

# LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

## National Report of Vietnam

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

The activities planned within the framework of the program include diverse research activities conducted at the global and regional level. The primary activities undertaken at the global level include a Legal Framework Analysis (A2.2), which is led in a coordinated way by all ICA offices. Within this framework, ICA-AP oversees implementing the research in the Asia and Pacific region.

The study on legal frameworks under the Legal Framework Analysis (A2.2) will evaluate jurisdictions and policy regulations according to their enablement of cooperative development. The document will present recommendations for the next steps in renewing the legal frameworks and helping to shape the policy agendas in a targeted way in the different regions and countries. It will evaluate the cooperative legal framework in place with common indicators, delivering on a scale of how ‘cooperative-friendly’ the legislation in a country is. In the same context, this report deals with the Legal Framework Analysis of Vietnam.

### **Introduction**

Cooperative economy and cooperatives have become more and more widespread, gradually becoming a way of organizing economic activities and life of civilized society. Vietnam, with a population of over 96 million, nearly 10 million households living in the rural areas, more than 4 million individual households living in urban areas, increasing income and asset accumulation, the need for linkages and cooperation according to the cooperative models, pre-cooperatives to produce and address the needs of daily life is increasing rapidly. With advantages and preeminence contributing to socio-



economic development, cooperative economy, cooperatives play an increasingly important role and are becoming one of the pillars of Vietnam's economy.

Over the past 70 years of the development, the cooperative sector of Vietnam has grown significantly. By June 2019, Vietnam has more than 23,000 cooperatives, more than 100,000 pre-cooperatives and nearly 80 cooperative federations operating in various sectors of the economy, from agriculture, industry, small handicraft to trading and services, transportation, environment, health and credit with nearly 7 million members, 2.5 million formal workers and over 10 million informal workers.

This report is prepared by International Cooperation Department, Vietnam Cooperative Alliance with the objective to introduce the main contents of the Vietnam Cooperative Law issued in 2012 and other legal documents to implement the Law within the ICA-EU Partnership National framework.

The Law on Cooperatives (No. 23/2012/QH13) was passed by the Vietnam's National Assembly on November 20, 2012 at the 4th Session XIII and signed by the President of Vietnam on December 3, 2012. The Cooperative Law consists of 9 chapters, 64 Articles. The Cooperative Law was built based on the amendment of the Cooperative Law issued in 2003 and the Cooperative Law firstly issued in 1996.

The purpose of this report is to examine the friendliness of cooperative laws in Vietnam in the present context, particularly The Law on Cooperatives (No. 23/2012/QH13) which is the only law that governs cooperative activity in Vietnam. Section II provides an overview of the cooperative legal framework in Vietnam. Section III examines the important legal features of cooperative laws in Vietnam under the headings indicated below:

- Definitions, Objectives and Purposes of the Cooperative Law
- Establishment, cooperative membership and governance
- Capital, Cooperative financial structure and taxation
- Cooperative Self-control and Cooperation among Cooperatives

Section IV discusses degree of "cooperative friendliness" of cooperative laws in Vietnam and Section V makes some recommendations for the improvement of the national legal framework and Section VI gives a conclusion.

## **Overview of the cooperative legal framework in Vietnam**

On April 11, 1946, President Ho Chi Minh wrote a letter to Vietnamese farmers and landlords calling upon for their participation in agricultural cooperatives. After His call,



a series of cooperative economic units were formed and cooperatives had strongly developed during 50s-60s of the twentieth century. Along with the development of cooperative movement in Vietnam, management agencies, representative and supporting organizations for cooperatives have been gradually formed and developed. In 1955, the Cooperative Management Board of Vietnam was established. In 1961, the Vietnam Union of small scale Handicraft and Industry was established. These were two national organizations that managed, represented and supported supplying and marketing cooperatives and small handicraft and industry cooperatives in the whole country.

On December 18, 1991, the Chairman of the Council of Ministers (now it is the Government Prime Minister) issued Decision No. 409 /CT for establishing the Provisional Central Council of Non-State Enterprises on the basis of the unification of the Central Union of small scale handicraft and industry cooperatives and Vietnam Management Board of supplying and marketing cooperatives. On 30/10/1993, the first National Congress of Vietnam Cooperatives was conducted. The Congress has approved the Bylaw of the Central Council of Vietnam Cooperative Union - that it is an organization supporting, representing and protecting the interests and rights for cooperatives in the fields of small scale handicraft and industry, transportation, trading and services, construction and other non-agricultural occupations. The Bylaw of the Central Council of Vietnam Cooperative Union was approved by the Prime Minister in the Decision No. 582-TTg / QD dated December 1st, 1993. Up to now, the Bylaw of Vietnam Cooperative Alliance was approved by the Prime Minister in Decision 105 / QD-TTg dated 24 January 2017.

Since the first Law on Cooperatives approved by the National Assembly in 1996, which came into force on January 1, 1997, to the Law on Cooperatives in 2003 and the Law on Cooperatives in 2012 have created a more favorable legal corridor for the development of the cooperative sector – it is called Cooperative Law No. 23/2012/QH13.

The Cooperative Law No. 23/2012/QH13 is the only law that regulates the establishment, organization and operation of cooperatives and cooperative unions of all economic sectors in society. Compared to the 1996 and 2003 Cooperative Law, The Law on Cooperatives No. 23/2012/QH13 has expanded on the subjects of cooperatives which are individuals, households and legal entities.

In addition, legal documents guiding the implementation of the cooperative law No. 23/2012/QH13 are also issued, including:

- Government's Decree No. 193/2013 / ND-CP issued on November 21, 2013: elaborating on certain articles of the Law on Cooperatives



- Government's Decree No. 107/2017 / ND-CP: Amending and supplementing a number of articles of the Government's Decree No. 193/2013 / ND-CP.

There are no special laws on any of the different types of cooperatives that exist in Vietnam. However, Vietnam's National Assembly issued Resolution No32/2016 dated 23 November 2016 and Government issued a Decision No 461/QD-TTg dated 27 April 2018, in which defining the goal and missions up to 2020, Vietnam will have 15.000 effective agricultural cooperatives and cooperative unions; strengthening the effective linkage and cooperation in agricultural sector.

The law also states seven principles which have similar contents as seven ICA's Principles in Article 7 of the Cooperative law No. 23/2012/QH13 as follows:

- Individuals, households and legal entities establish, join or leave cooperatives voluntarily. Cooperatives shall be established, joined and leave unions of cooperatives voluntarily.

- Cooperatives and unions of cooperatives shall widely admit members and affiliated cooperatives.

- Members and affiliated cooperatives have equality and equal vote regardless of contributed capital in determining the organization, management and operation of cooperatives and unions of cooperatives; are provided information completely, promptly and accurately on production activities, sales, finance, income distribution and other contents as prescribed by the charter.

- Cooperatives and unions of cooperatives shall control and take responsibility for their activities before the law by themselves.

- Members and affiliated cooperatives and unions of cooperatives have responsibilities to carry out their commitment under service contract as prescribed by the charter. The income of cooperatives and unions of cooperatives shall be distributed by the level of use of products or services of the members and affiliated cooperatives or by members' contributed labor for worker's cooperatives.

- Cooperatives and unions of cooperatives shall pay their interest in education, training and retraining for their members and affiliated cooperatives, managers, employees of cooperatives and unions of cooperatives and give information about the nature and benefits of cooperatives and unions of cooperatives.

- Cooperatives, unions of cooperatives shall care for the sustainable development for member community, member cooperatives, and work together to develop the cooperative movement on the local, regional, national and international scale.



## **Specific elements of the cooperative law**

### Definition of Cooperatives

In Article 3, The law defines cooperatives as follows “Cooperative is a collective economic organization, co-ownership with legal entity, and is established voluntarily by at least 07 members and mutually cooperate and assist 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 cooperative..”

The law also states that “When the cooperatives and unions of cooperatives develop to a higher level, they shall form enterprises of cooperative and cooperative union and operate under the Enterprise Law”. Thus, under this Law, when cooperatives or cooperative unions develop to a certain extent, they will form a cooperative enterprise and be subject to the Enterprise Law like other types of businesses.

In Article 8, the Law specifies 12 rights of cooperatives and unions of cooperatives as follows: (1) Performing the operational objectives of cooperatives and unions of cooperatives; taking self-control and self-responsibility in their operation; (2) Making a decision on organizing the management and operation of cooperatives and unions of cooperatives; hiring and using labors; (3) Performing production and business activities, creating employment under business lines registered to meet the general needs of the members and affiliated cooperatives; (4) Providing and consuming products, services and jobs for members and affiliated cooperatives and to the market but ensuring the fulfillment of obligations to members and affiliated cooperatives; (5) Newly admitting and terminating the status of members and affiliated cooperatives; (6) Increasing or decreasing charter capital during the operation; mobilizing capital and internal credit activities in accordance with the law; (7) Joint venturing, affiliating and cooperating with domestic and foreign organizations and individuals to perform the operational objectives of cooperatives or cooperatives unions; (8) Contributing capital, buying shares and establishing businesses aims to support activities of cooperatives and unions of cooperatives; (9) Managing, using and handling capital, assets and funds of the cooperatives and unions of cooperatives; (10) Implementing the income distribution, handling losses and debts of cooperatives and unions of cooperatives; (11) Participating in representative organizations of cooperatives and unions of cooperatives; (12) Making a complaint or through representatives to denounce violations of the legitimate rights and interests of cooperatives and unions of



cooperatives; handling members and affiliated cooperatives for violation of charter and settling internal dispute.

### Objectives and purpose of the cooperative law

In Article 3, the Law states that cooperatives are established on a voluntary basis by members “to meet the general needs of all members, on the basis of self- control, self-responsibility, equality and democracy in management of cooperative.” It is thus understood from the Law that cooperatives are established to promote their members’ interests and benefits through providing services to members, granting cooperatives the independence to identify their objectives and purpose and the way they will pursue these in their bylaws.

In Article 8, the law allows cooperatives to provide and consume products, services and jobs for members and to the market (non-members) but ensuring the fulfillment of obligations to members and affiliated cooperatives.

Article 5 of Decree 107/2017/ND-CP stipulates that the ratio of provision of products and services for non-members will be specified in their bylaws, but will not be over 50% of total value of products and services of the cooperatives in agriculture and non-agriculture sectors; not over 30% of total value of salaries and wages for all labors in worker cooperatives.

The law does not prevent cooperatives from engaging in community development or serving non-members, but the ways in which the law is understood and actually applied makes it difficult at times for cooperatives to attain registration on the basis of general community development objectives or on the basis of enterprise ideas built around providing service to non-members. Once registered, however, and in the absence of regulations that explain what standard of performance must be adhered to by cooperatives vis-à-vis member promotion following their registration, cooperatives may receive grants and donations to implement general development activities within the communities they serve (and, in fact, outside). Perusal of general development objectives has actually become a common practice by many cooperatives, often to the detriment of the core cooperative endeavor for which these cooperatives were established, and without much consensus by members.

The law also does not include any provisions that restricts cooperative activities to specific sectors. However, it is generally understood that cooperatives have to comply with all current regulations if the sector is controlled and licensed by relating ministries, for example, in Vietnam, all people’s credit funds is monitored by the State Bank of Vietnam.



## Establishment, cooperative membership and governance

### Cooperative Registrar and Registration process and requirements

In Vietnam, Government's Decree No. 193/2013/ND-CP issued on November 21, 2013 to elaborate on certain articles of the Law on Cooperatives. Its Article 6 prescribes the following agencies for registration of cooperatives and cooperative unions: cooperatives or cooperative unions must register at the cooperatives' registries where the cooperatives or cooperative unions intend to set up their head offices.

- The cooperative union, the people's credit fund shall register at the business registration office under the planning and investment department;

- Cooperatives register at the finance and planning departments of the district-level People's Committees.

A cooperative will not be registered unless it has a minimum of 7 members, and is obliged by law to maintain this number after its registration. Should the cooperative membership become less than this statutory requirement, it risks being subject to dissolution by the Article 54 of the Cooperative law: The cooperatives and unions of cooperatives do not ensure sufficient minimum number of members in accordance with the provisions of this Law within 12 consecutive months.

The cooperative law also states the key legal requirements for registering a 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.

### Cooperative membership

The cooperative law stipulates the conditions of membership in a cooperative. According to Article 13 of the cooperative law, individuals, households and legal entities that become cooperative members must meet the following conditions:

- Individuals as Vietnamese citizens or foreigners legally residing in Vietnam, from 18 years of age or older, having full civil act status; households with a legal representative in accordance with the law; agency or organization is a Vietnamese legal entity. For



worker's cooperatives, member is only an individual;

- Having needs for cooperation with the members and the needs for using products and services of the cooperatives;
- Having application for voluntarily joining and agreement upon the cooperative charter;
- Contributing capital as specified in Clause 1, Article 17 of this Law and the cooperative charter.
- Other conditions as prescribed by cooperative charter.

The principle of open-door membership is mentioned in the Article 7 of the cooperative law as follows: "Cooperatives and unions of cooperatives shall widely admit members and affiliated cooperatives"

Article 16 of the cooperative law also states the rights and obligations of members, including those related to voluntary withdrawal as follows: The status of members and affiliated cooperatives shall be terminated upon occurrence of one of the following cases:

- Member who is an individual dies and declared dead by the Court, missing, restricted or lost civil act status or sentenced to imprisonment as prescribed by law;
- Household member has no legal representative in accordance with the law; member is a legal entity that is dissolved or goes bankrupt; the member cooperative of the cooperative union is dissolved or goes bankrupt;
- Cooperatives and unions of cooperatives are dissolved or go bankrupt;
- Members and affiliated cooperatives voluntarily leave the cooperatives and unions of cooperatives;
- Members and affiliated cooperatives are expelled as prescribed by the charter;
- Members and affiliated cooperatives do not use products or services in a continuous time under the provisions of the charter, but not more than 03 years. For worker's cooperatives, members do not work in continuous time as prescribed by the charter, but not more than 02 years;
- At the time of full capital contribution commitment, members and affiliated cooperatives do not contribute or have contributed capital less than the minimum capital specified in the charter;
- Other cases as prescribed by the charter."

Article 34 of the cooperative law regulates the voting power in the General Assembly





meetings by explicitly stating that each member has only one vote, irrespective of the number of shares he/she owns: "Each member and member cooperative or member deputy attending the general meeting of members has one vote. All votes have equal value, regardless of the amount of contributed capital or positions of members and affiliated cooperatives or member deputies".

#### The internal structure of administration (i.e. of governance) of the cooperative

The governance structure of cooperatives as stipulated in the cooperative law (from Article 29 to Article 41) is as follows: The organizational structure of cooperatives and unions of cooperatives includes general meeting of members, Board of Directors, Director (General Director), supervisory Board and controller.

- The general meeting of members has the highest right to make a decision of the cooperatives and unions of cooperatives. The general meeting of members includes the annual and extraordinary general meeting. The general meeting of members is held in the form of general meeting or delegate general meeting (hereinafter collectively referred to as general meeting of members).

- Board of Directors of cooperatives and unions of cooperatives is the management agency of cooperatives and unions of cooperatives and is established by conference or elected, dismissed or removed by general meeting of members by secret ballot. The Board of Directors includes the chairman and members; the number of Board members is prescribed by the charter but a minimum of 03 persons and a maximum of 15 persons.

- Director (General Director) is the executive of operations of the cooperatives and unions of cooperatives; Director (General Director) has the following powers and tasks: Organizing the implementation of business and production plan of the cooperatives and unions of cooperatives; Implementing resolution of the general meeting of members and decision of the Board; Signing contracts in the name of cooperatives and unions of cooperatives under the authorization of the chairman of the Board; Submitting the Board the annual financial statement; Developing plans for organization of assisting departments and units directly under the cooperatives and unions of cooperatives and presenting the Board for decision; Recruiting labourers under the Board's decision; Implementing other powers and duties as prescribed in the charter and regulations of the cooperatives and unions of cooperatives.

In case the Director (General Director) is hired by the cooperatives and unions of cooperatives, in addition to implementing the powers and tasks as specified in Clause 2 of this Article, he/she shall also implement the powers and tasks under the labour contract and may be invited to attend the general meeting of members and the Board.



On the other hand, Supervisory Board and controller shall operate independently, examine and supervise the activities of cooperatives and unions of cooperatives in accordance with the law and charter. Supervisory Board and controller shall be elected directly by the general meeting of members among the members and representatives of member cooperatives by secret ballot. The number of members of supervisory Board shall be decided by the general meeting of members but not exceeding 07 persons. Cooperatives with 30 members or more, unions of cooperatives with 10 members or more must elect the supervisory Board. For cooperatives with less than 10 member cooperatives, the establishment of supervisory Board or controller shall be regulated by the charter.

### Capital, Cooperative financial structure and taxation

#### Shares and capital

The Cooperative law does not prescribe a minimum issued capital for cooperative establishment, Article 17 of the Cooperative law states that contributed capital by a member shall comply with the agreement and in accordance with the charter and it permits individual members to own a maximum of 20% of the charter capital of the cooperative.

For unions of cooperatives, contributed capital by a member cooperative shall comply with the agreement and in accordance with the charter, but not more than 30% of the charter capital of the cooperative union. Article 42 of the Cooperative law states that Contributed capital is Vietnam dong and other assets converted into Vietnam dong including foreign currency, objects, value of land use right, intellectual property right and other valuable papers at the time of contribution.

According to Article 18 of the Cooperative law, Cooperatives and unions of cooperatives shall return contributed capital to members and affiliated cooperatives upon termination of status of members and affiliated cooperatives or return the capital in excess of the maximum contributed capital when the contributed capital of members and affiliated cooperatives exceeds the maximum capital prescribed in Clause 1, Clause 2, Article 17 of this Law.

#### Profit allocation

According to Article 46 of the Cooperative law, after completing financial obligations as prescribed by law, the income of cooperatives and unions of cooperatives shall be distributed as follows:

- Deduction for development investment funds at a rate not less than 20% of income; extraction for the financial reserve fund at the rate of not less than 5% of the income;



- Deduction for other funds is decided by the general meeting of members;
- The remaining income after deduction of funds as provided for in Clauses 1 and 2 of this Article shall be distributed to members and affiliated cooperatives according to the following principles:
  - + Mainly to the extent of use of the products and services of the members and affiliated cooperatives; with labour effort contributed by members for job creation cooperatives;
  - + The remaining income is divided by contributed capital;
  - + Rate and mode of distribution are specified by the charter of cooperatives and unions of cooperatives.

Income distributed to the members and affiliated cooperatives is the asset under the possession of members and affiliated cooperatives. The members and affiliated cooperatives can hand over distributed income to the cooperatives and unions of cooperatives for management and use under agreement of cooperatives and unions of cooperatives.

#### Financing cooperative operations

The Cooperative law also provides cooperatives with a relatively wide range of options to finance their operations (Article 48). Assets of cooperatives and unions of cooperatives shall be formed from the following resources: Contributed capital of members and affiliated cooperatives; Mobilized capital of members and affiliated cooperatives and other mobilized capital; Capital and assets shall be formed during the operation of cooperatives and unions of cooperatives; Subsidies and financial assistance of the State and other offers and donations.

Accordingly, it is permissible for cooperatives to take loans from members. The management and use of assets of the cooperatives and unions of cooperatives shall be implemented under provisions of the charter and regulation on financial management of the cooperatives and unions of cooperatives, resolution of general meeting of members and relevant laws.

However, at the moment, Vietnam people's credit funds are able to issue financial instruments if they are satisfied and comply with all the requirements and conditions specified in legal documents and licenced by the authorized agencies.

#### Assets and capital in the case of cooperative dissolution

According to the Article 49, handling of assets and capital of cooperatives and unions of cooperatives upon dissolution as follows:



1. Order to handle assets and capital of cooperatives and unions of cooperatives: a) Recovery of assets of the cooperatives and unions of cooperatives; b) Liquidation of assets, excluding undivided assets; c) Payment of liabilities payable and financial obligations of the cooperatives and unions of cooperatives.

2. Handling of remaining assets, excluding undivided assets to be done according to the following order of priority: a) Payment of dissolution expenses, including expenses for the recovery and liquidation of assets; b) Payment of salary debt, allowances and social insurance of workers; c) Payment of secured debts as prescribed by law; d) Payment of unsecured debts; e) Remaining value of asset to be returned to the members and affiliated cooperatives.

3. The handling of assets shall comply with priority order as specified in Clause 2 of this Article. In case the value of remaining assets is not sufficient to pay debts under the same payment priority line, only a part of debt shall be paid in proportion to the debts payable in that priority line.

4. The Government shall stipulate the handling of undivided of the cooperatives and unions of cooperatives upon dissolution and bankruptcy.

#### Taxation

In the Articles 6, the Cooperative law states: “State has preferential enterprise income tax policies and other tax policies in accordance with the law on tax”. However, at the moment, agricultural cooperatives are paying 10% as enterprise income tax as equal as companies perform in agricultural sectors. Cooperative member has to pay 5% as personal income tax for the income from contributing the legal capital of cooperatives.

#### **Cooperative Self-control and Cooperation among Cooperatives**

##### Cooperative Self-control

According to Articles 3 of the Cooperative law, Cooperatives and Cooperative Unions are subject to self-control as follows:

1. Cooperative is a collective economic organization, co-ownership with legal entity, and is established voluntarily by at least 07 members and mutually cooperates 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 cooperative.

2. Cooperative union is a collective economic organization, co-ownership with legal entity and is established voluntarily by at least 04 cooperatives and mutually cooperate and assist in the production, sales to meet the common needs of member cooperative,



on the basis of self-control, self-responsibility, equality and democracy in the management of the unions of cooperatives.

According to Articles 57 and Articles 58 of the Cooperative law, representative organizations of cooperatives are voluntarily established and have 2 levels, as follows:

- Representative organization of cooperatives and unions of cooperatives shall be voluntarily established by the cooperatives and unions of cooperatives in order to protect their legitimate rights and interests.

- Vietnam cooperative alliance is established at the central level; provincial cooperative alliance is established in centrally-affiliated cities and provinces.

### Cooperation among Cooperatives

In addition to espousing respect to the ICA principle of cooperation among cooperatives (Article 7) and allowing cooperatives to co-invest in enterprises that promote cooperative value chains, the Cooperative law encourages cooperation among cooperatives through the formation of central cooperative organizations, sectoral cooperative unions, and tertiary cooperative organizations.

According to Articles 3 of the Cooperative law, there are special forms or rules on cooperative union, as follows: “Cooperative union is a collective economic organization, co-ownership with legal entity and is established voluntarily by at least 04 cooperatives and mutually cooperate and assist in the production, sales to meet the common needs of member cooperative, on the basis of self-control, self-responsibility, equality and democracy in the management of the unions of cooperatives.”

On the other hand, Vietnam Cooperative Alliance is established at the central level; provincial cooperative alliance is established in centrally-affiliated cities and provinces. The charter of Vietnam cooperative alliance shall be adopted by the general meeting of Vietnam Cooperative Alliance and approved by the Prime Minister; the charter of provincial cooperative alliance shall be adopted by the provincial-level general meeting and approved by Chairman of provincial People's Committee.

The cooperative alliance has the following functions and tasks as follows: Representation and protection of legitimate rights and interests of the members; Propagation and advocacy of development of cooperatives and unions of cooperatives; Consultation, support and supply of services, training and retraining of human resources for the establishment and development of the cooperatives and unions of cooperatives; Implementation of programs, projects and public services to support the development of cooperatives and unions of cooperatives; Participation in developing policies and law on cooperatives and unions of cooperatives; Representing



members in coordination with domestic and foreign organizations in accordance with the law.

The State shall support and create favourable conditions for the cooperative alliance to implement the assigned activities.

### **Degree of “cooperative friendliness” of cooperative laws in Vietnam**

The Vietnam’s cooperative law is certainly not perfect (no piece of legislation ever is), but it contains several elements that reflect good practice and measures that could be useful in the current context. After 6 years of implementing the Cooperative Law, the collective economy with the core is cooperatives, initially showing the changes in quality and efficiency, proving increasingly clearer and more important role on economy, politics, and society. The most important of these are the following:

1. The general awareness of cooperatives has changed fundamentally. The 2012 Cooperative Law of Vietnam represents a fundamental change in awareness of nature and role in the development of cooperatives.

2. Unlike the old model, new-style cooperatives under the Cooperative Law of 2012 operated to focus on bringing benefits to members through the commitment to supply and consumption of products, services and jobs according to the needs of the member.

3. Awareness of the nature of cooperative organization has gradually been asserted and united in the whole society. Society in general and cooperatives in particular have gradually distinguished between cooperatives and businesses or social organizations. The advantage and role of cooperatives in developing household economy, local economy in particular and the whole economy in general are gradually confirmed.

There are a number of weaknesses and obstacles in the legal framework governing cooperative legislations that stand in the way of cooperative development, of which the most prominent are:

- Some regulations have not been specifically instructed, such as: Determination of non-divided assets, handling of undistributed assets after conversion or dissolution of cooperatives; Guidance on conversion of cooperatives to other types of organizations; Guidance on procedures for supporting infrastructure investment for cooperatives; Many policies to support cooperatives are not effective and feasible. The Law on Cooperatives in 2012, Decree No. 193/2013 / ND-CP stipulates 11 preferential policies and supports for cooperatives, but in fact these policies are not much. Policies to support cooperatives are mainly integrated into general policies. Some specific policies for cooperatives (Policies on training and fostering cooperative cadres; Supporting investment in infrastructure for agricultural cooperatives ), have no capital,



and must be mixed in other programs (National Target Program for New Rural Construction, National Target Program for Sustainable Poverty Reduction). Therefore, the number of cooperatives entitled to support policies is limited.

- Regarding the implementation of the Law: There is no proper attention of the party committees and administrations of some localities in orienting, developing mechanisms and policies, focusing on solving difficulties and problems. Awareness of collective economic development is still limited although have been improved significantly. Many localities are still confused in implementing a number of new regulations of the Law, not yet seeing the role of cooperatives in the socio-economic development of the locality, so it is only at the policy level. The dissemination and replication of effective cooperative models have not been widely implemented, helping people believe in the socio-economic benefits brought about by cooperatives.

The Cooperative law in Vietnam is quite progressive and could be a source of inspiration for others, particularly in relation to the one-member, one vote principle, surplus allocation, and the degree to which it aligns with the cooperative principle. At the same time, some modifications in the national legislation could be introduced to strengthen its alignment with the ICA principles, with inspiration from Dutch legislations as follows:

- The cooperative law of Holland is very flexible. There are no regulations on members, minimum number of cooperative members, any persons and legal entity can become cooperative members.

- Almost no limitations or regulations on the operational and business activities of the cooperatives.

- Voting rights could be flexible, depend on the value or quantity of commercial transactions with the cooperatives in a certain period of time.

Conclusion and Recommendations for the improvement of the national legal framework

After 7 years of implementing the 2013 Cooperative Law, the cooperative's activities across the country have achieved remarkable results. However, the process of implementing the Law still has some difficulties and problems, causing the cooperative models to not promote their full potential. The implementation of the 2012 Cooperative Law faces the following challenges, such as most cooperatives have little capital, outdated equipment, small production scale, so they have not built a chain of links. The ability of members to raise capital is very limited, making it difficult to borrow medium and long-term loans from banks. Some cooperatives still rely on State support. The accounting and finance work of cooperatives has not been done seriously and



methodically, so the reporting regime of cooperatives is not regular; the training and retraining of state management officials on cooperatives at all levels has not met the requirements and has not been trained and fostered about cooperative knowledge.

In order to make national legislation more adequate for the development of cooperatives, these are some recommendations for the improvement of the Vietnam's legal framework as follows:

- Regarding the definition of cooperatives: In fact, Vietnam's cooperatives have been operating as an enterprise, having legal status in relation to other enterprise's types. Therefore, it should be added to Article 3 as follows: cooperatives operate as a type of enterprise as defined in the 2003's Cooperative Law.

- Regarding the minimum number of members and establishment of cooperative enterprises: Clause 3 Article 3 stipulates: "When cooperatives and unions develop to a higher level, they will form cooperatives' enterprises and unions under the Enterprise Law". This easily causes misunderstanding, when cooperatives grow big enough they will be automatically transformed to enterprises. Proposal to amend as follows: "Cooperatives, cooperative unions are allowed to form enterprises of cooperatives, cooperative unions. Enterprises of cooperatives and cooperative unions operate under the Enterprise Law". In addition, Clause 1 of Article 3: Proposal to reduce the minimum number of members to establish cooperatives to 5 members (minimum of Board of Directors 3, accountant 1, controllers 1) to match Vietnam and international experience.

- Regarding business activities: Abolishing the listing of cooperatives' business activities in Clause 6 Article 4 due to incomplete listing and creating barriers to curb creativity and innovation in business activities of cooperatives as an economic subject in a market economy.

- Regarding support policies: Article 6 needs to supplement insurance policies for cooperatives and members (social insurance, agricultural insurance).

- Regarding the principles of organization and operation: Clause 2 of Article 7 stipulates the organization and operation of cooperatives and Cooperative Unions comply with 7 principles, in which the second principle states: "Cooperatives, Cooperative unions widely admit members, cooperative members ". Proposing to remove the phrase "Cooperative members" because it means that there is no legal entity other than the cooperative, and makes it difficult to admit new members such as enterprises or other legal entities.

- Conditions for membership, cooperative membership: Clause 1 Article 13 need to adjust to allow private enterprises to join the cooperative as an official member. In addition, it is recommended to adjust Item A, Clause 1, Article 13, which is large enough





for people with disabilities to become cooperative members.

- Termination of membership status: It is proposed to abolish Item e, Clause 1, Article 16, stipulates that: "Members do not use the cooperative's products or services for more than 3 years must terminate membership". This is not really reasonable.

- Capital contributed by members: Clause 1 Article 17 is recommended to adjust in specific provisions of capital contribution of members: "not exceeding 20% of charter capital". This causes difficulties and hindrances for cooperatives to mobilize contributed capital from enterprises, other organizations. The proposal can extend the capital contribution rate to no more than 30%.

- Regarding production and business lines of cooperatives: Abolish Clause 3 Article 21 that states on business and production sectors in the Charter in accordance with Clause 1, Article 7 of the Enterprise Law

- Regarding the registration of cooperatives: Clause 2 Article 23 stipulates the cooperative charter, procedures for cooperative registration which are troublesome and complicated and not in accordance with the provisions of the Constitution on the right to freedom of doing business that are not prohibited by law.

- In addition, the cooperative law should also consider amendments and supplements to the contents of: the Board of Directors and the Supervisory Board; income distribution; Handling non-divided assets; compulsory dissolution; the organization of conversion from cooperatives to other types of organizations; Supplementing regulations on capital contribution, establishment of cooperative enterprises

- Finally, Add the chapter dedicated to the operation of Cooperative Unions, Cooperative Alliances.

In order to make the cooperative law friendlier, the Co-operative Law needs to be amended and supplemented with some following principles:

- Creating a favorable legal environment and developing cooperative ecosystems, aiming at sustainable and diverse development objectives of cooperatives; creating favorable conditions for access to cooperative resources such as finance, microfinance implementation, and expansion of capital mobilization of different cooperative models.

- Promulgating policies to encourage cooperatives to connect and integrate regionally and globally, promote cooperative economy and cooperative growth sustainably, creatively, and maintain the good and human nature of cooperatives.

- In a digital era, the legal framework and the Cooperative Law need to make a



mechanism to build a digital system for cooperatives, connecting the real cooperative economy with the cooperative economy on the network, adopting policies to encourage the application of digital economy, digital services, e-commerce cooperatives as well as connecting information on markets, products, technologies and variables climate change.

- Having policies to support Vietnamese cooperatives to penetrate international markets in the context of competition and implementation of free trade agreements, promoting sustainable businesses and economic development, building value chains, increasing cooperative products with high technology application, building multinational and transnational cooperative models.

- Legal frameworks for cooperatives must ensure to create a fair level playing field for all enterprises in the national economy.

- In addition, it is necessary to supplement regulations on capital contribution, establishment of cooperative enterprises: The cooperative Law does not clearly stipulate how to contribute investment capital and establish enterprises of cooperatives. Supplementing regulations on contributed capital and procedures for establishment of cooperatives. The role and position of the household economy should be clearly defined as a member of an agricultural cooperative.

