

# LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

## National Report of Japan

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 Japan.

Cooperatives are specifically regulated in Japan, but there is no general regulation of cooperatives. The separate cooperative laws are specifically dedicated to different kinds of cooperatives and regulated by different ministries. They are based on the Civil Code but increasingly influenced by the Commercial Code incorporating provisions of the latter. Cooperatives are not dealt with in the Constitution but can be organized based on the Constitutional right for freedom of association.

This national report was written by Mr. Akira Kurimoto based on the legal documents and input from Mr. Tsukuru Akeda of Norinchukin Research Institute. Given the wide variety of



different laws, the following analysis will mainly deal with the regulations of Agricultural Cooperatives Act (ACA) and Consumer Cooperatives Act (CCA), to a lesser extent with those on financial cooperatives, in view of their importance in the socio-economy and contrasting approaches reflecting different status of cooperatives in the public policy.

## General Context

There is no general regulation of cooperatives. The separate cooperative acts are specifically dedicated to different kinds of cooperatives and regulated by different ministries.

Existing regulations	Types	Supervisory ministries***
Agricultural Cooperatives Act, 1947	Agricultural Cooperatives	MAFF, FSA
Consumer Cooperatives Act, 1948	Consumer Cooperatives	MHLW
Fisheries Cooperatives Act, 1948	Fisheries Cooperatives	MAFF, FSA
SME Cooperatives Act, 1949	SME Cooperatives	METI
Act on Cooperative Banking, 1949	Credit Cooperatives	FSA
Shinkin Bank Act, 1951	Shinkin Banks	FSA
Labor Bank Act, 1953	Labor Banks	MHLW, FSA
Tobacco Grower Coop Act, 1958	Tobacco Grower Cooperatives	MAFF, MOF
Forest-owners Coop Act, 1978	Forest-owners Cooperatives	MAFF
Norinchukin Bank Act, 2001	Norinchukin Bank	MAFF, FSA

\* There is no official translation; The full text is available only in Japanese.

\*\* There are other laws pertaining to organizations classified as cooperatives by the Corporate Tax Act (Act for Cooperatives to Promote Street Associations, etc.)



\*\*\* MAFF: Ministry of Agriculture, Forestry and Fisheries, MHLW: Ministry of Health, Labour and Welfare, MOF: Ministry of Finance, METI: Ministry of Economy, Trade and Industry, FSA: Financial Services Agency

The ICA Principles of cooperative identity are explicitly referred to in the cooperative law. Art. 8 of ACA provides that cooperatives are exempted from the application of the Anti-Monopoly Act.

Art. 22 of the Anti-Monopoly Act provides that acts of a cooperative (including a federation) which conform : 適合する(てきごうする)conforms to the : 当該(とうがい)the requirement : 要件(ようけん), 基準(きじゆん)requirements and which has been form : 様式(ようしき) / form of a written application, 形成する(けいせいする), 方式(ほうしき)[形式], ひな形(ひながた)formed pursuant to : に基づく(にもとづく)[法令の規定等] / measures pursuant to Art. 60pursuant to the provision : 規定(きてい), 支給(しきゆう)[物], 条項(じょうこう)provisions of law, are exempted from the application except for the case : 事件(じけん)cases where unfair trade practices are employ : 採用する(さいようする), 使用する(しようする)employed, or where competition : 競争(きょうそう)competition in any particular field of trade : 取引分野(とりひきぶんや)field of trade is substantial : 実質的(じっしつてき)substantially restrain : 抑制する(よくせいする)restrained, result : 成果(せいか)resulting in unjust increases of prices, following the example of Capper-Volsted Act of 1922.

These requirements are reflecting the ICA Principles;

- a) aiming at mutual benefits among small producers or consumers,
- b) voluntary and open membership,
- c) equal voting rights for each member,
- d) limited compensation when distributing surplus.

Thus, the Anti-monopoly Act defined the criteria for Ideal type of cooperative to be applied to all kinds of cooperatives.

Art. 2 of CCA provides for Standards of a cooperative.

Sec. 1. Consumer cooperatives shall, with the exception of cases provided for otherwise in this Act, fulfil each item of the requirement as listed below:



- (1) It shall be an association of persons by definite area or occupation;
- (2) It shall have for its purpose only improvement and elevation of the cultural and economic standards of the daily life of its members;
- (3) Any one shall be allowed to join or leave at will;
- (4) Each member shall, in spite of the number of the shares held by him or her, enjoy one member one vote for decision making or election;
- (5) Surplus shall be distributed to members mainly in proportion to the amount of purchase in the cooperative;
- (6) In case of surplus distributed in proportion to the share of each member, the maximum rate thereof shall be stipulated.

Sec. 2. Consumer cooperative and its federation shall not be utilized for any particular political parties.

As such, Clauses (3) to (6) and Sec.2 correspond to the ICA Cooperative Principles of 1937. Such reference to the ICA Principles concretely affects the interpretation and/or the application of the law.

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

### a) Definition and objectives of cooperatives

There is no definition of cooperatives, but the purpose of law suggests objectives that the law assigns to the cooperative. Art. 1 of ACA reads “This law aims at improvement of the agricultural productivity and the raising up of the economic and social position of farmers, through facilitation of agricultural cooperative organization, and thereby contribution to the development of national economy.” Art. 1 of CCA stipulates “This Law purports to enhance the growth in the organization of the livelihood cooperatives formed by initiatives of the people, and thereby to bring about security in living and elevation of culture in daily life.”

The objective of cooperatives is reflected in a principle of maximum service to its members and not-for-profit making. A cooperative must work for the greatest service for the members through its activity and must not work for the profit (Art.7 of ACA and Art.9



of CCA).<sup>1</sup> The principle of maximum service to its members and not profit making is implemented through transactions with the members as consumers, providers or workers of the cooperative enterprise.

Members are not obligated to transact with their cooperatives. There was a provision of exclusive use contract that a member uses only agricultural cooperative within the period not exceeding one year while the contract is made optional of the member and the cooperative cannot refuse use of its facility because he or she does not make contract (Art. 19). But this clause was removed in 2015.

The Japanese cooperative laws basically prohibit to trade with non-members. ACA allows agricultural cooperatives to trade with non-members up to the amount of 20 percent of trade with members for the relevant business year in accordance with provisions of their bylaws. Several exceptions are provided; allowance of 25 percent for loans and savings, that of 100% for health care, no limits to loans for municipalities or nonprofits and so on (Art.10, Sec.17 ff). Those who belong to the same households are treated as members. However, since agricultural cooperatives had largely increased non-member trade for banking and insurance activities mainly in urban areas, the MAFF (Ministry of Agriculture, Forestry and Fisheries) took the critical stance requesting cooperatives to submit annual reports including the state of non-member trade to the administrative authorities which shall grasp the state of non-member trade in the annual hearing of cooperatives.<sup>2</sup>

In contrast, CCA completely prohibits consumer cooperatives to trade with non-members, which have had long-standing effects on the evolution of cooperatives (Art. 12). Cooperatives had been bothered by the retailer association's persistent anti-cooperative campaigns, which led to the enactment of the Special Retail Measures Law in 1959 that brought further restrictions to non-member trade and introduction of the clause of coordination with the MITI (Ministry of International Trade and Industry, today's METI) regarding the interests of small retailers. The MHW (Ministry of Health and Welfare, today's MHLW) conducted administrative inspection from time to time to gauge the extent of non-member trade.<sup>3</sup>

Thereafter cooperatives had to fight back right up until the last anti-cooperative campaign was staged in 1986, when the stance of the government's commercial policy shifted to pro-competition. The amendment of CCA in 2007 introduced relaxation of regulations for

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<sup>1</sup> The term "must not work for the profit" is currently removed from the art.7 of ACA, but the limitation of surplus distributed in proportion to the share of each member still remains in the Art.52 of ACA.

<sup>2</sup> It is based on "General Guidelines for Supervision aiming at Agricultural Cooperatives etc" published by the MAFF in August 2012 and backed by order for collecting information (Art.93, Sec.1, ACA).

<sup>3</sup> The final administrative inspection was conducted by the Management and Coordination Agency in 1991.



the first time. Although the framework prohibiting non-member trade was maintained, increased exceptional cases were enlisted. Those cases that do or do not require government permission with the extent of non-member trade are provided in Art. 12..

A cooperative may pursue objectives other than member-promotion, and in particular act in the interest of the community at large. Koseiren (Welfare Federations of Agricultural Cooperatives) were designated in 1951 as “public interest medical institutions” providing health/social services in the rural area where very few alternatives existed and became tax-exempt in 1984 since they are specifically designed by the legislator for the pursuit of general interests. Health cooperatives are also seen to pursue general interests and allowed to trade with non-members up to 100% of member trade but not allowed to distribute surpluses.

ACA allows agricultural cooperatives carry out any economic activity including banking and insurance in the same organization as multipurpose cooperatives. CCA excluded consumer cooperatives from banking activity up to today while it allowed insurance activity but separated it from other activities (for example, food retailing) in 2007.

## b) Establishment, cooperative membership and governance

Cooperatives are incorporated upon the approval of the administrative authorities<sup>4</sup> that must approve the establishment of organizations within two months after filing the application except for some cases. In case of an agricultural cooperative, exception includes the legal violation in the procedure of establishment and the contents of bylaws (articles of association) or the business plan, and the lack of necessary managerial basis (Art 60, ACA). In case of a consumer cooperative, exception includes the non-fulfilment of requirements prescribed in each item of Art. 2, Sec. 1, the legal violation in the procedure of establishment and the contents of bylaws or the business plan, the lack of necessary managerial basis (Art.58, CCA). Registration of establishment of a cooperative shall be effected at the seat of its main office within two weeks of the day of the first payment of share. (Art.74, ACA; Art.74, CCA). A cooperative is founded when the registration to the

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<sup>4</sup> The administrative authorities shall mean the Minister of Agriculture, Forestry and Fisheries (and the Prime Minister delegating to the FSA Commissioner for inspection of banking activity) with respect to central unions of agricultural cooperatives, agricultural cooperatives, their federations and so on having for their area of activity exceeding the sphere of a prefecture, and federations having a prefecture for their sphere of activity, and the prefectural governor with respect to other cooperatives (Art. 98, ACA). They shall mean the Minister of Health, Labor and Welfare with respect to consumer cooperatives having for their sphere of activity, by area or by occupation, which exceeds the sphere of a prefecture, and the prefectural governor with respect to other cooperatives. (Art. 97, CCA)



district legal affairs bureau is made at the location of main office (Art. 63, ACA). A cooperative need to include the term 'cooperative' in its official name while no person other than a registered cooperative can use the term 'cooperative' in its official name (Art.4, ACA; Art.3, CCA). There is no specific register for cooperatives.

Consumer cooperatives are organized by definite area or occupation. They are classified as chiiki seikyo (a cooperative operating in an area stipulated by a bylaw) and shokuiki seikyo (a cooperative operating in an institution stipulated by a bylaw)<sup>5</sup>. There exist hybrid cooperatives such as Toyota Cooperative which was originally founded to serve employees of Toyota Motor Corp. and later extended its activity to serve residents who live in the adjacent geographic areas.

The minimum number of members in an agricultural cooperative is 15 (Art.55, Art.64, ACA). An agricultural cooperative is dissolved when the number of regular members fall below the minimum of 15 persons (Art. 64, ACA). The minimum number of members in a consumer cooperative is 300 as required number of supporters at an inaugural general assembly (Art.55 Sec.2, CCA). A cooperative shall dissolve itself when the number of its members has been reduced to less than 20 (Art.64, CCA).

The qualification of the membership of the agricultural cooperative is as follows, which is to be defined in its bylaw (Art.12, Sec.1).

- (i) Farmer, except the corporation who usually employ 300 or more employees and with capital exceeding JPY 300 million.
- (ii) The individual who has address in the area of the agricultural cooperative or one who has continued to receive supply of goods and services concerning its enterprise from the cooperative and can appropriately use the cooperative facilities.
- (iii) The agricultural cooperative, whose area is the same or a part of the areas of the existing agricultural cooperative.
- (iv) Agricultural organization, such as the Noji Kumiai Hojin.

As such, membership consists of Regular member (i) who has full-fledged rights and Associate member (ii,iii,iv) who has no voting right. There exist corporate members in the primary cooperative while only user-members are allowed (there is no provision or

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<sup>5</sup> The latter includes civil servant's cooperatives, university cooperatives and school teachers cooperatives,



practice of investor members).<sup>6</sup> The member may terminate his membership at any time by transferring shares (Art.21). The member shall retire upon the occurrence of disqualification for membership, death or dissolution and expulsion. Expulsion may be exercised against a member by a resolution at a general assembly upon the occurrence of non-utilization of the cooperative facilities for an unreasonable time period, failure to comply with his obligations and violation of provisions of the bylaw (Art.22). When a person who has the qualification for the entry and has the will to become the member, the cooperative must not refuse without the proper reasons<sup>7</sup>, and must not add more difficult condition than previous members (Art.20).

The qualification for membership in a consumer cooperative shall be determined by the bylaw applicable to the following persons (Art.14, Sec.1).

(i) Persons who have residence in the fixed area in the case of chiiki seikyo;

(ii) Persons who are engaged in the occupation in the case of shokuiki seikyo.

Sec. 2 In case of the cooperative by area, persons whose place of employment falls within the area of the cooperative and who have reasonable needs to utilize its facilities.

Sec.3. In case of the cooperative by occupation, persons who, are living about the place of occupation, have reasonable needs to utilize its facilities and who had worked in the place of occupation.

Sec.4 Students in case the cooperative is in universities and schools.

As such only user-members are allowed while there exist no corporate members in the primary cooperative. A member may terminate his/her membership at the end of any business year by giving a minimum of ninety days' notice (Art.19). The member shall retire upon the occurrence of disqualification for membership, death or dissolution and expulsion. Expulsion may be exercised against a member by a resolution at a general assembly upon the occurrence of non-utilization of the cooperative facilities for an unreasonable time period, failure to comply with his/her obligations and violation of provisions of the bylaw (Art.20).

Each member shall own one or more units of share but shall be entitled to only one vote for decisions and for elections, regardless of the number of shares held (Art.13 and 16,

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<sup>6</sup> But an agriculture cooperative (including its federation) carrying on banking business is allowed to accept the preferred equities from non-members according to the Act on Preferred Equity Investment by Cooperative Structured Financial Institutions (Act No.44 of 1993) up to the amount of members' contributions.

<sup>7</sup> The proper reasons are related with the reasons of Expulsion in Art.22.





ACA). Each member shall own one or more units of share but shall be entitled to only one vote for decisions and for elections, regardless of the number of shares held (Art.16 and 17, CCA). In both cases, voting rights in federations can be decided by bylaws based on number of members of affiliated cooperatives and so on.

The governance system of cooperatives is composed of the general assembly, the board of directors and auditors. The general assembly is the supreme decision making organ in which members have equal voting rights in primary cooperatives with no exception (“one member, one vote”) while in case of federations, different stipulations may be provided in its bylaw in accordance with the number of members of affiliated cooperatives.<sup>8</sup> A member may, in accordance with the provisions of bylaw, vote on previously submitted specific issues by written ballot or proxy; however, one who is not a member or who does not belong to the same household as the member may not become the proxy.<sup>9</sup> A member can vote by electronic voting based on provisions in the bylaw (Art.16, ACA; Art. 17, CCA) .

There may be a meeting of delegates which is authorized to take the place of a general assembly, in accordance with the provisions of the bylaw, in a cooperative with a membership of 500 or more. Delegates are elected from among members while the term of office of delegates shall be specified in the bylaw within 3 years.<sup>10</sup> (Art.48, ACA; Art.47, CCA)

There shall be directors and auditors as cooperative officers. A cooperative shall have a minimum of five directors and two auditors. Officers shall be elected from among the members or executive officers of the member societies in accordance with the provisions of the bylaw at the general assembly, however one third or less of the fixed number of the directors may be elected from among those who are not members (Art. 30; Art. 27 and 28, CCA)<sup>11</sup>. 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 (Art. 30, Section 12, CCA). The term of office of officers shall be provided for by the bylaw not exceeding three years in agricultural cooperatives (Art. 31, ACA) while that of directors and auditors shall be within two years or four years respectively in consumer cooperatives (Art. 30, CCA).

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<sup>8</sup> Associate members of agricultural cooperatives have no voting right.

<sup>9</sup> A proxy may not represent more than four (ACL) or nine (CCL) members for voting purposes excluding his/her own vote..

<sup>10</sup> The constant number of delegates shall be more than one fifth of total members or 500 in agricultural cooperatives while corresponding number in consumer cooperatives are one tenth or 100.

<sup>11</sup> In case of Art.28 of CCL, non member can be elected to a director “under special circumstances” but there is no provision prescribing this matter.



The board of directors and representative director are the statutory organs newly introduced following the prohibitions of Companies Act, in which the former decides and supervises on the important matters in business administration while the latter is responsible for implementation of business plans and has authority for all the juridical and extra-judicial acts pertaining to cooperative activities (Art. 32 and 35-3, ACA; Art. 30-4 and 30-9, CCA). Directors have fiduciary duties to abide by laws, bylaws, rules and resolutions of general meetings (Art. 30-3, CCA).

Agricultural cooperatives have dual board system; the board of directors and the keiei kanri iinnkai (management supervisory committee) which was introduced in 1996 aiming to strengthen the governance structure. The management supervisory committee may be set up as an option by the provisions in bylaws while it is obligatory organ in the agricultural cooperative federations undertaking banking or insurance activity and other federations with 500 or more Regular members (Art. 30-2, ACA). It is composed of more than 5 members elected at the general assembly, of which one fourth may not be Regular members.<sup>12</sup> It shall decide on the important matters pertaining to business administration of a cooperative, elect directors and representative directors and entrust directors to do daily operation within the scope of its decisions. (Art.34, 35-2, 35-3 ACA). In this regard, it is superior to the board of directors.

The auditors are responsible to supervise implementation of director's functions. 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 (all federations, cooperatives whose amount of savings and liability reserves exceeds JPY 20 billion) (Art. 30, ACA). The amended ACA obligated agricultural cooperatives with savings above JPY 20 billion and federations with liabilities JPY 20 billion to undertake the external audit since 2019. Consumer cooperatives whose total amount of liabilities exceeds JPY 20 billion have the similar provision (Art. 28, CCA). All federations and cooperatives whose amount of liability reserves exceeds JPY 20 billion that undertake insurance activity are subject to the external audit by independent accountant auditors appointed at general assemblies in addition to auditor's audit (Art. 31-8, CCA).

### c) Cooperative financial structure and taxation

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<sup>12</sup> In 2015, a new clause was added obligating agricultural cooperatives to elect more than half of the members of management supervisory committee from certified farmers, while all the director members must be persons who have practical business skills such as marketing (Art. 30-2, ACA).



There is no minimum capital requirement for the establishment of a cooperative except for those undertaking banking or insurance activity (JPY 100 million for primary cooperatives; JPY 1 billion for cooperative federations; JPY 10 billion for national agricultural cooperative federations) (Art.10-2, ACA; Art.54-2, CCA). The cooperative capital is variable. Member's contribution is not linked or made proportional to the volume of transactions with the cooperative.

Each member of an agricultural cooperative shall own one or more units of share. The amount of each unit of share shall be equal to all. The maximum number of shares owned by one member shall be specified in the bylaw<sup>13</sup>. The responsibility of a member shall not exceed the amount of his/her subscribed share (limited liability) (Art.13 and 28, ACA; Art.16, CCA).<sup>14</sup> An agricultural cooperative may also accept contribution-in-kind, in which the name of a contributing member, the contributed property, its price and allocated units of share must be stated in bylaws (Art.28, Sec.3, ACA). A member cannot transfer the share to the other member without consent of a cooperative. The assignee of the share succeeds to the rights and duties of the assigner (Art.14, ACA). When no person shall be an assignee, a member may request a cooperative to accept his/her shares in accordance with the bylaw (Art.21 Sec.1 and Art.54 Sec.2, ACA). A member can request to reimburse all or a part of shares by the provision of the bylaw, when it withdraws (Art.23, ACA).

In case of consumer cooperatives, a member may withdraw or reduce the number of the units of share at the end of a business year by giving at least ninety days' advance notice (Art. 19 and 25, CCA). The member shall retire upon the occurrence of disqualification for membership, death or dissolution, expulsion. Any person who has ceased to be a member of a cooperative may, in accordance with the provisions of the bylaw, demand the reimbursement of a part or the whole of the paid amount of his/her share while the cooperative may demand the retired person for the payment of a part or the whole of the unpaid amount of his/her share due to the cooperative in case the liabilities of the cooperative cannot be paid up by the assets at the end of the business year (Art.20, 21 and 22, CCA).

A cooperative can distribute the surplus to members either through dividends on amount of usage (patronage refunds) or dividends on paid-up share. The former is regarded as a discount and not taxed while the rate of the latter shall be less than seven or eight percent per year (agricultural cooperatives) or ten percent per year (consumer cooperatives) of

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<sup>13</sup> CCA sets a threshold of 25 percent of the total number of the shares (Art.16, Sec.3, CCA).

<sup>14</sup> There exist provisions on non-share agricultural cooperatives in ACL. 952 co-ops mainly operate the management of commons (pasture etc.) After 1911, the dominant form of US cooperative law became the non-stock cooperative law, which emphasized service at cost and fraternal nature of membership.



the paid-up share (Art. 52, ACA; Art.52, CCA). The distinction between profits from cooperative transactions with members and profits deriving from other sources (including from transactions with non-members) is not relevant.

A cooperative shall set aside as a compulsory reserve fund a minimum of one tenth of the surplus of each business year until the reserve fund reaches the amount prescribed by its bylaw, not less than one half of the total amount of share capital (Art 51, ACA; Art.51-4, CCA)<sup>15</sup>. A cooperative is obliged to submit public financial statements and balance sheets to administrative authorities and to deposit them at offices (Art. 31-7 and 92-2, CCA). An agricultural cooperative shall set aside profit from capital reduction or merger as a capital reserve fund while it shall carry forward five percent or more of the surplus of each business year for the purpose of the instruction for members and life/culture improvement activity. A consumer cooperative shall carry forward five percent or more of the surplus of each business year for the purpose of the education and member's welfare activity. The residual assets can be distributed among members in case of dissolution.<sup>16</sup> A cooperative must have separate accounts of reserves for health and social care activities that shall not be broken apart except for allocating to those activities on the ground that they are paid partly by tax (Art. 54-2, 54-3, ACA; Art. 50-3, 51-2, CCA).

A cooperative may not admit "investor members" (except for an agriculture cooperative or its federations carrying on banking business), namely, members who do not participate for transacting with the cooperative but only for financing them through their capital contribution. There is other instrument of cooperative financing called member loan to consumer cooperatives that build stores or hospitals, but it is restrained by JCCU since there is no legal provision on security.

The Law on Preferred Equity Investment by Cooperative Structured Financial Institution (No. 44 of May 12, 1993) allows financial cooperatives to issue preferred shares to non-members aiming at strengthening cooperative capital basis.

The cooperative capital and assets are redeemed in the case of cooperative dissolution. The share capital and residual assets are distributable to members based on provision of bylaw or decision at the general assembly. In case of Koseiren, they are not allowed to pay

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<sup>15</sup> In case of agricultural cooperatives undertaking banking and insurance business or consumer cooperatives undertaking insurance business, the requirements are increased to one fifth and not less than the total amount of shares.

<sup>16</sup> There is no legal provision for the indivisible reserve fund except for health and social care activities although most of cooperatives have such a provision in their bylaws.



dividend and distribute the residual assets that should belong to the State, local governments or other Koseiren.

The chapter on conversion into another type of business organizations was added in the ACA in 2015; a joint stock company (Art. 73-2 to 76), a general incorporated association (Art. 77 to 80), a consumer cooperative (Art. 81 to 86) and a medical corporation (Art. 87 to 92). In case of the conversion to a joint stock company, members may be redeemed their equity or allocated new share of that company based on shares held by members. There is no provision for transformation or conversion of consumer cooperatives into different legal forms of enterprise.

Cooperatives were exempted from the corporation tax until 1940 when the Special Corporation Tax Act was introduced to tax cooperatives with 6% rate (as against 18% for general corporations), partly to respond to small retailers' criticisms, partly to finance the war-time economy. This law was absorbed into the Corporation Tax Act in 1948 while the different rates were maintained.<sup>17</sup> The Welfare Federations of Agricultural Cooperatives (Koseiren) became tax-exempt in 1984. In 1988 the special higher tax rate was introduced to large scale cooperatives with more than 500,000 members and retail store sales of more than JPY100 billion in the wake of anti-cooperative campaign of small retailers, which targeted large consumer cooperatives.

Corporate Tax Act provides for the different tax rates in accordance with corporation's status as enlisted in the Appendices for public bodies, public interest corp. etc. and cooperatives etc.<sup>18</sup> Now cooperatives are taxed at lower rate as compared to other business organisations (Table 3) 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. The patronage refunds are considered as discounts and are therefore not taxed on cooperatives.

#### d) Other specific features

Cooperatives need to have the administrative approval on establishment, revision of bylaws and operational rules, merger and dissolution. They are also subject to public supervision by the administrative authorities. Chapter 7 of ACA and Chapter 8 of CCA

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<sup>17</sup> The corporation tax was levied on all corporations uniformly fixed at 35% by the 1950 revision of the corporation tax according to the Report on Japanese Taxation by the Shoup Mission, however the revision had applied a reduced tax rate again for cooperatives.

<sup>18</sup> Appendix 3 of the CTA covers all cooperatives incorporated by cooperative laws mentioned in Section 3.



provide for a wide range of supervising measures including collection of reports, inspection, order of dissolution, measures against violation of laws and ordinances, revocation of decisions at the general assembly and so on but do not provide for auditing. Since agricultural cooperatives are engaged in a wide range of financial activities, they are subject to much more inspections compared with consumer cooperatives. In 2011, a guideline pertaining to the implementation of inspection stipulated in ACL was jointly published by the MAFF and the FSA (Financial Services Agency). The tripartite joint inspection of Prefectures, the MAFF and the FSA, is conducted on banking and insurance activities of agricultural cooperatives in accordance with these guidelines since 2011.

The State had delegated the power of control to representative organizations of the agricultural cooperative; the provisions on JA Zenchu (national central union) and JA Kenchu (prefectural central unions) were introduced by the amended ACA in 1954. They have been exclusively designated by central and prefectural governments and have compulsory membership of agricultural cooperatives and federations.<sup>19</sup> JA Zenchu can publish model bylaws and make proposition on cooperative-related matters to the government. JA Zenchu's National Audit Organization can conduct compulsory auditing of cooperatives. JA Kenchu could make territorial coordination within a prefecture when new cooperatives are established.<sup>20</sup> However, JA Zenchu is to be replaced by general incorporated associations (GIA) by 2015 amendment of ACA while JA Kenchu is to continue as a prefectural federation. According to this amendment, the power of Zenchu and Kenchu providing proposition on cooperative-related matters to the government and the power of Zenchu conducting compulsory auditing of cooperatives are to be deprived. CCA has not granted such self-control capacities to cooperative federations that can provide the affiliated cooperatives the information and coordination.

There is no provision on cooperation among cooperatives implemented in the national legislation. There are special forms on secondary and tertiary cooperatives (cooperative federations composed of cooperatives) and/or on representative organizations of the cooperative. ACA provides for federations for business and unions for representation, both at prefectural and national levels. CCA also provides for federations for business and representation both at prefectural and national levels. Laws on financial cooperatives provide for federations for business and GICs for representation at national level. There was no umbrella organization to represent all cooperatives but the Japan Cooperative Alliance (JIA) was set up as a GIC in April 2018 to promote cooperation among cooperatives among sectoral cooperatives.

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<sup>19</sup> JA Zenchu was privatized and transformed to a special civil corporation in 2002.

<sup>20</sup> It was intended to avoid competition among primaries. This function was removed in 2013.



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

There are some legal obstacles or barriers deriving from cooperative specific regulations to the development of cooperatives. The largest obstacle has been very strict prohibition of non-member trade. Consumer cooperatives are deprived of business opportunities to open stores in the vicinity of public transportation (stations etc.) on the ground that such stores may induce non-member’s use. They are not allowed to sell renewable electricity to the power grid since they cannot sell to non-members. Agricultural cooperatives can trade with non-members up to 20-25% of trade with members but threatened by an attempt to introduce a provision that restricts the associate members’ use of the cooperative business. It is also difficult to establish multi-stakeholder cooperatives since cooperative laws specify the qualification of members as single stakeholders.

The other obstacle is the limitation of area of activity within a prefecture. A consumer cooperative shall not be established covering a wider area than that of a prefecture, except in case of the cooperative by occupation under inevitable circumstances and of the cooperative federations (Art. 5, CCA) while there is no such a limitation in the ACA. The restriction on cooperative operating area has often prevented cooperatives from serving consumers who live in their catchments areas, but have home addresses registered in another prefecture. This restriction has proved to be anachronistic as the economy has expanded to a global scale and to cyber space. Under such circumstances, cooperatives had to adopt a strategy of establishing regional federations (consortia) in the 1990s aiming at enhanced economy of scale. This solution bypassed the restriction, and prevailed throughout the country<sup>21</sup>. The amendment in 2007 extended the area of activity to adjoining prefectures when necessary for the implementation of a retail activity (Art.5, Sec.2, CCA). This enables consumer cooperatives to make inter-prefectural mergers and solve the governance problems associated with the two-tiered board structure in cooperative consortia. Some of largest cooperatives are merging beyond prefectural boundaries to set up regional cooperatives.

It is difficult to identify the best practices of cooperative legislation in Japan since cooperative laws are crafted to serve specific purposes of industrial policies (agriculture, fishery, banking, SMEs etc.) except for CCA that has no relevance to those policies. We have no framework act of cooperatives nor workers cooperative act. The latter is in the pipeline and if it is enacted, it could constitute an example for legislators and law makers since a cooperative can be established with only 5 members without government’s

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<sup>21</sup> More than 90 percent of cooperatives’ turnover is concentrated in consortia and mega cooperatives.



approval. The promotion of cooperatives per se has never been a public function. There are few incentives to cooperatives in the legislation on public procurement or elsewhere.

The degree of “cooperative friendliness” of the Japanese legislation varies from sector to sector. ACA has been very friendly to agricultural cooperatives as a major tool to implement the agricultural policy together with subsidies and favorable tax treatment. However, the globalization changed the orientation of public policy from protectionist to pro-competition seeking to enhance the productivity of agricultural sector since 2000 that culminated to the amendment in 2015. Agricultural cooperatives feel the government is imposing the reform in organizational structure and business operation while dismantling the special treatment that they have enjoyed. CCA has been unfriendly to consumer cooperatives under the pressure of small retailers who have pursued anti-cooperative campaigns that resulted in the stricter regulation on non-member trade. It has not allowed them to conduct banking and confined retail activity within the prefecture until 2007.

The Japanese cooperative legislation has evolved differently from foreign legislation due to the socio-economic reasons and historical path dependency. Since cooperatives have been regulated by the separate laws under the different ministries since 1945, it is not realistic to think about the unified legislation. I think the Framework Act of Cooperatives of 2012 in South Korea could be a source of inspiration for the national legislation since it had been possible to create new corporate status of a general cooperative and a social cooperative in addition to the existing 8 co-operative laws under 8 ministries and brought an explosion of new cooperatives. But on this matter, there is no consensus among cooperative sectors.

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

The fundamental changes are necessary to make the national legislation more adequate for the development of cooperatives. In Japan, the organizational laws are mingled with the business laws under the same public authorities. Co-operative laws incorporate elements of banking/insurance business laws while social welfare laws incorporate elements of organizational laws on specific nonprofit corporations. Such a legal system is convenient for regulating authorities but creates very complex situation in the lawmaking process. It is desirable to separate the organizational laws from the business laws, but it is difficult since it means to overhaul the legal system.

The general modification would make Japanese cooperative laws more cooperative friendly. The following aspects need to be considered.





- The extent of non-member trade can be stipulated by cooperative bylaws since it is to be decided autonomously by cooperatives themselves. For example, non-members can use cooperative's service to the extent it would not interrupt member's use as prescribed by bylaws.
- The cooperative laws need to enable multi-stakeholder membership.
- The type of activity can be decided freely except for financial one that needs licenses to be granted by regulators.

The following changes are necessary regarding specific sectors of cooperatives.

- The qualification of members in ACA can be defined more loosely to enable non-farmers can be Regular members.
- The operating area can be decided freely by cooperatives themselves in CCA.

## Conclusions

The author argues there should be a national working group that will examine the problems of existing cooperative legislation and develop common strategy to improve the legal framework of cooperatives so that they can effectively contribute to implementation of the sustainable development goals (SDGs).

