region, it is mandatory for cooperatives to register with the regulatory authority as a cooperative organization. The term 'cooperative' cannot be used by any enterprise without approval from the cooperative regulator. In addition to cooperative legislation, cooperatives could be registered under the Companies Act in New Zealand.

There are similarities in the requirements for registration of a cooperative society in the Sub Region due to commonness in the foundation of the legislation:

**Table 5: Requirements for registration of a cooperative society in Oceania**

REQUIREMENT	VANUATU	KIRIBATI	PNG	FIJI	AUSTRALIA	NEW ZEALAND
Minimum number of 'natural' persons	7	10	7	10	5	2 Industrial & Provident Societies Act of NZ (IPSANZ) 7 Cooperative Companies Act of NZ (CCA)
Includes minors (under 18)	School co-ops only	Yes	If allowed in rules but not for formation	School co-ops only	Yes, if allowed in by-laws	Yes subject to bylaws
Pre- formation meeting requirements	Members must sign application form	Members must sign application form	Yes,	Yes,	Yes	No, Industrial & Provident Societies Act of NZ Yes, Cooperative Companies Act of NZ
Approved application form	Yes	Yes,	Yes,	Yes,	Yes,	Yes, CCA No IPSANZ
Application fee	Yes VT4,00	Yes KI \$4	Yes, K\$25	Yes FJ\$110	Yes AU \$110 or \$383 (with disclosure statement)	No IPSANZ s 20 No CCANZ (but fee paid for registering as a company under CA)
Model rules or by-laws	Yes, prescribed by-laws for Savings and Loan Co-ops and Consumer Co-ops	Yes,	Yes, s57. but unable to locate on website,	Yes, Schedule 1, also see website for consumer co-ops	Yes,	No CCANZ Yes IPSANZ
Probationary societies	Yes	Yes	No	Yes	No	No

Financial projections required	No (although the Registrar may require such information	No (although the Registrar may require such information	No, however the Registrar may require the applicant to provide further information	Yes,	Yes, if distributing co-operative – disclosure document required.	No
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(Source: Ann Apps-2020)

If and when the minimum number of members of a cooperative society becomes lower than the law, it is a condition for de-registration.

One of the issues that was a concern is availability of a model by law for adaptation by the respective proposers, whereas only in Vanuatu and Fiji have introduced model by laws.

All countries under review provides for institutional members (cooperative) in addition to individual members. Vanuatu and Fiji restrict the membership to persons older than 18 years, with the exception of school cooperatives while Kiribati allows members over 16 years. Australia allows minors but not to hold office or voting. In New Zealand, minors are allowed membership with all rights except holding office of the cooperative society. PNG law allows only automatic citizens over 18 years to be members. Kiribati stipulates that members should own land in the area of operation of the cooperative society in addition to other qualifications. Normally detailed qualifications other than the provisions in the main law have been allowed to be incorporated in the bylaws of cooperatives.

Maximum number of members for a cooperative society has not been specified notwithstanding the minimum number and preserve the principle of open membership and allowing it to be on the basis of the type of cooperative such as consumer to be very high and housing to be low.

Vanuatu being a country used for international money market has stipulated rules in cooperative law that prevents the persons with money laundering business would not join as key figures.

In all countries, members are allowed to withdraw from the cooperative society in which they do not have further economic interest or unable to make contributions, but the shares paid are valued at a nominal value.

When it comes to withdrawal of a member from a cooperative society, all cooperatives adopt the payment of nominal value of the share and in some countries like Kiribati, from a share transfer fund, which is built up by allocating monies from the surplus every year. However, Fiji and PNG have provided that written permission from the Registrar should be obtained to pay back the value of shares in the event of resignation of a member. This may be due to the suspicion of erosion of capital causing insolvency. The solution appears to be the share transfer fund which is popular among South Asian countries. Postponement of returning share to ex-members is another provision in some other countries but could be argued as unreasonable.

Members liability on the liability of cooperatives has been commonly provided as to the value of shares they have obtained.

Internal structure of cooperatives in Oceania mainly consists of two players: general body and the board of directors. Vanuatu and Kiribati do not assign or delegate powers in the law, but other countries draw a distinction between the Board and the General Body on their roles. In the countries where the distinction is absent, the bylaws should undertake to assign functions to these entities.

In Fiji, however, the delegation to the Board of Directors is to implement the decisions taken by the general body at its meetings. This is understandable as the size and the activities of cooperatives in Fiji are simple enough to be managed mainly by the general body. Generally, credit cooperatives all over the Region have such arrangements, their being smaller in size to be village based and also the activities are limited. In these cooperatives, the members have total control of the cooperative society.

In Australia, where there is a broader delegation has been provided, has reserved the decisions impacting members exclusively to the members' ballot.

Decision making generally is entrusted to all qualified members using one member one vote principle, except New Zealand, where only transacting members are allowed to vote.

## 2.5 South East Asia Sub Region

Maintaining a register of cooperatives has not been provided in South Asian countries, which means that it is an administrative requirement. Once it is provided in law, it becomes a legally valid evidence in a court proceeding, which is so in South Asia.

Minimum number of members required for registration is as follows:

Indonesia: **20**

Myanmar: **05**

Philippines: **15**

Vietnam: **07**

In the event of falling in the minimum number of cooperatives the countries under purview have the provision for de-registration for not fulfilling the statutory requirement.

In regard to the registration of cooperatives in Indonesia, The Ministry of Co-ops & SMEs at the national level has the authority to grant the legal permit, and the application could be submitted online via a public notary. Legal administrative requirements are, among others, Minutes of the meeting of founding members alongside their signatures, copies of Citizenship Cards of these founders, Bylaws, Work plan, and initial Balance Sheet.

In Indonesia, in order to be a member of a cooperative society, (a) must be Indonesian citizen. (b) Special/ extra-ordinary members can be admitted but with no voting right and with duties spelled out in Bylaws. Members' right to leave is also specified in Bylaws.

The members have the right to withdraw from the cooperative according to his/her wish and get the share value returned when the liabilities to the cooperative is settled.

Registration of cooperatives in Myanmar has to take place after preliminary meetings of sponsors and the election of executive committee by sending an application with (a) three copies of application requesting permissions to register including the original to form the agricultural cooperative; (b) three copies of the minutes of the general meeting (see step 4) including the original held to form the primary cooperative society; (c) three copies of the by-laws of the primary cooperative society including the original as agreed and approved by the majority at general meeting held to form the primary cooperative society.

In Myanmar, a member should have following qualifications: (a) a citizen, an associate citizen or a naturalized citizen; (b) a person who has completed the age of 18 years; (c) a person who has subscribed fully the value of one share determined under the by-law of the society; (d) a person not of an unsound mind. Persons who have completed the age of 12 years may be admitted as an associate member in a primary co-operative society. Staff members of cooperatives are allowed to be members of cooperative societies.

The members have the right to withdraw from the cooperative according to his/her wish and get the share value returned when the liabilities to the cooperative is settled.

The governance system consists of the general body, committee of management and leading committee in Myanmar. Leading committee supervises the functioning of the Board.

In the Philippines, the Cooperative Development Authority is assigned with the registration of cooperatives. The proposed cooperative society having completed the mobilization of members, set up a general body and electing the Board, should send the following documents for registration: 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.

Member must be natural Filipino person, of legal age (18 yrs. or older), and have taken pre-membership education seminar. Third-party membership is not allowed under the Code. Yet open-door policy for membership is encouraged, although not mandatory. Article 30: member can withdraw with valid reasons and by giving a sixty (60) day notice to BOD.

The members have the right to withdraw from the cooperative according to his/her wish and get the share value returned when the liabilities to the cooperative is settled.

Vietnam cooperatives are registered by the Peoples Committees in the area following the steps: cooperative as the following (The Article 23): - Before operation, the cooperatives and the unions of cooperatives shall register at the competent State agencies where the cooperatives and unions of cooperatives plan to locate their head office. - Dossiers to register cooperatives and unions of cooperatives including: Written request for registration of cooperatives and unions of cooperatives; Charter; Business and production plan; List of members, member cooperatives; list of Board of Directors, Director (General Director), supervisory Board or the controller; Resolution of conference for establishment.

As per the law, a member must be Vietnam citizen or foreigner residing legally in Vietnam. Minimum age of membership is 18 years. Article 7: "Co-operatives and unions of co-operatives shall widely admit members and affiliated co-operatives". Article 16 specifies 6 conditions when members can leave, i.e. Voluntarily, Bankruptcy, contribution ceased, or expelled.

The members have the right to withdraw from the cooperative according to his/her wish and get the share value returned when the liabilities to the cooperative is settled.

Members have one member one vote principle in all the countries in the Region.

Indonesian cooperative law provides for a general body, board of directors, and a supervisory committee appointed by the general body. Executives are appointed by the board of directors. Supervisory Committee oversees governance and audits financial records based on ethical standards & performance. Result will be reported to AGM.

In the Philippines, the governing body consists of the general body looking after the policy matters, board of directors elected at the general meeting to oversee the management of cooperative society. Non-members could be inducted to the board when there is a need for technical specializations, who is not having any voting rights. The bylaws could accommodate provisions for the appointment of committees.

Any director who is found to have any conflict of interest with the cooperative society is disqualified by law.

The governance system of cooperatives in Vietnam consists of the general body, board of directors elected by the general body, and the supervisory board elected by the general body using secret vote.

Ethical aspects of governing system are not provided by law.

## **2.6 South Asia Sub Region**

In Bangladesh, the Registrar of cooperatives, who is the regulator maintains the register of cooperatives.

In order to register a cooperative society, the minimum number of members has been stipulated as 20, which is mandatory to be maintained all the time. Failing which, the cooperative society is liable for de-registration.

The application should have following documentation for the Registrar for registration:

- Application for registration signed by members
- Draft bylaws approved by the membership
- Draft budget for 2 years
- Account showing fulfilment of minimum paid up statutory capital
- Receipt for the payment of registration fee through a treasury challan

Registration should be provided within 60 days. Any refusal is liable for appeal.

In Bhutan, there should be 15 Bhutanese citizens who are eligible should be the minimum number of members for registration. The application signed by the members should be sent to the Registrar of Cooperatives with following proof:

- Three copies of duly accomplished Constitution and By-laws
- Evidence that the proposed primary co-operative is organized based on a) the members' common needs or demand, and b) the economies of scale and requirements of the market of its business under takings
- Bond of accountable officer
- Proof of bank account.

Upon registration, Ministry of Agriculture would issue the certificate to the cooperative society. Any refusal for registration could be appealed.

In a given situation of decline of membership than the statutory requirement, the cooperative is liable to be de-registered.

There is no provision for maintenance of a register of cooperatives.

India being a federal state, each state has its own cooperative legislation and in addition, at the central level, Multi-State Cooperative legislation is in force. Therefore, the study is based on the Multi-State Cooperative Act, which is supposed to be the model. Model Cooperative Societies Act is non-functional now.

In the case of a multi-state cooperative society, 50 persons from each of the state should sign the application if they all individuals. The Society is required to maintain the minimum number of members all the time to keep the registration.

For the purpose of registration, the sponsors should submit the application along with following documents:

- 4 copies of proposed bylaws
- Statement by the persons by whom or on whose behalf such application is made.

The Registrar would register the Society if he is satisfied that

- The application complies with the provisions of this act and the rules;
- The proposed Multi-State Cooperative Society satisfies the basic criterion that objects are to serve the interests of the members in more than one state;
- There is no other Multi State Cooperative Society having similar area of cooperation and identical objects;
- The proposed bylaws are not contrary to the provisions of this Act and rules &
- The proposed Multi State Cooperative Society has reasonable prospects of becoming a viable unit.

Once the Society is registered, a certificate of registration is issued to the cooperative society as evidence as it is registered.

Indian law provides 6 months for registration. Any refusal could be appealed.

There is no legal provision stated on the register of cooperatives.

Maldives, having comparatively new legislation has differed from the British Indian model somewhat. In Maldives, in order to get registration, the minimum number of members should be 10. And Minimum of 10 members should sign the application

Applicants for the registration of a Society should furnish the following information:

- a. The economic or other purpose for the formation of the proposed Society.
  - b. A statement on the viability of the activities proposed by the Society.
  - c. The evidence of sufficient capital for the commencement of operations and details of keeping records and accounts of the Society.
  - d. Until the management committee is elected as per clause 28 (a) of this Act, the name of the temporary members of management committee.
- Registration fee of Rf. 200 and annual fee of Rf. 200
  - The name submitted by the Society to be registered shall only be approved by the Registrar if the name complies with the regulations made under this Act on the criteria on names that can be submitted to be registered. If the Registrar does not accept the submitted name, that name will not be registered.
  - Proposed bylaw of the society
  - Report on the viability of the society

A Certificate of Registration by the Registrar is issued to the Society as evidence of its registration.

Minimum number of members for Nepal cooperatives is more elaborate:

- Minimum of 3 Nepali citizens could form a sectoral or multipurpose cooperative society, whereas a Cooperative Organization carrying out business based on labor and skills involving laborers and youths and others, should have a minimum of 15 Nepali citizens; participation of at least one hundred Nepali citizens is required while forming an Organization carrying out transactions of savings and credits in a Metropolitan City or Sub Metropolitan City; at least one hundred employees, teachers or professors who are incumbent in an office getting remuneration from Government of Nepal, Provincial Government, Local Level or from a school, University or corporate entity getting a grant from, or under the ownership of, such government or level may, based on the professional organization formed according to the prevailing law, form together an organization with a condition to abide by the terms and conditions as prescribed. Provided that in an office with less than one hundred employees, at least thirty employees, teachers or professors may, form together an organization with a condition to abide by the terms and conditions as prescribed.

The basis for membership is one member for one family.

Following documents are to be submitted with the application for registration:

- a. Proposed Bylaws of a Cooperative Organization;
- b. Report of the feasibility study of operation of the Cooperative Organization;
- c. Details as to the number of shares undertaken to subscribe by the members and amount of share;
- d. Other details as prescribed.

Registration criteria have been specified in the main law as:

- a. The Bylaws submitted along with the application is consistent with this Act and Rules framed under this Act;
- b. There is the basis that the proposed Cooperative Organization could be run according to the values, norms and principles of cooperatives;
- c. There is clear basis that the Cooperative Organization could be run and controlled being community-based and member-centric;
- d. Other bases prescribed are completed



There is no provision for registration of cooperatives with unlimited liability.

There is no provision for register of cooperatives. The time limit for pending application is 30 days.

Any rejection has to be notified with the reasons for refusal. There is no appeal procedure for any rejection of registration, which makes Registrar's decision is final. Minimum number of members for a primary cooperative organization is 10. Minimum of 10 members who have acquired a minimum of one share each to sign the application.

Following documents should be presented for registration along with the prescribed application:

Economic feasibility report that proved the viability of the proposed cooperative

- Preliminary committee should have 2 members between the ages of 18 to 35
- Decision on the liability as to be 'limited' or 'unlimited'.
- Resolution of the general body with an endorsement of a Cooperative officer to be attached to the application
- Proposed bylaw in two copies

Any refusal for registration could be appealed against which is to be forwarded to the Minister in charge of cooperatives and his/her decision would be final. There is no time limit for scrutiny of the application for registration.

South Asian countries have not provided nitty gritty of qualifications for membership other than the citizenship of the respective country and the age of 18 years leaving it to be decided at the bylaw level. However, legislation in Sri Lanka provides age exemption for school cooperatives. There is no restriction of the number of members by law except the minimum number.

Multi State Cooperative Act (MSCA) of India has specified the category of persons who would be eligible for membership in addition to the traditional concept of people having common needs: any individual competent to contract under contract law; any multi state cooperative society; central government; state government; government corporations or companies; such classes of persons or associations permitted by the Central Registrar.

Decision to grant membership is expected to be within four months of applying and communicated to the respective person within 15 days after the decision. If no communication is sent, it is assumed that the application has been rejected.

In the case of refusal to grant the membership, MSCA and some countries have not laid down any provision for appeal, but Nepal and Sri Lanka provide for an appeal procedure. Sri Lankan law is elaborate on this and the Registrar's decision on such a matter prevails in law. Such a procedure safeguards the principle of open membership.

In Sri Lanka and India, associate members – either individuals or cooperatives – are permitted by law, but without any voting power in the meetings.

In all countries in South Asia, just like in a private enterprise, silent membership is allowed, which is detrimental to the proper functioning of a social enterprise such as a cooperative. The only compulsion stipulated in certain countries is the provision of economic participation to a certain value for contesting to hold a position in the management committees.

All countries have adhered to the principle of members' right to join voluntarily and voluntary termination of membership by him/her. However, before termination, the liabilities to cooperative, if any, is required to be settled.

Member's expulsion procedure has been written into the laws in India and Sri Lanka, whereas others have left it for the bylaws. Generally, it is the general body of the cooperative society which would grant and terminate the membership after following due process of inquiry.



Indian law has stipulated that any employee of the same society who becomes a member should not vote during any election of office bearers or bylaw amendment. Likewise, law in Sri Lanka bars employee member becoming a committee member through an open election.

In all countries in South Asia, law permits one member one vote principle for general meetings of cooperatives. This is irrespective of any number of shares held by him/her in the cooperative society. However, no representation of individual members is allowed through proxies.

In Bangladesh, the governing system is consisting of the general body, Committee of Management elected by the general meeting and the election committee. Registrar is permitted by law to nominate members to the Committee and if the government holds 50% of the working capital, 1/3<sup>rd</sup> of the committee could be nominated by the Registrar.

Suspension and the termination of the committee is authorized to the Registrar under the law when inefficiency and corruption is proved after an inquiry. Executives are not included on the cooperative law.

Governance system in cooperatives of Bhutan consists of the general body, board of directors and the finance and audit committee elected at the general meeting. The functions of these bodies are provided in the respective bylaws. In addition, as per the law, cooperatives should also appoint credit and education committees as well.

Governance system in India consists of a general body, board of directors elected at the general meeting and the executive committee appointed by the general body when necessary. Employee representation at the board has been allowed. Central government and state government ministers are excluded from being elected as directors. The government has the authority to nominate one director if the government holds 26% of the working capital of the cooperative society and if 50% is held 2 directors are appointed by the government.

One of the progressive actions specifically stated in Indian law (2002) is the power provided for the general body for the formulation of code of conduct for the members of the board and officers. Under any good governance system, code of conduct for the directors as well as employees is common. In addition, there are also practices for evaluating the performance of individual directors as well as board of directors are in place, but current legislation in the countries under review do not have such provisions.

Qualifications and disqualification of directors in the Indian legislation is more elaborate than others. Elimination of politicians from the governing committees are found in Indian and Sri Lankan laws, whereas other country legislations are silent on the subject.

The Chief Executive appointed by the Board on fulltime basis shall also be a member of the board and of the Executive Committee and such other committees or sub committees as may be constituted.

Maldives law does not provide detailed qualifications for becoming a member other than the persons falling within the norms of cooperative society. It merely provides for Members of a Society to be at least 18 years old and individuals living in a community or part of a community in which the Society is operating. The person has to apply to be a member and the management would accept it after scrutiny. No procedures laid down in the event of any rejection, which means civil law applies.

Member is able to withdraw from the cooperative society and also could be terminated by the society in the event of contravention of any of the provisions of this Act or the Articles of Association or behave in any way detrimental to the interests of the Society, and may be expelled by a vote of not less than two-thirds majority of the members present and voting at a General Meeting upon a charge of which he or she is informed in writing by the Management Committee at least seven days before the meeting. S/he is provided with an opportunity to defend himself/herself.

A member should have only one vote irrespective of any number of shares s/he holds.

The governance system in Maldives consists of the general body and the board of management.

General body needs to elect 15 members consisting of i) Chairperson ii) Vice Chairperson iii) Secretary iv) Treasurer v) Additional members. The law stipulates that any elected director should be a person who is i) A member of the Society ii) A Maldivian citizen. iii) A person who has not been declared as bankrupt. i) A person who has not been removed from membership of a Society within the past five years. ii) A person who has not been convicted in a court of law in involvement in the embezzlement of a society's fund or any other such similar fund.

The Management Committee is empowered to appoint sub-committees.

However, as per the law, the Maldivian government reserves the right to buy 50% of the paid up share capital and nominate one third of directors to the Board of directors. Provisions for the disciplinary action against directors are to be provided in the bylaws.

In Nepal, any citizen who resides in the area of operation of the cooperative association and purchased shares could join as a member. In addition, any institution including the government who purchased shares could also become members. Board is empowered to decide on the membership, but any rejection of an applicant has the right appeal to the general body for final decision.

Members have the right to withdraw from the cooperative association, when s/he settle accounts.

The law established the principle of one member one vote for decision making at the members' forums.

The governance system consists of a general body and a board of directors elected by the general body. The board of management elected at the general meeting should have 33% representation of women.

Certain restrictions to be a director are provided: No more than one person of the same family may become a candidate and be elected at the same tenure as a director and a member of the Accounts Committee;) No director of any Cooperative Organization can become an employee or a director of any other Cooperative Organization, except the Cooperative Organization in which he/she is a director; A person may become a Director of only one Cooperative Organization at a time.

The Board can be removed after an investigation into any wrong doings conducted by Registrar in the case of Cooperative Bank, s/he should consult the Nepal Rastra Bank.

The law has also provided for an Accounts Committee elected by the general body to oversee the finances of the cooperative. The law has made provisions for the appointment of sub-committees for conducting business.

Under the law, the Board is empowered to appoint advisors and employees for carrying out business with the remuneration decided by them.

Governing system in Sri Lanka consists of a general body and a board of directors elected by the general body. The main act No. 5 of 1972 does not deal with any provisions in regard to the Management Committees, whereas the Rules of 1974 deal with the appointment and dismissal of the Management Committees. It lays down the disqualifications to be appointed as a director. However, Amendment Act of 1992 brought a provision barring any politician members of Pradeshiya Sabha, Provincial Councils and the Parliament to be elected or appointed as a Director of a cooperative organization at any level. However, under the law, it is mandatory that 2 members of the management committees should be members between the age of 18 to 35 years.

Law provides for Registrar to investigate any malpractice on the part of a director or the board of directors and frame charges but the ultimate authority for dismissing the boards of directors or a director is vested with the general body in the case of cooperatives which have no capital from the government, but in the case of cooperatives having government funds, the Registrar is authorized to dismiss the directors or the board and appoint a temporary team of administrators until such time the case of malpractice is cleared.

Appointment of committees or sub committees is undertaken in the by-laws and there are no compulsory committees provide in law.

Unlike the other countries, laws governing employees do not come under a common labour legislation of the country, but a specially appointed authority titled Cooperative Employees Commission appointed by the government under the Cooperative Employees Commission Act No. 12 of 1972.

## Cooperative Financial Structure and Taxation

### 3.1 Central Asia

In Kazakhstan and Kyrgyzstan, the shares are termed as 'property fee' which could accommodate cash, securities, things, property rights, including the right to land use and the right to the results of intellectual activity and other property. Any limit to share capital has not been declared as well.

Both countries allow the investor members for investing in cooperatives at the discretion of the management of cooperatives, but such persons would not have voting power at the general meetings.

Law does not link the shareholdings to the transactions of the member with the cooperative society.

In Kazakhstan, the Law "On Consumer Cooperative" provides that income received by the consumer cooperative cannot be distributed among its members and is directed to statutory goals whereas other laws on producer and agricultural laws provide for distribution of surplus among members.

The laws in force in both countries provide for the right of the cooperative to create various funds, including a reserve fund and a fund for the promotion and social support of its members.

A member of the cooperative, in the event of the liquidation of the cooperative society, has the right to receive the value of a property part remaining after settlements with creditors, or, by agreement of the majority of the cooperative members, a part of this property could be utilized for community welfare proportional to its property (share) contribution.

In Kyrgyzstan legislation, there are no specific rules on the capital and assets allocation in the event of liquidation by a decision of the general meeting or the transformation of a cooperative into another organizational and legal form. The conditions and procedure for reorganization, transformation can be provided for in cooperative's charter.

Conversion of cooperatives into other types of organizations is not allowed in law.

Kazakhstan, having dual system of cooperatives – consumer cooperatives under Civil Code and agriculture and production cooperatives (later named as service cooperatives) under specialized coop legislation – has inherited cooperative system and mechanism from USSR. Their disbursement surplus defer from each other. Statutory and other reserves are met from the gross surplus of the cooperatives. Undivided surplus is distributed among the members based on their participation in transaction with service cooperatives. Dividends on share too are determined by the cooperatives at their discretion.

Cooperatives registered under the Civil Code do not distribute their surplus among members which is allocated for statutory purposes.

Another specific feature is that in the event of any loss incurred in service cooperative society under Civil Code, the loss has to be paid by the members within 3 months. This is somewhat similar to modern day paying a deficit in a solvency statement of a company by the board of management of a company in the event of a deficit under the Company law. Another explanation is the practice of a cooperative society with unlimited liability where any default or a loss to be paid back by the individual members.

However, there is a concessionary taxation of cooperatives in Kazakhstan. However, even the amounts distributed from the surplus too are taxed in addition to the value added taxation on the goods and services. Dividends received by a resident of the Kyrgyz Republic from participation in domestic organizations are income not subject to income tax.

In the case of agricultural cooperatives, they fall under the provisions of the Tax Code of the Republic of Kazakhstan, where the amount of income tax, social tax, property tax and road tax is reduced for agricultural producers by 70% from the generally established rate for other categories of taxpayers. Tax Code of the Republic of Kazakhstan provides for the tax payment in the amount of 30% of the calculated amount, save for land tax. The road tax is not paid on objects of taxation directly involved in the process of production, storage and processing of its own agricultural products.

In contrast to other economic entities, agricultural cooperatives in accordance with the Tax Code of the Kyrgyz Republic are provided with a number of preferences.

Cooperatives are exempt from income tax, sales tax, value added tax, real estate tax at rate of 50 percent (recent changes in the Tax Code of Kyrgyz Republic dated August 4, 2018).

The supply of its own agricultural products by the agricultural cooperative, as well as its processed products, is a VAT free supply.

The supply of agricultural products and processed products by an agricultural cooperative received from agricultural producers who are members of the cooperative is a VAT free supply.

The supply of goods, works, services by an agricultural cooperative to members of this cooperative is a VAT free supply.

Dividends received by a resident of the Kyrgyz Republic from participation in domestic organizations are income not subject to income tax.

An agricultural cooperative, as tax agents, withholds and pays a fixed amount of income tax on each employee, calculated based on the minimum estimated income, from the wages of employees.

According to the Tax Code of the Kyrgyz Republic, a dividend is a part of the taxpayer's profit, including cooperative payments to members of agricultural cooperatives. However, the Law "On Cooperatives" distinguishes the concept of "dividend" from the concept of "cooperative payments", which should be noted about the inconsistency of the two regulatory legal acts to each other.

### **3.2 East Asia Sub Region**

There is no minimum or maximum share capital limits provided by law except that the founding members should have the contribution to the value to level of one share for those who sign the application except in Japan, for banking and insurance minimum statutory capital is fixed by the relevant authorities. There are no investor members accommodated in the laws. However, the financial cooperatives are allowed to issue preferential shares.

In Japan, share capital does not have a link with the transactions of a member. Maximum number of shares to be held by a member is specified by the bylaw. Liability of a member towards the liabilities of a cooperative society is limited to the shares s/he holds in the society.

In the case of South Korea, the maximum number of shares that could be held by a member is 30% of the total shares in the case of all other cooperatives other than consumer cooperatives which has 20% only. Cooperatives have no legal provision to issue any financial instrument and also to admit investor members. Preferential shares are allowed in district cooperative unions or the national federations.

Cooperatives are permitted to establish statutory reserves and other types of reserves as they desire.

In South Korea social cooperatives are not allowed to distribute residual assets in the event of liquidation. Instead, it should go to a non-profit organization or the government.

In the event of a liquidation of a cooperative society, residual assets are distributed among the members.

Conversion of cooperatives are allowed in Japan to be converted to other forms of enterprise including private companies, and the members are allowed to withdraw their share capital in such a case.

Member is authorized to withdraw the membership by recalling the shares s/he holds in the cooperative giving 90 days' notice.

Cooperatives in Japan are provided with the permission to distribute the surplus in form of dividends based on his/her patronage and/or based on shares. Patronage dividend is treated as a refund and not taxable, while the dividend on shares is restricted to 7-8% a year in agricultural cooperatives and 10% in consumer cooperatives. Japanese cooperatives deal with members only, hence the surplus from the transactions with the non-members is not applicable. Cooperatives are able to allocate 5% of the surplus for education and training activities as well.

In China the surplus could be distributed on the basis of a general assembly under following conditions:

(1) to return the profits in proportion to the volume (amount) of the transactions effected between the members and the cooperative, and the total amount returned shall not be less than 60 percent of the distributable profits; and

(2) to distribute pro rata to the members of the cooperative, the rest of the profits left after the return according to the provisions in the preceding subparagraph, on the basis of the capital contributions and shares of common reserve funds recorded in the members' accounts and the members' average quantified shares of the assets accumulated from subsidies directly given by the government and donations made by other persons to the cooperative.

In South Korea, 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 Restriction of Special Taxation Act while cooperatives organized under the Framework Act don't get any preferential tax treatment.

Cooperatives in Japan are taxed at lower rate as compared to other business organisations although the difference in rates for conventional corporations and cooperatives is being reduced from 12.3% to 4.4% during 1984-2016. They are also subject to a specific tax treatment in Registration and License Tax, Stamp Tax, as well as local taxation such as Corporate Enterprise Tax, Fixed Property Tax etc.

In Mongolia, Surplus needs to be distributed as dividend based on member's share or transaction based on decision of the board while some percentage of profit must be allocated as reserves. Credit and savings co-operatives can issue financial instruments, but they are not allowed to sell insurance. Other co-operatives can give a non-interest loan to members to fill the seasonal gap until the sales of cashmere. Investor members are regulated by bylaws. The residual assets can be distributed among members while the remaining assets are transferred for public use.

As per the Taxation Law of Mongolia, cooperatives are taxed the same as other private for-profit business entities and partnerships.

### **3.3 Middle East Sub Region**

In the countries under review, there is no fixation of share capital needed for the cooperative society, but members are required to contribute to share capital.

In Jordan, the capital of a cooperative society consists of members' capital entirely and there are no provisions in law for issuing any financial instrument other than shares for the members.

Minimum share capital is not specified in law. Maximum shares are not specified and also the maximum number of shares which can be held by a member.

A withdrawing member (including an expelled member) of a cooperative may claim for a 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 is resigning.

When a cooperative has a surplus after the settlement of accounts for a fiscal year, it is required to set aside the following:

- no less than 20 percent of the surplus as a legal reserve, which the cooperative can only use for cooperative business investment purposes. Once the value of accumulated reserve exceeds the value of subscribed capital, a cooperative may decide to distribute all or part of this excess to members in proportion to their shares. Moreover,
- no less than 2 percent of surplus to an education fund, which –if not spent for two years following its allocation- must be reallocated to the legal reserve.

As per the Cooperative Societies Charter, a cooperative may decide to allocate whatever remains of its surplus after deducting the preceding mandatory reserve allocations to a voluntary reserve account and a member withdrawal account. Should its bylaws permit it, a cooperative may also distribute what remains of its surplus (after deducting statutory allocations) to members in proportion to the volume of their business transactions with the cooperative. Nonetheless, it may not distribute any surplus accrued in any given fiscal year unless it first covers any deficit (i.e. losses) accrued in the preceding year

Jordan law is silent on the disposal of surplus created through the transaction with non-members, which is equal to a company. Individual cooperative is allowed to decide on the disposal of surplus among the members.

In Jordan, dissolution of a cooperative society can be initiated by the members voluntarily or by the Registrar of cooperatives at his discretion. There are no provisions in law to contest his/her decision. Any residual amount of money that remains after settlement of the other liabilities gets distributed to members in proportion to their subscribed shares.

The law has not provided any specific clauses on taxation, allowing it to be decided by tax laws. Cooperatives too are considered in the line of private companies, except the non-profit activities conducted. Only the Jordanian Cooperative Union is exempted from taxation.

In Lebanon, the capital for the cooperative society is provided by the members.

From the surplus of cooperative with limited liability 25% is vested with the statutory reserve, whereas in unlimited liability cooperatives, it is 50%. Out of the balance surplus, 25% is paid as interest on members' shares. 5% is allocated for cultural activities. Balance is paid as patronage rebates.

There is no specific tax regime for the cooperatives in Lebanon, but the Lebanese law provides tax exemption on income for cooperatives, in addition to an exclusive list of tax and fee exemptions. On the other hand, members of the cooperatives are not exempted from income tax; however, the cooperative itself is exempted hence any reserve belonging to the cooperative is exempted.

Palestine laws do not provide any limit of declared share capital. Law has allowed the bylaws to decide the minimum share capital a member should own in order to get the membership and exercise the rights. However, a member is not allowed to own number of shares more than 20% of the total share capital. However, the institutional members are allowed to own 35% of the total share capital. However, variations of capital such as preferential shares etc. are not provided. Neither the investor members are allowed.

In addition to the share capital, the law allows the increase of equity capital using following strategies:

loans, donations, accumulated reserves, member deposits and profit generated from them, surplus generated and profit from cooperative owned businesses and investments.

The cooperative society is also authorized to set up special funds for project on health, construction etc.

At the instance of a withdrawal of membership by a member, it is allowed on settlement of dues by both parties.



Law of Palestine provides a formula for the disposal of surplus in the legislation:

- 5% of surplus is to be allocated for community development;
- 5% for transfer to the Cooperative Development Fund (an independent institution whose establishment is stipulated in the Decree-law); a maximum of 20% to individual members in proportion to the shares they own;
- a minimum of 20% to a reserve account held by the cooperative;
- a maximum of 10% to the cooperative management committee (based on decision by the general assembly); and
- the remainder as a return to members in proportion to their transactions (patronage).

The law is not specific on the tax regime except the mention of exemptions the cooperative is allowed: taxes, customs duties and registration fees on movable and immovable property necessary for the implementation of the objectives specified in their bylaws provided that they are not disposed of within a period of not less than (5) years, unless the accrued taxes and customs duties are paid.

### 3.4 Oceania and Pacific Sub Region

In Vanuatu and Kiribati, shares of members are un-attachable. No member is entitled to hold more than one fifth of the total share capital of the cooperative society. The rules of these two countries allow shares to be transferred to another member with the approval of the management of the cooperative society. Share can also be withdrawn by a member as per the bylaw provisions.

In Fiji, Bylaws should have the provisions to determine the amount of shares a member should acquire to be a member. Law permits to have preferential shares as well. No member should have more than one fifth of the total shares.

In Australia, the law provides that a distributing co-operative must have share capital, a non-distributing co-operative may or may not have share capital depending upon the rules of the co-operative. Shares are transferable as provided in the co-operative's by-laws. Shares are transferable based on the bylaw provisions. No member is allowed to hold more than 20% of the total number of shares.

In Papua New Guinea, rules of the society have to determine the nominal value of shares, the minimum share subscription requirements for membership and the way the shares or interests of members may be transferred.

In New Zealand, law allows to issue shares at a nominal value and accept surrender of those shares at that nominal value and different classes of shares may have different nominal values. There is no limit in the New Zealand law on the size of the shareholding of a single transacting shareholder, so long as no less than 60% of voting rights are in the hands of transacting shareholders as a whole. Law also authorizes the co-operative company to require a shareholder to surrender excess shares where the shareholder holds more shares of nominal value than is required under its constitution.

All countries have adopted the principle of one member one vote in primary cooperative societies. In order to safeguard primacy of members' interest, Vanuatu, Kiribati and PNG have legally prohibited transactions with non-members and even restricting lending to other cooperatives and also the restriction in external borrowings.

Co-operative laws in Vanuatu, Kiribati and PNG require the Registrar to approve decisions that involve access to external capital. However, the Registrar has the power to fix the maximum amount of undischarged liability that the co-operative may incur including both aggregate and specific classes of liability.

In Vanuatu and Kiribati, the co-operative must fix at a general meeting, the maximum liability it may incur in loans or deposits whether from members or non-members' liability it may incur in loans or deposits

In Fiji, law allows the cooperatives to receive deposits and raise loans from the members and non-members as well. However, in the law, any surplus generated from the transactions from non-member capital should go to any reserve fund.

Vanuatu and Kiribati laws provide for Registrar to restrict transactions with only the members. In New Zealand, all transactions of dairy cooperatives should be within the members.

Australian law allows cooperatives to issue debentures and cooperative capital units (CCU) to members and non-members. CCUs are hybrid forms of instrument which can be structured as either debt or equity, subject to their terms of issue.

Cooperative Companies law of New Zealand allows co-operative companies to raise capital by issuing transferable shares to non-transacting members in accordance with the relevant provisions in the Companies Act and subject to its own constitution and the requirement that 60% of shares are to be held by transacting shareholders. Co-operative companies may also raise capital by issuing debentures and obtaining loans in the same way as other companies.

Most co-operative laws in the region recognize the notion of patronage refunds or rebates but leave it to individual co-operatives to tailor their own rules relating to the distribution of surplus to members, whereas in Australia, these principles applied to distributing cooperatives only. PNG requires Registrar's approval in addition to the cooperative decision. Countries in the region have adopted different ratios for interests on shares and payment of dividends, but complete negation of economic benefits to members has been avoided. Some have allowed individual cooperatives to decide on it merely stating as 'limited' benefits. A deviation has been found in the New Zealand cooperatives under the Companies Act to pay different dividends to different classes of shareholdings.

Allocation of a percentage (normally 25%) from the surplus to a reserve fund has been made mandatory under law, which is undividable even at the time of legislation with the exception of PNG. In South Asia, such a fund is treated as a security or contingency fund, which could be utilized for taking into working capital at a time of losing solvency or liquidity. However, this fund as a principle, ensures the sustainability of a cooperative society.

Kiribati and Vanuatu receive tax concessions fixed in low ratios and void of income tax.

In Fiji, elaborate tax concessions have been in place:

- New co-operatives may be entitled to an exemption from income taxation for a period of up to 8 years from the date of registration if the Minister so orders;
- Savings and loan co-operative societies are entitled to claim as exempt income, any income derived by the society and carried to a reserve fund or capitalized;
- A co-operative society registered under the *Co-operatives Act* that is receiving government assistance for a project may be exempt for the duration of the project for a period of up to 5 years.

Australia and Papua New Guinea provide tax concessions to cooperative companies, who maintain transactions with their members more than 90% taking the stand as non-assessable income. They also get concessions on the interest to be paid to the government loans. This logic of inability to assess the income from the transactions among members has been the rationale of getting income tax concessions to cooperatives in Europe throughout.

### 3.5 South East Asia Sub Region

Indonesian law has not prescribed a minimum share capital in cooperatives. Savings from members are obligatory. Members are encouraged to make deposit to capitalize the cooperative society. Shares are returned to members after liquidation of the society, but proportionately.

Myanmar cooperative law does not stipulate minimum size of the share capital, but the by laws are allowed to fix the number of shares amount of capital for the society. But it appears that the law does not prescribe the principles of fixing minimum capital, which may lead to constraints in starting business.

There are no provisions on withdrawal from membership. The shares are returned to the members on liquidation of the cooperative with the settlement of personal accounts.



Philippines has brought in the element of authorized capital as in a company to the cooperative law and it is mandatory to subscribe 25% of capital with no less than Pesos 15000 at the beginning. No member is authorizing to hold more than 10% of the total share capital. Bylaws are supposed to have provisions for withdrawal of membership and the return of shared contributed by the respective member. Share capital is returned to the members on the liquidation of a cooperative society.

Vietnam too does not have prescribed minimum share capital for cooperatives in law. Contributed capital by a member shall comply in accordance with charter and permits individual members to own a maximum of 20% of the charter capital of the co-operative. The share value is allowed to be paid back to the members on termination of their membership.

Indonesia has brought in the payment of dividends on shares and also the patronage refunds (some call it dividend too) to the cooperative law. The amount is not fixed, but the general meeting is expected to fix the amounts or percentages. These allocations have to be made only after allocations for reserve fund and the education fund.

In Myanmar, the surplus has to first allocate for: a) Depreciation of capital assets; b) Payment of all forms of taxes. Thereafter following allocations could be made: a) Dividend on shares, investment, and for executive committee members and staff. b) refund for purchase or sale of goods.

In the Philippines, the distribution of net surplus should be on following manner: distribution of net surplus: a) 10% Reserve Fund; b) 50% to ensure the co-op's stability; c) 10% - Education & Training fund; d) More than 3% for Community; e) Development Fund for projects or activities; f) Less than 7% - Optional Fund for Land & Building; g) The remaining is available to members in the form of Dividends & Patronage Refund; The balance should go to Reserve Fund of the cooperative society.

Allocation of surplus of cooperatives in Vietnam is as follows: a) 20% deducted for development investment funds b) 5% for reserve fund; c) Other funds as decided by the general meeting of members; d) Remaining income distributed to members & affiliated co-op based on labour effort contributed by members for job creation (Patronage Refund); e) Balance is for dividends based on contributed capital.

Indonesian cooperative law provides for issuing bonds and other financial instruments, but no investor members are provided.

Myanmar law does not permit external capital other than shares, deposits and other investments generated internally.

Philippines Co-ops can issue preferential share instruments to raise capital, but only from and for members. "Investor member" is admitted as long as the investment does not exceed 10% of the co-op share capital.

Vietnam law allows loans from the members, but as investments not having voting power.

In the event of a liquidation of a cooperative society, Indonesian law permits the return of share capital proportionately to the members after meeting all other liabilities. Any other unpaid dividends etc. too can be paid to members.

In Myanmar, in an event of liquidation, members and member societies would be compensated to the extent of their shares subscribed and liquidator shall issue a certificate of termination of the liability to compensate to the relevant members and member societies.

Philippine cooperative law provides that any assets remaining after the payment to creditors, shall be distributed to the members based on their respective share capital. If remaining asset is insufficient, the distribution shall be done in proportion to their share capital.

In Vietnam, after meeting all external liabilities in the event of a liquidation of a cooperative society, remaining assets, excluding undivided assets upon dissolution should be utilised for: a) Payment of dissolution expenses, b) Payment of salary debt/allowances/ social insurance of workers; c) Payment of secured debts d) Of unsecured debts; e) Remaining assets to be returned to members and affiliated co-operatives.

In the subject of taxation, Co-operatives in Indonesia are subject to the general taxation law and regime for business enterprises. There is no distinction given to co-operatives in provisions of the Tax Law. The imposition of taxes is a double burden for co-operatives because co-operatives are taxed as legal bodies, and patronage refunds to members are also taxed.

Co-operative Societies in Myanmar are liable to pay tax like individuals and other organisations. But according to co-operative rules, the payment of duties and taxes, the expenses spent for restitution of wear and tear of capital assets, appropriation for bad debts, general provident fund for staff of the society are included in the expenditures of the co-operative society.

### 3.6 South Asia Sub Region

Bangladesh law provides minimum share capital but differ as per the types of cooperative: poverty alleviation cooperatives minimum share capital is 3000 BDT (30 Euros approximately as of August 2021); credit cooperatives are 10,000,000 BDT; all other forms of cooperatives are 20,000 BDT to be collected from members. In addition, member fees are levies and also the investments from members are allowed.

In addition to the share purchase, the members are required to pay a member fee to join a cooperative society. Members could also contribute to the capital through deposits.

The government could contribute to the share capital and be a shareholder and own more than 20% of the total share capital.

Cooperatives are allowed to use external sources for capitalisation:

- External loans with the approval of the Registrar, but maximum credit limit for the cooperative is not required to be approved.
- Yield from external investments through company shares, debentures and other securities
- Government contribution to equity through shares and investments for specific purposes

Members could claim the value of shares in the event of his/her resignation from the cooperative society. In a case where a cooperative society is liquidated, the residual shares could be returned to the member proportionately. The members are also entitled to receive whatever the dividend accrued proportionately to the shares.

Bangladesh law has provided for the investment and distribution of surplus as follows:

- A minimum of 15% to a reserve fund;
- In the case of financial cooperatives or cooperative land development banks, 10% to a fund to protect the cooperative from non-performing loans/ bad debts;
- 3% as a subscription to the cooperative development fund;
- Up to 10% to any other objective specified in the bylaws;
- Remaining surplus could be distributed as dividend among members.

The surplus created from transactions with non-members too is taken in for distribution, which is ethically wrong. Patronage refunds are not identified for distribution.

The cooperatives are allowed by law, with the approval of the Registrar, to issue other financial instruments for capitalisation purpose. Likewise, extra capital could also be invested in government securities and company shares as well as debentures.

The concept of investor members is not provided in law.

In the event of a dissolution of a cooperative society, after settling all external liabilities, residual funds are elaborated for disposal as follows:

- Proportional refund to members of any contribution realised from them in addition to their own personal debts;

- Pro rata refund of share capital;
- Pro rata payment of dividend on shares, if any, at a rate not exceeding 6.25% per annum for the period of liquidation;
- Contribution to any charitable purpose defined in the section 2 of the Charitable Endowment Act;
- Utilisation for any purpose connected with the development of the movement.

Certain types of cooperatives such as agricultural or livestock cooperative are exempted from income tax in Bangladesh. Likewise, marketing and processing cooperatives too get tax concessions. Other cooperatives are liable for taxation as any other company.

There is no minimum share capital provided for cooperatives in Bhutan by law. In addition, the cooperatives are capitalised through:

(1) Loans and borrowings including deposits; (2) Revolving capital which consist of the deferred payments of patronage refunds or interest of share capital; and (3) Subsidies, donations, legacies, grants, aids and such other assistance from any local or foreign institutions whether public or private but with prior approval from the Ministry of Finance.

No member is allowed to own more than 10% of the total number of shares in a cooperative society.

Article No.25 of Cooperative Act of Bhutan 2001 provides a clear and bold statement on the surplus: *"The net surplus of a co-operative shall not be construed as a profit but as an excess of payment made by a member from his/her business transactions with the co-operative."*

Although patronage refunds are allowed, the law also provides for The schemes that include the deferring of payment of patronage refunds and interest on capital, and the deduction of a percentage from the proceeds of products sold or per unit of product handled.

Bhutan law provides for the distribution of surplus as follows: (1) Reserve fund of a minimum of thirty percent (30%); (2) Co-operative education and training fund (CETF) of ten percent (10%); (3) An optimal fund of not more than ten percent (10%); (4) Interest on capital and patronage refund of the remaining balance after deducting items (1), (2) and (3) in this article.

Reserve fund appears to be an important financial tool in Bhutan, and unlike many laws, it specifies the scope and functioning as per the Act: *"This is a buffer fund of the co-operative to cover for its financial limitations that are brought about by economic or business dislocations such as price fluctuations or inflation or brought about by fortuitous events such as earthquakes and fires and to meet net losses in its business operations."*

*Its purposes are to protect or restore the stability of business operations and to build confidence among members and the community. Any sum recovered on items previously charged to the reserved fund shall be credited to such fund.*

*The reserve fund cannot be divided among members in case the co-operative is dissolved. Instead, the fund, upon the dissolution of the co-operative, the general assembly may decide to distribute in the following manner: a) establish a trust fund for the federation where it belongs and to the union, and/or b) donate to the communities covered by the area of operation of the co-operative."*

This is guiding more than other laws that provides contribution, but do not provide guidance for utilization, due to which it become just another ledger account.

The status of members shares and contributed capital is unclear in Bhutan law as specific provisions are made.

All existing cooperatives in Bhutan are exempted from paying tax, as the Fiscal Incentives Tax of Bhutan, 2017 granted a 10-year tax holiday to businesses engaged in agriculture and renewable natural resources sector such as organic farming, biotechnology, fisheries, health food, api-culture, dairy, agro-processing, poultry, flora-culture, animal food and horticulture.

There is no minimum limit for share capital in Indian cooperative law. In order to be a member, acquisition of one share is sufficient. In the by laws, borrowing should be 5% of the share capital.

Law permits borrowing from external sources to such extent and under such conditions as may be specified in the by-laws: Provided that the total amount of deposits and loans received during any financial year shall not exceed ten times of the sum of subscribed share capital and accumulated reserves: Provided further that while calculating the total sum of subscribed share capital and accumulated reserves, the accumulated losses shall be deducted.

A Multi-State co-operative society may issue non-convertible debentures or other instruments subject to the provisions of any law for the time being in force to raise resources for the fulfilment of its objects to the extent of twenty-five per cent. of its paid-up share capital.

Distribution of surplus is guided by the State cooperative legislation and the Multi-State Cooperative Societies Act in India at two levels. Commonly accepted provisions for the disposal of surplus are as follows:

- a. Transfer 15% of the net surplus to a reserve fund;
- b. Provide 5% of the surplus to the Education Fund;
- c. Pay dividend to the shareholders not exceeding 35% of the net surplus;

Leaving these aside, there are other optional allocations that can be made for the balance net surplus:

- a. Payment of dividends not exceeding 25% to members;
- b. Payment of patronage refunds as specified in the bylaws;
- c. Contributions to any other special funds stated in the bylaws;
- d. Donation of 10% of the balance net surplus for charity;
- e. Payment of bonus to the employees as specified in the bylaws.

Indian cooperative law does not provide any issue of financial instruments other than the shares and deposits ns specified borrowings. The concept of 'investor members' is also absent from the legislation.

Law does not allow contribution to any political party from the cooperative funds.

In the event of a liquidation of a cooperative society, residual assets are not apportioned for membership or the community but transferred to the government.

Generally, cooperatives are subject to taxation, except few types of cooperatives get concessions.

In Maldives, there is no fixed minimum share capital as a legal provision. Members need to acquire a minimum of one share to become a member. Government is authorized to be a member and hold more than 50% of the capital in a cooperative society. Shares should be equal among members. Law does not provide any guidance on the returning of the share value to a member in the event of a withdrawal from the membership.

In the event of dissolution or liquidation of cooperatives, monies and assets of the cooperative should be expended first to pay fees of the liquidator, then to repay debts of the society, and remaining balance to be distributed among the members according to their subscribed share percentages.

Distribution of net surplus in cooperatives as per law is as follows:

- 25% of the net surplus as a contribution to the reserve fund (should not be used for business)
- Distribution as bonus and dividends to members and employees the amount decided by the management from the balance surplus

Patronage refund is not accommodated in law. The concept of 'investor members' has not been provided in Maldivian law. No other financial instruments are provided either. In the event of a liquidation of a cooperative society, after paying all other liabilities, any residual monies could be utilized for paying back members' shares and other dividends and due to members.

Maldivian cooperatives are subject to general tax regime as any other private enterprise.

Nepal law provides for members to decide on the minimum share capital. Maximum limits are not fixed. No member is allowed to purchase more than 20% of the total number of shares, but the government has no such limit when it contributes to the share capital.

On the withdrawal of a member, the cooperative society would pay back the value of his/her shares after settling any due to the society.

Cooperatives could accept deposits only from members which is limited to 15 times of share capital. No external capital other than members and the government allowed in cooperatives in form of deposits. Law allows borrowing in form of loan or accept grant from any native or foreign bank or institution or from any other agency or work in collaboration with the approval from the Ministry of Finance.

Law requires Central savings & sectoral credit cooperative to set a Stabilizing Fund.

The reserve fund should be established in cooperative societies which should have following sources of funding:

a.) Minimum 25% of net profit of every fiscal year b.) Capital grant received from any organization c.) Amount received from selling of fixed assets d.) Amount received from other sources

After deduction to reserve fund, the net surplus can be distributed as follows:

- 18% of the balance for dividends on shares
- 25% of the balance surplus as patronage refund
- 0.5% to the cooperative promotion fund

In the event of a dissolution of a cooperative society, any residual funds available for distribution after paying all liabilities, the members are not entitled to receive any monies in lieu of shares or dividends. The balance funds are sent to the government.

Cooperatives in Nepal are liable for taxation.

In Sri Lanka cooperative law has not fixed any minimum or maximum share capital for cooperatives. Multi-purpose cooperative society bylaws specifically state that there should not be any maximum share capital fixed.

A member should acquire at least one share to be member. But no member should hold more than one fifth of the total share capital. For obtaining credit facilities from cooperatives, the member should acquire proportionate number of shares depending on the bylaws. Members could also invest in cooperatives in form of deposits and provide loans to the cooperative society. No preferential shares in practice in Sri Lankan cooperatives.

According to the law, a cooperative society is allowed to borrow capital from external sources such as cooperatives, banks and other financial institutions. In addition, if necessary, debentures and bonds too could be issued.

In addition, the cooperatives are allowed to have institutional members such as cooperatives and individuals as associate members, who enjoy benefits as members but without voting power for decision making.

In the event of a resignation of a member, s/he is allowed to receive the value of shares after settling dues to the cooperative society. There is provision in the bylaws to set up a share transfer fund for reimbursement of shares to ex members without affecting the working capital of a cooperative society. On the other hand, if a society is liquidated, the members are eligible to receive proportionate value of their paid up shares and also the dividends and any other benefits they have in the society after settling all dues to external parties.

In regard to the disposal of net surplus of a cooperative in Sri Lanka, law allocates distribution as following:

- 25% of the surplus be allocated for the Reserve Fund
- 5% of the surplus should be contributed to the cooperative development fund
- Dividend on shares as decided by the general body
- Patronage refund as decided by the general body
- Allocations for any other funds as decided by the general body
- Allocations for employees' welfare fund as decided by the general body.

Cooperatives are exempted from paying stamp duty to the government. The cooperatives too get concessions on other types of taxation such as value added tax and income tax depending on the government policy from time to time.

## Other Specific Features

### 4.1 Central Asia Sub Region

One of the specific characteristics in cooperatives in Kazakhstan is that consumer cooperatives are termed as non-profit organisations. The bylaws of consumer cooperatives strictly adhere to this condition, which is a challenge for the sustainability and solvency of such cooperatives.

In Kazakhstan and Kyrgyzstan, the workers' cooperatives insist that the produce is for the consumption of the producer members. The cooperatives are created by the members using their pool of share capital (property) which is used for production, in which the members engage as a vocation. Members' remuneration for their labour is to be decided at the general meeting of the cooperative society.

In both these countries, the cooperatives are owned and used by members and do not serve the non-members. It is a strength as a cooperative provided the members are able to maintain the sustainability of profitable operations, and in the meantime, it does not reach the open society as a market to obtain a better volume of turnover. As the cooperatives are exclusively for their members, the governance system is within the members themselves. Decisions are made following the principle of one member one vote.

There are no social cooperatives in the two countries.

The minimum number of members for a cooperative is 2 in Kazakhstan and 7 in Kyrgyzstan, but there are no provisions on the procedure to be followed when the minimum number become less.

In Kyrgyzstan, the stipulation of law that each member of a cooperative has the right to attend the meeting in person or via a representative who has a power of attorney. Moreover, if there are less than 20 members in the cooperative, one representative can represent only the interests of one member, if there is more than 20 members in the cooperative, one representative cannot represent the interests of more than 3 members of the cooperative creates a dilution of interest of individual members as another person is allowed to participate in lieu of the actual member.

In Kazakhstan, the general body, executive committee and the supervisory board members should be members only, barring any expertise who are non-members to participate in them.

In Kyrgyzstan, the general body, council of the cooperative and the executive committee consist of the governing system, but in order to have a Council, the number of members should be more than 50. If it is less than 50, the powers of the Council are transferred to the general body.

In both countries, the members have the right appeal against the decision of these bodies to the general meeting or failing that, courts of the countries.

The existing laws in Kazakhstan and Kyrgyzstan clearly provide for the self-control of the cooperative through the creation of a supervisory board, an audit commission, and the involvement of an independent auditing company. It is also indicated that any member of the cooperative may request an audit of the financial activities of the cooperative, and in case of refusal to apply to the relevant judicial instances.

In Kyrgyzstan, the investor members are not provided in law. In Kazakhstan, the general body could decide on this.

Kazakhstan law prohibits transforming or converting cooperatives to other legal forms of corporate bodies.

In both countries local government and other state agencies are barred from interfering in cooperative activities, and in the event of loss incurred from such an interference needs to be paid back to the respective cooperative society.

Both countries do not have legal provisions on the nitty gritty of the disposal of assets in the event of a liquidation, other than the element of allocating value of shares to members proportionately from the residual assets.

In Kazakhstan, the government agency role of promoting cooperatives is provided in law:

1. provide information, consulting and methodological assistance in the development and implementation of measures for the dissemination and introduction of experience in creating and operating agricultural cooperatives, including through Internet resources;
2. develop proposals:
  - to create a favorable tax, financial and credit, investment policy regarding the activities of agricultural cooperatives;
  - support of agricultural cooperatives in accordance with the legislation of the Republic of Kazakhstan;
3. promote the training, retraining and advanced training of personnel for agricultural cooperation and implementation of research on agricultural cooperation.

Laws in both countries provide for forming unions and association of cooperatives at the secondary level, but on non-profit basis as ideological organizations.

#### **4.2 East Asia Sub Region**

South Korean and Mongolian cooperative legislation consist of subject specific (agriculture, consumer etc.) cooperative laws and general type of cooperative laws which allow the cooperatives to choose the activities in diversity. However, Japanese and Chinese cooperative legislation are subject specific but allowing related other activities to be undertaken.

Japanese law does not reflect on the Cooperative Identity Statement or the cooperative principles, although the definition of cooperatives identifies certain feature of cooperation. The inference of the term- maximum service to members- represent the element of not for profit enterprise. However, there is no compulsion by law for the exclusive use of the cooperative by its member, except that there had been a contract system binding members with the agricultural cooperatives for one-year basis in the past, which has now been repealed.

On the other hand, the agriculture cooperative law allows agricultural cooperatives to transact with non-members to the value of 20-25% of the volume from the members' transactions. But the consumer cooperatives are mandatory to transact only with the members.

Agricultural cooperatives are allowed to form secondary level social organizations (*Koseiren* -Welfare Federations of Agricultural Cooperatives) for providing health and social services in the rural areas.



The South Korean Framework Act on Cooperatives, 2012 defines cooperatives in specific terms as “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” and the social cooperatives 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 but that is not run for profit.”

The South Korean Agricultural Cooperative Act, 1961 finds the objective of the agricultural cooperatives as “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.”, whereas cooperatives registered under the Framework Act stipulates as “to 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.”

In China, a farmers’ cooperative is defined as “is defined as a mutual-benefit economic organization for those who produce similar agricultural products or provide similar services or are users of similar agricultural business operations; it is based on the rural household contract system, and is a voluntary association, democratically controlled by its members.”

A Cooperative in Mongolia is defined as “a legal person established by individuals on a voluntary basis for the purpose of satisfaction of their social and cultural needs, governed and supervised in a democratic manner and conducting its business based on common ownership of its members.”

If bylaws provide, the cooperative could have transactions with the non-members except credit and savings cooperatives, who are authorized only to transact with the members.

The cooperatives in Japan and Korea are required legal identity as cooperatives by the respective authorities for functioning. In Japan and Korea, non-farmers also can become members of agricultural cooperatives as associate members.

The governance structure comprising of general assembly, board of directors and auditors is a common feature across legislations in Japan and Korea. If the cooperative society has more than 500 members, a delegate system is worked out for the general assembly.

The general body elects the board of directors. Agricultural cooperatives accepting member’s savings must have three executive directors including one specialized in banking business. In 2015, a new clause was added obligating agricultural cooperatives to elect more than half of directors from certified farmers or those who have practical business skills such as marketing.

Management supervisory committee elected from the general body has been introduced recently to oversee the work of the boards of directors and their performance. Internal audit is conducted by the audit committee and for the cooperatives having more than 500 members may need to go for an external audit agency.

In South Korea, the regulation of cooperative societies has two authorities: the line ministry in charge of particular enterprise system (Agriculture, Consumer affairs etc.) which gives clearance for registration and the Juristic office, where the cooperative is registered.

Internal governing system is operated through the provisions of the legislation and the bylaws, which specifies the recruitment and management of members, governing bodies and the business administration by the general assembly, board of directors and the control committee and the audit committee.



In China, the business license for cooperatives should be obtained from the administrative department of the Ministry of Industry and Commerce. In regard to the membership, every citizen, firm, government-affiliated agency or civil society organization, who is engaged in activities associated with a cooperative can make use of the services are eligible to become members, provided they are willing to adhere to the conditions in the bylaw. Government agencies dealing with public administration are not allowed to be members. Even the related stakeholders in the cooperative business such as providers, retailers, processors, and service organizations could become members.

Another feature of the farmers' cooperative system in China is the representative democracy in cooperatives which have more than 150 members, when the delegate system to bring down the number participating in the general body meetings could be lowered.

Another feature is to allow additional voting based on the contributed capital up to 20% of the votes, in order to enhance the capital base, which negates the principle of one member one vote.

As mentioned earlier, in Mongolia, the cooperatives are required to register in the National Registry and the credit cooperative should apply for certificates from the Financial Regulatory Commission while some co-operatives (veterinary, artisanal mining etc.) must be certified by another regulatory bodies.

In regard to secondary cooperatives in Mongolia, any legal entity including nonprofits, private businesses, partnership as far as a majority of members are co-ops are able to become members.

#### **4.3 Oceania Pacific Sub Region**

Practically all countries recognize the establishment of secondary level cooperatives. Fiji is more elaborative on the role and functions of secondary, tertiary and apex organizations. The PNG experience has been that except the Federation of Savings and Loans Societies, other secondary level cooperatives have been converted into companies later with the changes in law in 1970s.

Australia being a federal structure, has state level secondary unions and tertiary level organizations such as Business Council of Cooperatives and Mutuals. Cooperative Business New Zealand being a tertiary set up is functioning from 1984.

#### **4.4 South East Asia Sub Region**

Cooperation among cooperatives, as a principle, is practiced through cooperatives at different levels joining into either business organizations or ideological organizations. Another form of consolidated cooperative practice is to join informally without legal registration as in the case of Japanese consumer cooperative initiated joint buying activities or joint committee of cooperatives at the national level.

South-east Asian cooperatives are self-governed entities. Discussions on the character of cooperatives as an autonomous and independent peoples' enterprise has been subject to debate in all countries while role of regulators change with the changes in cooperative laws. In the Philippines, there were parallel cooperative entities such as 'private' cooperatives under the company law and 'government' cooperatives under the traditional cooperative law. Debate on the role of cooperatives in the national development has been the centric point of the debate that was on.

Cooperative law of 1992 in Indonesia has been criticized with the argument that the provisions were made for directing cooperatives rather than supervision. However, there is a federal structure of cooperatives in place in Indonesia from primary cooperatives in different sectors to secondary unions and national federations.

Law of Myanmar is specific to state "The co-operative societies shall be managed and supervised according to the wishes of the members, member societies and member of the leading committees", hence, the intervention of external regulator should be marginal in the operations of cooperatives. With the recent change in the regime to a militarised rule, it is yet to see what happens to these provisions.

Myanmar adopted a four-tier co-operative structure in accordance with the 1992 Co-operative Society Law, composed of Primary, Township, Union Co-op Syndicate, and the Central Co-operative Society.

Cooperative law of Vietnam states that A Primary Co-operative is a “collective economic organization, co-ownership with legal entity, and is established voluntarily by at least 07 members and mutually co-operates and assists in the production, sales and job creation to meet the general needs of all members, on the basis of self- control, self-responsibility, equality and democracy in management of co-operative.”

This definition goes for secondary and tertiary cooperative organisations as well. In order to form a secondary organisation, minimum of 4 cooperatives have to join. Vietnam Cooperative Alliance functions as the apex organisation of cooperatives.

#### 4.5 South Asia Sub Region

External regulatory functions for overseeing cooperatives in Bangladesh is undertaken by Registrar and the Department of Cooperatives under the Ministry of local government, rural development and cooperatives. Registrar has wide range of functions such as registration, supervisors, arbitration and liquidation of cooperatives.

Under the provisions of law, the Registrar is able to decide on the scope of business and also the discipline of the boards of management as well as when to cancel the registration of cooperatives and go into liquidation. s/he could investigate into the affairs of the cooperatives including business practices and functioning of directors and take penal action when necessary to terminate the boards of management. Hence, the autonomy and independence of cooperatives and the sovereignty is compromised in law.

Certain business activities are subject to be regulated by some other government agencies: Bangladesh Central Bank oversee the functioning of cooperatives conducting banking activities; Money Laundering Act 2015 and the Anti-Terrorism Act 2009 imposes compliance on investments etc. Bangladesh Rural Development Board too promotes cooperatives.

The cooperative law of Bangladesh allows a federal structure of cooperatives from the primary cooperatives to secondary unions and the national federations in each sector of enterprises. There is also an apex cooperative organisation representing the cooperative movement in country is in place.

Bangladesh government has declared a national policy on cooperatives in order to strengthen the cooperatives, specially the secondary and tertiary organisations and also expand the scope of cooperative enterprises. As a result, Bangladesh Rural Development Board too has promoted number of different types of cooperatives.

Ministry of Home Affairs (MOHA) regulates cooperatives; it has detailed authority over cooperatives:

1. Register all co-operatives under this Act;
2. Require all registered co-operatives to submit annual report including duly audited financial statements;
3. Monitor and evaluate co-operatives to ensure that they abide with and sanction those that have violated, this Act; their Constitution and By-laws and the policies and rules of the MOHA;
4. Provide legal services on training, information and advice to co-operatives;
5. Prescribe, after consultation with the co-operative sector, the implementing rules of this Act, which shall include, but shall not be limited to, the following:

(a) Mediation and conciliation of co-operatives; (b) Division, merger and consolidation of co-operatives; and (c) Dissolution and insolvency of co-operatives;

There are certain business activities regulated by other government agencies than the MOHA as the line Ministry: The Royal Monetary Authority (RMA), in consultation with the Ministry of Home Affairs regulates the banking function in cooperatives and issue instructions; The Ministry of Finance, in consultation with the MOHA and the cooperative sector, issues and implements the rules governing the operations of insurance co-operatives. The issuance of a license to operate an insurance business by the Ministry of Finance is a prerequisite to the registration of insurance co-operatives with the MOHA.

Bhutan has a consolidated cooperative system consisting of primary, secondary and tertiary cooperative organizations.

In India, registration & regulation of cooperatives is undertaken by the Registrar of Cooperative Societies, who is a public servant under the Ministry of Agriculture or any other officer authorised by the government. However, the Registrar has wide powers concerning Registration, monitoring of activities of cooperatives, investigation and dismissal of boards and nomination of management committee, audit, arbitration and liquidation of cooperative societies. S/he too has restrictive authority over business functions of a cooperative society.

In the case of cooperative banks in India, the Banking Regulation Act 1949 has jurisdiction over the functioning of the cooperative banks as well. This highlights the existence of dual- regulatory structure in India where the Reserve Bank of India through the Banking Regulation Act,1949 as well as the respective state or multi-state cooperatives laws.

Some 6 States have introduced a new generation of cooperatives with a legal status under Self Reliant Act, and in Karnataka State an apex federation too has been formed.

Producer collectives have been allowed to register as producer companies under the Companies Act incorporated in 2002. Activities covered: (a) production, harvesting, processing, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit : (b) rendering technical services, consultancy services, training, education, research and development and all other activities for the promotion of the interests of its Members; (c) generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce; (d) promoting mutual assistance, welfare measures, financial services, insurance of producers or their primary produce; Primary produce has been defined as a produce of farmers arising from agriculture including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products: produce of persons engaged in hand-loom, handicraft and other cottage industries: by - products of such products; and products arising out of ancillary industries.

As the companies Act is regulated by the Central Government, chain of command is central.

The solidarity between agricultural cooperatives and consumer cooperative are not in place, which has lost a tremendous potential for bringing justice to producers and consumers as well.

Courts have no jurisdiction in respect of— (1) (a) the registration of a multi-State co-operative society or its by laws or of an amendment of the by-laws; (b) any matter concerning the winding up and the dissolution of a multi-State co-operative society. (2) While a multi-State co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the liquidator or against the society or any member thereof, except by leave of the Central Registrar and subject to such terms and conditions as he may impose. (3) Save as otherwise provided in the Act, no decision or order made under this Act shall be questioned in any court.

In Maldives, Regulatory functions are vested with the Registrar of Cooperative Societies appointed by the Government. S/he has authority on the registration, functioning of cooperative office, financial limits and management supervision, administration of the boards of management including supersession and termination, audit, arbitration and liquidation of cooperatives. Hence, the autonomy and independence of cooperatives are somewhat compromised in law.

Cooperative federal structure or consolidation of cooperatives are not provided in the cooperative law.

The Ministry looking after cooperatives designates an officer working in the capacity of a first class officer or equivalent rank of the Civil Service as the Registrar of the Department. Registrar is empowered to regulate the functioning of a cooperative society as per the provisions of the Act. No duplication of the establishment of a cooperative having objectives of another existing cooperative society is allowed by law.

Nepal law permits to have their own auditors by the cooperative's society, who should be approved by the Registrar and if the audit is not carried out during the time limit, the Registrar could conduct the audit and the fee is to be charged to the society.

In addition, Nepal Rastra Bank is authorised to regulate the activities of the cooperative banks and other cooperatives having banking activities. If necessary, any penalty could also be imposed. Cooperative Banks has been established with the permission and licensing by the Nepal Rastra Bank in addition to be a cooperative organisation.

Act provides for the formation of District Sectoral Cooperative Associations, District Cooperative Associations, Provincial Sectoral Cooperative Associations, Provincial Cooperative Associations, Central Sectoral Cooperative Associations, Specialised Cooperative and Associations, National Federation of Cooperatives. In this specification, sectoral cooperatives are from business cooperatives and other associations at different levels are ideological cooperative associations.

Sri Lankan law has two functions for the Registrar: cooperative development and administering cooperatives. One time there were two public servants handling these functions desparately, later combined.

Registrar is empowered to carry out registration function as well as regulating the functioning of cooperatives such as regulating the acquisition and disposal of properties, diversification of business, auditing, settling disputes, viability of business ventures, liquidation.

Minister in charge of cooperatives has certain powers by law such as decide on an appeal against refusal by the Registrar for registration, exemption a cooperative from certain provisions in the Act, permission to use the name 'cooperative' by an organisation other than cooperative society, appeal against any direction by Registrar on an audit issue and termination of the registration of a cooperative society.

Where there is government funding is with cooperatives, the Registrar has been provided with extra authority on the working of the management committees including nominations and suspension and dismissal of directors and employees.

No special provisions provided in the law for a federal structure of cooperatives, except that primary cooperatives are allowed to have institutional members. The federal structure that remains in Sri Lanka is not a compulsion, but by tradition: cooperatives are federated in two lines: primary cooperatives having similar business are consolidated at the secondary unions having geographical area of a district or a province and then a national business federation. On the ideological focus, primary cooperatives of all types in a District join together to form a District Council and the National Cooperative Council at the central level. National level business federations too become members of the National Cooperative Council.

Partnerships and alliance among cooperatives and private sector are allowed with the approval of the Registrar.

### III DEGREE OF “COOPERATIVE FRIENDLINESS” OF THE LEGISLATION IN THE REGION

The Legal Framework Analysis research has been undertaken to evaluate national jurisdictions according to their enabling environment for cooperatives, in order to compare national cooperative laws with indicators, based on a scale of “cooperative friendliness” of the national legislation. The scale of cooperative friendliness that was used is given below:

- a. It is very much so
- b. It is only limitedly so
- c. It is more cooperative friendly than not
- d. It is more cooperative unfriendly than friendly
- e. It is cooperative unfriendly

#### 1. Central Asia Sub Region

In Kazakhstan and Kyrgyzstan, despite the existence of laws, the existing legal acts do not take into account the specific features of the cooperatives functioning, do not create sufficient legal conditions to unify the agricultural producers, especially small business forms, for the joint cultivation of land, production, and marketing, processing, storage, supply them with material and technical resources and other types of service.

In general, the current development state of the cooperatives in both countries, regardless of their forms and types, proves their public relevance in modern conditions.

#### 2. East Asia Sub Region

In Japan, Agricultural Co-operative Act, 1947 has been very co-operative friendly giving policy support and financial assistance, while its amendment in 2015 deprived of special treatment aiming to strengthen co-op’s competitiveness. The aConsumer Co-operative Act, 1948 has been unfriendly giving some impediments such as the complete prohibition of non-member trade because of the pressure from small retailers who have insisted on stringent regulations.

In the case of South Korea, it is generally agreed that cooperative legislation is friendly to cooperatives. Specially, the Framework Act on Cooperatives, 2012 complements existing eight special cooperative laws and contain 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 in the application of the Anti-Monopoly Act, the procedure of changing model by-laws, the eligibility of financial or non-financial support to SMEs etc.

Mongolian legislation is influenced by German and Canadian legislation and provides a cooperative friendly approach with the integration of cooperative principles, but has limitations in application.

#### 3. Middle East Sub Region

In the Middle East, there are models of legislation that are clear in their definitions and objectives and detailed in laying out legal status. In Palestine, the legal definition prohibits the use of the term “cooperative” in referring to any other entity. While not often explicit in this, the legislation reflects good practice and is aligned with the ICA definition and the seven ICA principles. The process to register a cooperative is fairly simple and does not take very long (30 days in Jordan and Palestine, after completion of application) duration. In most cases, legislation enshrines the “one member, one vote principle.”

In Jordan, a lack of clarity in objectives of cooperatives, definitions and preambles in legislations leaves the laws open to misinterpretation and confusion. Moreover, there is a lack of attention to the member of a cooperative’s status as a user, which is different from that of a shareholder in a company.

In Palestine, the legal nature of the governing body, the CWA, is not clear, with implications for the proper representation of cooperatives within it. There is also greater clarity needed in laying out the powers of the CWA's various organs and their hierarchy, as well as its relationship with tertiary cooperative organizations.

The Law does not incorporate the Cooperative Identity Statement per se which would have guided the legal provisions for promotion, governance systems and regulatory scope and functions without compromising the functionality of cooperative principles.

The law does not differentiate cooperatives from other form of enterprises and when provisions such as taxation goes along with the private sector, the identity of cooperative as socio-economic enterprises cannot be established.

Law does not devote sufficient attention to provide detailed guidelines to make the cooperative user owned and member based enterprise as against capital based company with a profit maximization objective. Another point is that the surplus generated from the transactions allowed to be distributed among shareholders of the cooperative like a joint stock company without separating it though legal provisions for taking it to equity or using for community purposes.

It appears that the government has failed to consider cooperatives in a level playing field in the market, since the incentives offered to private companies under Investment Promotion Law of 1995 has not been offered to cooperatives. Hence, the cooperative law should have been emphatic on the equal treatment or something beyond the private sector companies in the market.

Imbalance in the representation at the Jordan Cooperative Commission, outnumbered by officials of the Government, where the Prime Minister is to be the head of the JCC is a disadvantage for cooperatives in decision making at the policy level.

The law has stipulated a qualification to be of more than 18 years of age prevents, school cooperatives formation. In many countries such cooperatives are excluded from this restriction.

In Lebanon, the sector is limited and falls under the purview of the Ministry of Agriculture rather than falling under a separate agency that has a broader set of responsibilities and outreach.

In the case of Lebanon, even if the Cooperative Identity Statement has not been explicitly incorporated into the law, the Decrees have provided for the inclusion of cooperative principles:

- Open membership (article 12 decree number 2989/72)
- Democratic member control (articles 21 decree number 17199/64 and articles 53 – 54- 55, Decree number 2989/72)
- Member financial participation (article 2/d and 9/1... decree number 2989/72)
- Autonomy and independence of the cooperative (article 7 decree number 17199/64)
- Education, training and information (Decree 8355- 10/07/1974)
- Cooperation among cooperatives (articles 62- 63 decree number 17199/64)
- Concern for community (article 33/2-b decree number 17199/64)

Palestine law has prohibited the use of 'cooperative' for other enterprises other than registered cooperative organizations. It has also incorporated the content of Cooperative Identity Statement and ILO recommendation 193.

The registration procedure for cooperatives is cooperative friendly enough to the extent that there is a possibility of review through an appeal in the event of a refusal for registration. Registration procedure itself is simple to follow and clear in the steps.

The status of the legal person provided for Palestine cooperative allow cooperatives to decide the form of business to plan as per the by law and also form subsidiaries in the form of non-cooperatives too.



#### 4. Oceania and Pacific Sub Region

Co-operative sectors in each country have cycled through periods of growth and contraction over time related to a combination of one or more of these factors. However, when co-operative law is regularly reviewed, amended and updated, it is more likely that there is a political commitment to co-operative development, and when this is done in conjunction with changes to other policy areas, so that there is an accommodating policy environment, it is more likely to lead to a rise in co-operative numbers. There is some statistical evidence that this did occur in Australia (NSW) after the introduction of the CNL.

The cooperative laws are quite significantly 'co-operative friendly' in the sense that the legislation is designed so that it is conducive to registered co-operatives operating in accordance with the first four of the co-operative principles. These features include requirements for active membership rules, primary activities and embedding of co-operative principles in several areas including directors' duties.

The Cooperative National law (CNLAUS) is a template law that brings Australia closer to uniformity between state jurisdictions. However, co-operatives do not have a seat at the federal policy making table, and the state registrars lack the resources to act as strong promoters or regulators. It is also difficult to form a co-op under the CNLAUS. The requirements might protect the co-operative identity, but they deter new entrants who have other faster, cheaper and less demanding options when it comes to a choice of legal form.

#### 5. South-East Asia Sub Region

In Indonesia, there is systemic misinterpretation in Indonesia of what a genuine co-operative actually is. Subordination of co-operatives could be seen in the tax laws, hospital laws and the Law on Public Enterprises. Co-op Law no 25/1992 was passed before the ICA Congress in Manchester in 1995, hence ICIS is not reflected in it.

It is difficult to cite best practices of co-operative legislation in Indonesia because Co-op Law no 25/1992 was passed before the ICA Congress in Manchester in 1995, hence the co-operative definition, values and principles in the Co-op Law are not congruent with the ICIS.

In Myanmar, no legal obstacles are encountered due to merger of three Ministries. The Ministry of Agriculture, Livestock and Irrigation (MOALI) became the responsible ministry for co-operative sector development after merging the former three ministries, i.e., Ministry of Agriculture and Irrigation, Ministry of Co-operatives, and Ministry of Livestock, Fishery and Rural Development, into one ministry in April 2015.

The best practices of co-operative legislation in Myanmar are the democratic governance and at the same time regulation by the Co-operative Department. The promotion of the co-operatives in Myanmar is a public function.

In the Philippines, certain barriers exist, such as a) prohibition of Co-op Federations to conduct audit; b) no state budget for co-op development; c) self-regulation hampered by CDA's quasi-judicial power; d) Taxes still levied for transaction with non-members; e) Reform Act 2013 weakens autonomy and independence of co-ops; f) CDA's special mandate is being challenged, especially on the question of taxes by the BIR.

The CO-OP-NATCCO Party List was a prime mover in the passage of the Code. The new Code spelled out in specific terms tax exemptions and privileges. The Code also provided for the creation of a Joint Congressional Oversight Committee on Co-operatives (JCOCC)

In Vietnam, many policies supporting co-ops are not effective and feasible, among others: a) the determination of non-divided assets, handling of undistributed assets after conversion or dissolution of co-operatives; b) guidance on conversion of co-operatives to other types of organizations; c) guidance on procedures for supporting infrastructure investment for co-operatives.

The 2012 Co-op Law: a) represents a fundamental change in awareness about the nature and role in the development of co-operatives as different from social & private enterprises; b) focuses on bringing benefits to members' needs; c) Co-op develops local and household economy.

## 6. South Asia Sub Region

All governments in South Asia, has recognised cooperatives are social enterprises distinct from other types of state or private enterprises. They have also accepted the basic character of cooperatives as governed by set of cooperative principles and values and ethics.

Most of the countries assure a level playing field for cooperatives to operate in the open market alongside the other sectors. There are no special restrictions imposed upon cooperatives, except in certain economic activities which are reserved to be handled by the state or private sector. Insurance and commercial banking are examples. However, certain countries have prevented cooperatives from entering into enterprises such as Insurance, Commercial banking and Industries of worker cooperatives, which need an opening.

In Bangladesh, there had been a substantial concessionary approach taken by the tax authorities before 2015, which has now been withdrawn.

There are also some provisions in law to make the relatives of any member after his death to make them liable for his/her debts to the cooperative society, which is humanly unjustifiable. It would have been settled through a special reserve made for such debts from the surplus of a cooperative.

Handling of disputes and the auditing functions by the Registrar is affecting the autonomy of cooperatives, due to the fact that, when the Registrar assigns arbitrations on disputes to his/her own officers, who supervise cooperatives, there is an element of doubt for justice. Likewise, the audit should also be independent, as the auditors of the Department are also regulating same cooperatives.

Alternate Dispute Resolution (ADR) has been tried in Bhutan, with mediation and reconciliation provisions being introduced into the Bhutanese law. It is necessary to introduce self-regulation by the membership replacing the control functions of the Registrar for the sustainability of the cooperative enterprise.

Indian legislation provides for the formation of subsidiaries in any form by the cooperative societies, which no other cooperative law has provided and also considered to be a progressive step towards diversification, while keeping the identity of cooperatives. Section 19 of the MSCSA 2002 provides 'Any multi-State co-operative society may, by a resolution passed at general meeting by a majority of members present and voting, promote one or more subsidiary institutions, which may be registered under any law for the time being in force, for the furtherance of its stated objects.'

The Indian law specifies conditions of establishing subsidiaries in order to sustain the control by cooperatives:

*"(a) an institution shall be deemed to be a subsidiary institution if the multi-State co-operative society— (i) controls the management or board of directors or members of governing body of such institution; or (ii) holds more than half in nominal value of equity shares of such institutions; or (iii) if one or more members of such multi-State co-operative society, hold whether by themselves or together with subsidiary institution or their relatives, as the case maybe, the majority of equity shares in that institution; (b) a subsidiary institution shall not include a partnership firm."*

Cooperative legislation in Sri Lanka has had no restriction on carrying out any business activity by cooperatives as per their bylaws, notwithstanding some restrictions in some enterprises such as Insurance and Health, which needed licenses. As in the case of insurance, only companies registered under the Company Act are provided with a license, hence the cooperatives are barred.



Cooperative law provides for making mandatory for members to transact only with their cooperatives to the extent of business decided by the general body as per their bylaws, which is a positive factor.

Another provision in Sri Lankan law that helps better governance of cooperatives is the prohibition of any political leader representing local authorities and the parliament to be elected or appointed as an office bearer in a cooperative organisation.

In Sri Lanka, youth representation in the management committees of cooperatives has been mandatory for 2 positions.

Another provision that ensures the sustainability of cooperatives is the condition of the submission of a feasibility study report on the proposed by a qualified person as per the law.

The governments in the Sub Region normally allow cooperatives in a specific field to receive government contracts of supply of goods and services for public purposes without tendering and bidding in competition with others. Government hospital supplies, road work, sale of office utensils and even construction work and supplies are examples of it. India has a tradition of government intervention in converting losing industries to cooperatives by workers. India administers its rationing schemes for public through cooperatives too.

As described above, some countries have provided exemptions from taxes, on the premise that cooperatives being organisations of low income groups would not be able to compete with large private enterprises in an open market economy. The other reason has been the sustainability of the food security of a country, which is the responsibility of a government. Stabilisation of consumer prices has been another reason for it.

## IV. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE LEGAL FRAMEWORK IN THE REGION

These recommendations are confined to common issues reflected in the Sub-Regional LFA Reports and make reference to national contexts whenever necessary. It is noted that there are recommendations at the Sub-Regional (annexed) and national levels by the legal experts who carried out the studies. Therefore, these recommendations are to be considered as complementary or supplementary.

### 1. Making cooperative legislation more adequate for the development of cooperatives

- 1.1 Putting forward a National Policy of Cooperatives would create a conducive environment for cooperative development.

With the exception of few countries who ventured into the introduction of cooperative enterprise by themselves, all other countries have experienced the emergence of cooperatives with the initiatives taken by either the colonial governments or socialist regimes, who followed Leninist Russia. Remnants of such thinking is reflected in the formats and the contents of legislation even now. Hence, out of box thinking is essential to introduce a development-oriented legislation based on current needs. Cooperative Ministers' Conferences held by the ICA for nearly thirty years have highlighted the need for a National Policy on Cooperatives. India, in the year 2002 had released such a National Policy on Cooperatives, but the impact is to be verified. This process should be a product of all stakeholders of cooperatives- cooperative leaders, government policy makers and agencies providing support services for cooperatives, so that the outcome would be a committed project. The guidelines for realistic legislation could be introduced by such a policy, so that the constraints for cooperative development would be eliminated. Cooperatives are nurtured and developed in a given socio-economic environment only.

The General Conference of the International Labour Organization met during its 90th Session on 3 June 2002 in Geneva, and passed the Resolution 193-Promotion of Cooperatives Recommendation (R193). Clause 10 within the recommendation stated that :

“10. (1) Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3, and revise such legislation and regulations when appropriate.

*· (2) Governments should consult cooperative organizations, as well as the employers' and workers' organizations concerned, in the formulation and revision of legislation, policies and regulations applicable to cooperatives.”*

1.2 Introduce a model cooperative legislation that meets the requirements under the ICA Statement on Cooperative Identity and global concerns on sustainability.

In spite of the fact, that the Asia-Pacific Region consists of a mix of developing and relatively developed countries, the cooperative enterprise has a universal character as economic and social enterprise. Hence, it should be possible to identify the elements of its incorporation, governing systems and management culture to have a uniformity in character. Member countries within the European Union have identified such common grounds to promote a uniform constitution for a model law for cooperatives. A model based on the enterprise practices in the contents of Cooperative Identity Statements could be created using ILO guidelines for the formulation of a cooperative legislation, so that the countries in the region would look at their current laws from the proper perspective of a cooperative enterprise and adapt such a model for cooperative development. It is also to be noted that any such legislation is to consider current global sustainable development goals and targets identified by the United Nations.

1.3 The cooperative legislation is required to be re-aligned to become private law and not a public law.

As a state sponsored and state initiated enterprise system, the governments following the British Indian legal tradition used the formats of public law for drafting cooperative laws which requires to be re-drafted as a private law. Many vital contents such as the boards of directors and general body functions have been absent in these laws (e.g. Sri Lanka) which are used as contents for self-governance in private companies. There is also an emphasis on the role of Registrars and the government agencies involved in regulatory functions. Therefore, the lay out of the legislation should undergo radical changes.

1.4 There should be a paradigm shift of model laws from the intent of national development to members' development.

So far, the intent of cooperative legislation in the Region has been to facilitate the national or community development, except in Australia, Japan and New Zealand, being promoted by the colonial legacy or socialism. The focus should be on the realisation of members interests, for which a mechanism of self-governance with best practices as well as tools for sustainability such as risk management and solvency standards incorporated into law, more than entrusting the responsibilities to the Registrar. Shift of current private company laws to this direction has to be taken note of.

1.5 Create legal legitimacy for international cooperative trade and legal identity for international cooperation.

Practically all countries in the Region, has been inward looking in terms of cooperative legislation, and had not dealt with the aspects of multi-national cooperatives as secondary organisations in spite of having international business partnerships. Cooperatives from New Zealand, Japan and South Korea have introduced some examples. There are others in the Nordic Region or Mondragon in Spain on these lines. There should be legal identity for these transactions from the legal side of cooperative law and other laws governing trade on one hand and creating legal opportunity for international organisations in the cooperative sector on the other hand.

- 1.6 Formulation of one common legislation for all types of cooperatives is feasible, which resolves the constraints of specific laws for each type of cooperatives.

East Asian cooperatives and some others are subject to specific laws in different fields for regulatory functions by different government agencies. These agencies suffer from lack of competencies for treating cooperatives as unique enterprise system to provide efficient regulatory service, while some countries have a dual system in place with the common law as well as specific laws. Regulatory mechanism should facilitate efficient functioning of cooperatives as enterprises functioning within the philosophy of cooperation embedded in the Cooperative Identity Statement. Specific laws would hinder the development of cooperatives, creating difficulties for new generation of different types of cooperatives. Therefore, the ideal would be to formulate a common law dealing with basic functions such as registration, governance system, disputes, auditing and liquidation added by special provisions on specific types of cooperatives in identified chapters such as financial services, consumer services and production services etc.

- 1.7 Cooperative legislation should provide for amalgamation, acquisition and merger among cooperatives

Few laws in the Region provide for amalgamation of cooperatives but rules governing acquisitions, mergers are rare. In the current market situation, like what is happening in Australia, New Zealand and Japan, in order to be competitive, these strategies need to be employed for survival in the market. Therefore, it is necessary to incorporate guiding rules in law so as to ensure that the interests of members are protected.

- 1.8 large cooperative enterprises should be allowed to establish subsidiary companies, that help the diversification and consolidation of the value chain of a product.

As practiced in mature cooperative enterprise systems, it is necessary to accommodate certain industries that support the main business of cooperatives to offer more benefits to the producer members by value addition to their products. Such activities may not be feasible for the main cooperative to undertake due to specialised nature or need technical persons and infra-structure. In order make such activities sustainable and taking advantage of concessions offered by the governments, they may be more viable to run as profit oriented business entities with a legal identity. In such circumstances, the law should provide guidelines as to how the relationships among such owned companies should be maintained without compromising on the cooperative identity of the cooperative society. Indian law has provided some guidelines in this regard.

## **2. General modifications and/or specific changes that makes the laws more cooperative friendly**

- 2.1 Being a unitary movement globally with the application of common principles, national level cooperatives too should be unitary in the structure, hence the Constitutions should allow it to be centrally regulated.

Many countries in the Region function as federal states, where many of them have devolved the subject of cooperatives to the States or Regions, thus fragmenting the cooperative enterprise system as a social movement and weakening it, whereas the private enterprises continue to be centralised. As a desperate solution, India has tried to address the issue by introducing amendments to the Company Act to bring in the Producers' companies and there by include principles of cooperation not just in the cooperative law but also in the country's company law. Australia is struggling with a draft Cooperative National Law to be introduced with consensus.

2.2 The government contribution to equity capital as shareholders or otherwise should be eliminated or to be without conditions.

In many countries in the Region, the governments become stake holders as shareholders with majority shares in the law and/or contribution to working capital which compromised members' governance. This has negative impact of the functioning of cooperatives based on cooperative principles and sustainability of such cooperatives is short lived. In any case, the external capital ratio should be lower than the members' capital if not self-financing is not adopted.

2.3 Employee's participation in cooperative societies as members needs to be strengthened and participation at the policy level too has to be identified in the cooperative law.

In some countries, the law does not permit employees participation at the Board of Management level, quoting conflict of interest as a reason, but the corporate entities encourage their participation. Cooperative laws should have a representation of employees' interest from the representatives they select within a given quota in the bylaws.

2.4 Viability of cooperatives should be brought into the law as a condition for registration.

In many countries, the registration procedure and the conditions are not written into the law incorporating all the elements that should ensure sustainability. Conduct of a proper feasibility study as an enterprise is essential to decide the minimum number of members and the equity capital needed as well as the marketability of goods and service which should be the minimum instruments to be written into law. In the absence of such provision, pseudo cooperatives promoted by political regimes or other interested parties or unviable cooperatives tend to get promoted.

2.5 The basis for membership in primary cooperatives should be individual based except associate members.

In some countries (e.g. Nepal) have the membership based on families, i.e. one member for one family, which would obstruct the principle of open membership that promotes the principle of accommodating all persons having qualification to draw upon the services of the cooperative. Family institution is under threat in the modern society as well. However, if closely knit families voluntarily decide to send one person as a member, this problem would not arise. Wage earners within the same family would have needs to obtain services of a cooperative who has to be accommodated in the cooperative society. However, proxy representation of members by external person in a primary cooperative society would affect the principle of members democratic control.

2.6 Cooperative law should intervene to eliminate inactive membership in order make cooperatives sustainable and strong.

As the current laws do not have restrictions on the silent or inactive members, while enjoying dividends by inactive members as in the case of private companies, the cooperatives would become weak and run by oligopoly groups with different interests. If an agricultural cooperative merely doling out credits and the farmers would sell their products elsewhere and default in the payment of loan instalments, such cooperatives would become weak. Hence, the law should provide for terminating such membership, so that the active membership would be strong all times as against the inactive members, who only influence in the election of leaders.

2.7 Cooperative legislation should be modified to incorporate the mechanisms for introducing best business practices, code of conduct and performance evaluation of directors.

Except in Indian legislation where code of conduct is integrated as a must, all others appear to be without provisions for such mechanisms that preserve the integrity of cooperative business and best corporate behaviour on the part of leadership. As the cooperatives grow in volumes and diversification, the element of representative democracy comes in with the delegates taking over decision making; as a consequence, individual members would not know each other personally,

and the corporate culture would be influenced by such impersonal behaviour which lead to unethical practices and misconduct. Hence, the legislation should provide for introducing codes of such best practices and good conduct through provisions in law.

2.8 Rationale for deciding on the registration by the Regulatory body should be written into cooperative law.

Few cooperative laws in the Region have provided to indicate the rationale for registration. Due to this, in the event of rejection of registration would lead to disputes and appeals and court work in some cases. Therefore, the law should provide as to how an application would be assessed by the regulatory authority and even provide provisions for Alternate Dispute Resolution (ADR) mechanisms in case of conflicts.

2.9 cooperative law should provide for facilitating the process for returning members' share capital in the event of withdrawal or termination of a membership.

The return of share value to the member in the event of a withdrawal or termination is unclear in many laws in the Region. In such an event, the members should have the right to receive the nominal value of share after settling any liability. On the other hand, during a crisis, when there are mass withdrawals, such an erosion of capital would affect the working capital of cooperatives. Therefore, while accepting the principle of the right for withdrawal of his/her share value, it is necessary to introduce a compulsory share transfer fund exclusively for redeeming shares funded by a percentage of surplus taking into a pool.

2.10 Cooperative laws should continue to recognise the cooperative with unlimited liability.

Some laws have provided as not to register cooperatives with unlimited liability, which was the pioneering model in the history. This is due to matching modern cooperatives with private sector organisations. However, as the experience has shown specially in the case of micro-finance cooperatives (such as Thrift and Credit cooperatives), it is the unlimited liability model that have survived the most. Only closely knit members group would commit for such a venture, but it should remain as an option. Hence it is suggested to include the option of registration of cooperatives with unlimited liability.

2.11 Cooperative law should provide for cooperatives to be more resilient by incorporating the principles of solvency and risk management

Current laws in many countries do not have specific provisions to deal with sudden risks as well as breakdown of enterprises due to market collapsing. The accountability of the board of management for sustainability of operations and maintaining solvency have not been established in law. The risk management at present is confined to have statutory reserves and some other funds as well as insurance. Therefore, there should be provisions for annual solvency audit, elements of risk management and accountability for the general body by the management etc. written into the law.

2.12 Principle of subsidiarity should be written into law to prevent primary cooperatives and their secondary organisations competing in the same area in similar form of business.

Some reports have identified the problem of cooperatives competing in the same area of operation in the same business such as a consumer cooperative federation running retail shops in the areas where their own member cooperatives are also having same type of shops. Current laws are not specific to prevent this happening, which needs to be corrected.

2.13 The surplus from the transactions accrued from non-members should not be paid to members as dividends, for which legal restrictions should be provided.

Cooperative laws of majority of the countries in the region are silent on the disposal of surplus accrued from the transactions the cooperatives undertake with non-member clients, hence such moneys are also apportioned to the members as dividends. Unlike a private company, cooperative

members are only entitled for the surplus or profit generated from their own transactions to prevent exploitation and also profit maximisation. It is not in keeping with the cooperative principles either. As at least one country provided, the law should provide for such funds to be transferred to equity for business development or set apart for charity purposes or community work. In some instances, it has been seen with the consent of the non-member client, who is a regular patron, such surplus is accumulated in his/her name for acquiring shares by him/her later as a member.

### 3. Recommendations on the specific sectors

#### 3.1 Member's commitment should be assured through legislation

In certain sectors such as agriculture and production enterprises, the commitment of members to transact with their cooperatives through marketing of products is not provided in law resulting in the default of credit and other facilities they have obtained from their cooperative. As a rule, the principle of compulsion of such transactions with the cooperative society need to be incorporated in the law while allowing the bylaws to decide on the ratio.

#### 3.2 Role and functions of secondary level or more federated levels of cooperative organisation need to be identified in law.

Few cooperative laws in the Region have recognised the secondary and tertiary as well as apex cooperative organisations and their relationship with primary cooperative societies. Some laws like in Sri Lanka, cooperatives at these levels too are treated as primary cooperative societies. Hence there should be guidelines on the establishment of organisations at these levels and the rules governing the relationship with primary cooperatives.

#### 3.3 Representation of members of various interests should be guided by cooperative law.

Some countries have multi-purpose cooperative systems by the same name, while in some cases such as in Japan, single purpose cooperatives such as agricultural cooperative do have diversified business as complementary enterprises while retaining the identity as agriculture cooperatives. On the other hand, where multi-purpose cooperative is identified as they are supported by the bylaw provisions, they engage only one or two businesses without servicing members with different vocations and interest. Main cause of this is the representative system based on geographical areas in contrast to the vocational groups of members. In Japan, the decision making and the representation at the policy making levels such as general meetings, are based on such vocational (commodity) groups. Adopting such a balanced decision-making process, practically needs of all major interest groups are fulfilled and the cooperative society would have active and balanced membership with different businesses in one network.

#### 3.4 In order to ensure participation in the activities as well as leadership of cooperatives by women and youth in proportion to their presence in membership, there should be legal provisions in place.

Except few countries like Nepal providing 33% women's participation in cooperative leadership, all others do not provide for such participation of women and youth in cooperative activities as well as leadership positions in proportion to their level of membership. Hence, it is justifiable to provide minimum standards of their participation in legislation. Equality has been a key value in practicing cooperative ideology as per the Statement of Cooperative Identity. Women representation on boards of pan-nation cooperatives in countries like India can be a good first step to ensure participation as well as ownership among them.



## V. CONCLUSIONS

Asia Pacific Region represents a diverse picture of cooperative movements originated from colonial legacy and socialist regimes to new generation of market economy related cooperatives found in Australia, New Zealand and Japan. The cooperative systems have been maintaining their identity in co-existence with various constitutions with flexibility and without conflicts.

Sub regional political and economic alliances have been found such as ASEAN, SAARC, Pacific Islands Forum and League of Arab Nations, which are active, but development of cooperative systems has never been in their agenda except the ASEAN Cooperative Forum.

In contradiction with such a consolidation, many countries, which have adopted federal system of government where some state functions such as cooperative regulation were devolved resulting in the fragmentation of early unified cooperative systems. As a result, the secondary and tertiary cooperative structures experienced decline in their volume of business, which depended on consolidation and alliances earlier. The cooperative statutes are too many in the regional governments with many complexities created and going stray for want of a model system with consensus. In order to address these issues, two strategies are needed; firstly, agreeing on a model cooperative law by the regional governments like the experiment undertaken in Australia for adaption and secondly, lobbying with the sub regional inter-government forums to set up units on cooperatives through which sub regional model laws could be introduced with subsequent economic alliances among cooperative movements in their member countries. European Commission has demonstrated a model emerged from the requirements of member countries which could provide learning experience in this direction.

Formulation of cooperative laws in keeping with the current development of global economy and creation of conducive policy environment for cooperative development has been discussed at ICAAP Cooperative Ministers Conferences for nearly three decades, with marginal changes in member countries. The efforts are required to be accelerated to focus on the creation of updated and progressive cooperative laws by a task group to be adopted in the future conferences, so that in country adaption could be facilitated. Preparation and declaration of national policies on cooperatives would set the directions for such a model law.

In regard to the issues emerging from the form of cooperative law to be utilized for the purpose based on the historical models used in the Region which have appeared in the form of common cooperative law for all types of cooperative on one hand and specific laws for each type of cooperatives on the other hand, one could see certain difficulties of specific laws to deal with new generation of new types of cooperatives and it has been noted that even within the existing specific systems, multi services are undertaken. Therefore, a model of law that serves common regulatory requirements as well as some tools specific to different types incorporated has to be found.

Historically, cooperatives in the region, many sponsored by the governments based on their development needs have outlived the experience and have come to face the 21<sup>st</sup> Century with neo liberal tendencies in the economies and political systems. In addition, global concerns of poverty and sustainability of eco systems and food systems have been accepted as millennium challenges, which are also affecting cooperatives. Cooperatives can no longer only be used as agents of socio-economic development policies of the governments, but to contribute to it by focusing on members' sustainable livelihoods through mainly serving them and directed by them. Such actions would contribute to the challenges at large than becoming subservient to government programmes. Hence, the legal environment should be created to release the cooperatives to pursue self-regulation than supervision from the government regulatory authorities. The law should focus on self-regulatory mechanisms and tools.

Current laws do not effectively deal with inequalities within the cooperative systems as well. Women and youth representing major stakeholders in cooperatives are not well represented in cooperative activities, especially at decision making levels as leaders. Future law should address this issue as well.

Participatory democracy is a vital strategy to preserve the cooperative character in enterprises, demonstrated by the participatory governance traditions through members' organs such as general body, boards of management, and committees. Practically all countries in the Region have some sort of committee system with unanimous choices such as general body and board of management. However, most important committees that safeguard the internal democracy have not been understood in uniformity. This is more valid for large and complex cooperatives with delegated systems rather than small credit cooperatives where Greek style direct democracy is practiced. In complex cooperative systems, control committees and audit committees play major roles in conducting regulatory roles. A model law should provide exclusive committee management system.

Majority of cooperative systems in the Region do not have built in mechanisms to make sure that the values and ethics embedded in the cooperative identity as per the ICA Statement on Cooperative Identity are practiced in their corporate behavior. For this purpose, the law should contain certain tools for adherence by all stakeholders. Inclusion of code of conduct for members, leaders and employees and guiding rules for best business practices are some tools to select. In addition, the performance appraisal of directors and committee members and follow up action would also ensure the efficiency of service. Formulation of local guidelines can also be helpful for better understanding of the registries and cooperators and thereby for implementation of the law.

Business sustainability has been a serious issue confronted by cooperatives all over due to market competition, disasters and epidemics. In order to address these issues, the law should provide risk management actions and conducting solvency audits and taking follow up action on those who are accountable in order to ensure sustainability of the enterprise. Legislation should also provide for acquisitions and mergers to save and strengthen the cooperative system at the times of difficulties.

Minimum and maximum capital for a cooperative society has been a subject discussed by many researchers during the study. The minimum number of members for forming a cooperative society has been mentioned as 2 (in Kazakhstan) and goes up to 50 individuals in some countries. The requirement is for the sake of registration as in the case of private company, but the actual number of members would definitely defer. When a cooperative is in the formative stage, appropriate number of members for a cooperative is determined using the tools of feasibility studies, which is a requirement for registration of many countries. Based on the nature of business arising out of common needs of group of persons, the turnover for achieving acceptable and reasonable surplus is calculated and the capital required for achieving such a volume is assessed. This capital requirement is required to be provided by the members, being a self-financed enterprise. Accordingly, the share capital is assessed and the members are recruited accordingly. The laws have different standards of members' maximum shareholding (normally 20% of paid up capital), which helps determination of the number of members.

In a given situation where there are no restrictions to attract external through the use of tools such as maximum credit limit to be approved by the general body based on the business plans, a situation may arise to have over-capitalization, which would be a problem. Experience has shown in Sri Lanka, many non-members prefer to invest in cooperatives through deposits and providing soft loans and debentures as the transactions are easy and trustworthy. Surplus capital accumulated in the process has to be invested in government securities or different ways in the private sector financial institutions, which may not be the major interest of members. This situation leads to corrupt practices in investment, which sometimes affect the liquidity problems and losses in transactions. Therefore, the capitalization should be guided through provisions in legislation such as limiting the borrowing to approved maximum credit limit and restrict the external capital to be lower than the members share capital.



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## CONTACTS

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