



International
Co-operative
Alliance
Asia and Pacific

LEGAL FRAMEWORK ANALYSIS

EAST ASIA

SUB-REGIONAL REPORT

ICA-EU PARTNERSHIP



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SUB-REGIONAL REPORT: EAST ASIA
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Contents

I.	Introduction	1
II.	Overview of Co-operatives Legal Systems in East Asia	3
III.	Specific elements of the Co-operative Laws in East Asia	6
	a. Definition and Objectives of Co-operatives	6
	b. Establishment, Membership and Governance	8
	c. Financial Structure and Taxation	11
	d. Other Specific Features	14
IV.	Degree of Co-operative Friendliness	15
V.	Recommendations for the Improvement of the National Legal Framework	16
VI.	Conclusions	16
VII.	References	17

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LEGAL FRAMEWORK ANALYSIS

within the ICA-EU Partnership

Sub-Regional Report: EAST ASIA

I. INTRODUCTION

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East Asia occupies 11.76 million square kilometers in the eastern part of Eurasia, ranging from the Japanese archipelago and Taiwan to Tibet plateau and Himalaya. It had prevailing thoughts of Confucianism and Buddhism from ancient time while its culture demonstrated the similarity in using the Chinese characters and architectural modes. It has fed a huge population since it has developed rich paddy fields in the monsoon climate, wheat and livestock production in the dry area and fisheries industry in the coastal area. Although it started the industrialization process in the late 19th century to catch up the West, it became factories of the world. It has not yet ended the cold war as there are still tensions between and within nations. Today, East Asia covers sovereign states such as Japan, South Korea (ROK), North Korea (DPRK), China (PRC), Taiwan (ROC) and Mongolia.

The modern co-operation was introduced from Western countries in the 20th century. The Japanese Industrial Co-operative Act was enacted in 1900 modeling the German law. It gave the influence on other East Asian nations under the colonialization and occupation by Japan. After the Second World War, the independent nations have pursued the co-operative development in their own ways and built distinct legal systems. As far as the co-operative legislation is concerned, there exist both difference and commonality. All these laws had the strong Western influence since the 19th century but have evolved differently based on prevailing political economies while there were also influences among them. This East Asia summary report covers four jurisdictions: Japan, South Korea, China and Mongolia.

East Asia is characterized by its diverse political economies. Historically, it had the tributary system as a network of loose international relations focused on China which facilitated trade and foreign relations by acknowledging China's predominant role in East Asia. It involved Korean peninsula, Manchuria, Mongolia and Vietnam but Japan managed to escape from it thanks to the geographic isolation. Facing the Western impact in the late 19th century, Japan managed to maintain independence and started the industrialization and military buildup to catch up the Western powers. It became the other imperialist power by colonizing Korea and Taiwan at the turn of the 20th century and invading China since the 1930s. After the Japanese surrender in 1945, these nations recovered independence but split to the divided nations in the Cold War. Japan resumed capitalist development coordinated by the bureaucracy under the US occupation and became the second largest economy in 1968 while South Korea pursued “compressed modernization” under strong government initiatives and became the tenth largest economy in 2018. China had followed the Soviet system of centralized command economy but turned to “Reform and Opening-up policy” since 1978 after the disastrous experiments of Great Leap policy and Cultural Revolution. China became the second largest economy in 2010 under so-called “socialist market economy”. Mongolia pursued socialist policy as a part of the Soviet block but turned to the market economy since 1992. Its economy is based on livestock and mining industries.

In the Variety of Capitalism (2001), Hall and Soskice set out two distinct types of [market economies](#) that implement capitalism: liberal market economies (LME) (e.g., U.S., U.K., Canada, Australia, New Zealand, Ireland) and coordinated market economies (CME) (e.g. Germany, Japan, Sweden, Austria). This notion cannot be applied to the Asian context and its Asian version (Witt & Redding, 2013) ended up with a geographical classification.

- Post-socialist: China, Vietnam, Laos and India
- Advanced city-state: Hong Kong and Singapore
- Emerging Southeast Asian: Indonesia, Philippines, Thailand and Malaysia
- Advanced Northeast Asian: Korea and Taiwan
- Japan

Thus, East Asia has quite diverse political economies that have the decisive influence on the evolution of the legal systems of co-operatives in 4 countries to be reviewed for comparison.

Table 1. Diverse political economy in 4 countries

	Japan	South Korea	China	Mongolia
Variety of Capitalism	Coordinated market economy	Coordinated market economy	Socialist market economy	Market economy in transition
Level of development	Highly industrialized	Highly industrialized	Industrialized and emerging	Less developed
Per-capita GDP (2017)	USD38,449	USD29,938	USD8,643	USD3,640
Political regime	Constitutional monarchy	Republic	People's republic	Republic
Political system	Parliament cabinet system	Presidential system	State president system	Presidential system
Political parties	Dominant ruling party (LDP)	Competing parties	One party system (CPC)	Dominant ruling party (MPP)

II. OVERVIEW OF CO-OPERATIVES LEGAL SYSTEMS IN EAST ASIA

The legal systems of co-operatives in 4 countries are diverse reflecting the different political economy. They can be summarized as below.

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

Hereafter the contents of national reports from Japan, South Korea and Mongolia are summarized while the answers to the questionnaire are used for China. The relevant information contained in chapters of the International Handbook of Co-operative Law (Springer, 2013) is also referred.

Japan has no general regulation of co-operatives. The Industrial Co-operative Act of 1900 modelling the German law had covered all types of co-operatives (supply, marketing, credit and production/services) and the similar legislations were applied to the Japanese colonies including Korea and Taiwan. After the Second World War, the Agricultural Co-operative Act (ACA) was enacted to cement the effect of drastic agrarian reform in 1947, and other co-operative legislation followed in line with public policies to rehabilitate industries and people's life. The separate co-operative laws are specifically dedicated to different kinds of co-operatives and regulated by different ministries. They are closely linked with the industrial policies for the primary industry, small and miner enterprises (SMEs) and banking sector except for the Consumer Co-operative Act (CCA). The legislation for the workers co-operatives has been longed for since the 1990s but it is likely to be enacted soon.

Table 3. Legal systems of co-operatives in Japan

Co-operative laws	Types of co-operatives	Supervisory ministries*
Agricultural Co-operatives Act, 1947	Agricultural Co-operatives	MAFF, FSA
Consumer Co-operatives Act, 1948	Consumer Co-operatives	MHLW
Fisheries Co-operatives Act, 1948	Fisheries Co-operatives	MAFF, FSA
SME Co-operatives Act, 1949	SME Co-operatives	METI
Act on Co-operative Banking, 1949	Credit Co-operatives	FSA
Shinkin Bank Act, 1951	Shinkin Banks	FSA
Labor Bank Act, 1953	Labor Banks	MHLW, FSA
Tabacco Growers Co-op Act, 1958	Tabacco Growers Co-operatives	MAFF, MOF
Forest-owners Co-op Act, 1978	Forest-owners Co-operatives	MAF
Norinchukin Bank Act, 2001	Norinchukin Bank	FMAFF, FSA

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

South Korea had followed same pattern with eight separate co-operative laws and different supervisory ministries after the state's founding in 1948, and there was no general law on co-operatives. However, the Framework Act on Co-operatives (FCA) was enacted in 2011 and resulted in the explosion of new co-operatives. FCA does not apply to co-operatives formed under existing co-operative laws, but, as a general law for co-operatives, other statutes enacted or amended regarding the establishment and fostering of co-operatives shall conform to the purposes and principles of the FCA (Art. 13). Thus, it has normative influence over existing laws.

Table 4. Legal systems of co-operatives in South Korea

Co-operative laws	Types of co-operatives	Supervisory ministries*
Agricultural Co-operatives Act, 1957	Agricultural cooperatives	MAFRA
Fisheries Co-operatives Act, 1962	Fisheries cooperatives	MOF
Tobacco Producers Co-operatives Act, 1963	Tobacco Producers Co-operatives	MOEF
Forestry Co-operatives Act, 1980	Forestry Co-operatives	KFS
SME Co-operatives Act, 1961	SME Co-operatives	Min. of SMEs/Startups
Credit Unions Act, 1972	Credit Unions	SFC
Community Credit Co-operatives Act, 1982	Community Credit Co-operatives	MOIS
Consumer Co-operatives Act, 1999	Consumer Co-operatives	FTC
Framework Act on Co-operatives, 2012	Co-operatives Social Co-operatives	MOEF

*MAFRA: Ministry of Agriculture, Food and Rural Affairs, MOF: Ministry of Oceans and Fisheries, MOEF: Ministry of Economy and Finance, KFS: Korea Forestry Service, SFC: Financial Supervisory Commission, MOIS: Ministry of the Interior and Safety, FTC: Fair Trade Commission

In 1934, the Chinese National Party government launched the first co-operative law in the history of China. When the People's Republic of China (PRC) was established in 1949, it began drafting its own co-operative law. However, as China had chosen the road of constructing a socialist planned economy, the co-operative law was set aside and was not enacted. In the mid-1980s new farmer co-operatives emerged after China's reform and opening up, and are different from the agricultural “peoples' commune” in the early days of foundation of the PRC, in which farmers were forced to be members and were deprived of their individual holdings through the rural collectivization. Aiming to give the legal basis, build sound management systems and introduce clear support policies for them, the Farmer Specialized Co-operatives Act (FSCA) came into force in 2007 as the first co-operative legislation in PRC in 2007. FSCs are regulated by the State Council for the registration, by the Ministry of Finance for the financial accounting system for FSCs, by the Ministry of Agriculture for model bylaws, and by the Ministry of Finance and State Administration of Taxation for the relevant taxation policies. On the other hand, the supply and marketing co-operatives operate widely in the rural area but still lack the legal recognition while banking and insurance co-operatives are not legitimized.

Mongolia has the Co-operative Act of 1995 and the Credit and Saving Co-operative Act of 2011. The credit and savings co-operatives are regulated by the Financial Regulatory Commission while all other types of co-operatives (consumer, production, agriculture, etc.) are regulated by the Ministry of Food, Agriculture and Light Industry. Co-operative establishment, registration, membership, termination of and control over its activities, types of legal persons and other relations relevant to co-operative shall be regulated by the Civil, Commercial and Family Code.

As such, the legal systems of co-operatives in East Asia largely differ reflecting on the divergent political economies and there seems to be very little common feature among these four countries. However, a tendency of co-evolution can be observed. For example, Japan has given great influence on South Korea in building legal/administrative system and the divided co-operative legislation was created while the latter made a breakthrough by enacting FAC. China and Mongolia are transforming to market economy under the strong government initiatives and paying attention to the Japanese and South Korean trajectories as a historical precedence. A large number of co-operative managers of South Korea, China and Mongolia often visit Japan to learn about its agricultural co-operatives while the comparative study of institutional arrangements need to be activated.

III. SPECIFIC ELEMENTS OF THE CO-OPERATIVE LAWS IN EAST ASIA

The great diversity of co-operative legislations in four countries makes it very difficult to conceive on the possible regional or sub-regional legislation. There is no legislative or policy dialogue to discuss on the regional co-operative law or conversion. Therefore, this section will concentrate on the comparative analysis of specific elements of the national co-operative laws in four East Asian countries.

a) Definition and Objectives of Co-operatives

In many legislations, cooperatives are defined in accordance with the ICA Statement on Co-operative Identity. The objective of co-operatives is stated as serving to satisfy member's needs or maximizing member's benefits. The scope of businesses that co-operatives can conduct are defined in individual specific cooperative laws while the South Korean Framework Act and Mongolian Cooperative Act allow a wide range of businesses. The Japanese and South Korean agricultural co-operative laws allow cooperatives to conduct both economic and financial businesses as “multipurpose cooperatives” while the Chinese and Mongolian legislations do not allow such dual operations. The non-member trade is restricted to the varied extent.

Japan

There is no definition on 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 co-operative organization, and thereby contribution to the development of national economy.”

The objective of co-operatives is reflected in a principle of maximum service to its members and not-for-profit making. A co-operative must work for the greatest service for the members through its activity and must not work for the profit. The principle of maximum service to its members and not profit making is implemented through transactions with the members as consumers or producers.

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 (ACA). 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 20-25 percent of trade with members while it allows that of 100% for health care.

In contrast, CCA completely prohibits consumer cooperatives to trade with non-members, which have had long-standing effects on the evolution of cooperatives.

A cooperative may pursue objectives other than member-promotion, and 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 government.

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.

South Korea

Special cooperative laws do not have a specific legal provision precisely defining a cooperative while the Framework Act stipulates that the term “cooperative” means “a business organization that intends to enhance its partners' rights and interests, thereby contributing to local communities by being engaged in the cooperative purchasing, production, sales, and provision of goods or services” and “social cooperative” is defined as “a cooperative that carries out business activities related to the enhancement of rights, interests, and welfare of local residents or provides social services or jobs to disadvantaged people but that is not run for profit.”

All cooperative laws including the Framework Act assign the precise purpose of establishment to a cooperative. Agricultural Cooperatives Act stipulates that a district agricultural cooperative shall promote the agricultural productivity of its members, expand the sales of agricultural products produced by its members and promote well-functioning distribution for its members, and improve the economic, social and cultural status of members through providing technology, working capital, and information which its members need. The Framework Act also has a provision for objectives of establishment. It stipulates that each cooperative or social cooperative or federation of cooperatives shall pursue the enhancement of welfare of its partners or members and mutual help/aid between members and shall meet economic, social, and cultural requests from members.

Cooperatives established by eight special cooperative laws can be engaged in businesses specified in their respective laws. Agricultural cooperatives can conduct banking and insurance businesses along with economic business in their industry. SMEs Cooperatives are not allowed to do banking and insurance businesses but can carry out mutual-aid project for members. In case of consumer

cooperatives, only consumer cooperative unions can engage in a mutual-aid project and non-member trade is prohibited. A cooperative founded by the FAC can conduct business activities in any industry necessary for fulfilling its objectives of establishment prescribed in its bylaws except for banking and insurance business. A social cooperative can be engaged 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 main business prescribed in the Act should be at least 40 percent of the total amount of the entire business of a cooperative.

China

A farmer specialized co-operative (FSC) 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. FSCs serve their members through joint purchase of agricultural inputs, marketing, processing, transportation, storage of agricultural products and provision of information and related technologies.

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.” The Co-operative Act does not stipulate the purpose of law, it provides for the activities; (a) Rough materials proceeding, (b) Industrial, (c) Credit union, (d) Selling, supplying, (e) Service, (f) Construction of apartments, (g) Consumers and (h) Others. The Credit and Saving Co-operative Act provides for banking business. Co-ops can trade with nonmembers if bylaws stipulate so while credit and savings co-operatives can trade only with members.

b) Establishment, Membership and Governance

Cooperatives are incorporated upon the approval (authorization, license) of the administrative authorities except for the Korean general co-operatives that can be incorporated upon the registration. In the Japanese and South Korean agricultural co-operative laws, non-farmers can become the associate members. The governance structure comprising of general assembly, board of directors and auditors is a common feature across legislations while the Japanese Agricultural Cooperative Act employ the dual system.

Japan

Cooperatives are incorporated upon the approval of the administrative authorities that must approve the establishment of organizations within two months after filing the application except for some cases. 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. A cooperative is founded when the registration to the district legal affairs bureau is made at the location of main office. There is no specific register for cooperatives.

The qualification of the membership of the agricultural cooperative is as follows, which is to be defined in its bylaw. (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 organization. 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 practice of investor members). The qualification for membership in a consumer cooperative shall be determined by the bylaw applicable to the following persons. (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. As such only user-members are allowed while there exist no corporate members in the primary cooperative. 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 number of shares held. 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. 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. 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 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. 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. The board of directors and representative director are the statutory organs newly introduced following the provisions 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-juridical acts pertaining to cooperative activities. Agricultural cooperatives have dual board system; 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 obligatory organ 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. 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. 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 auditors who are neither members nor executives while one full-time auditor must be elected among auditors in larger cooperatives. 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 Act has the similar provision for cooperatives whose total amount of liabilities exceeds JPY 20 billion.

South Korea

Under the Civil Code, a juristic person, whether it is profit or non-profit, can come into existence by making registration for incorporation (Art. 33). Any type of cooperative should be registered for establishment at the seat of the principal office of the juristic person. Each registry office has a register for cooperatives. Cooperatives regulated under eight special cooperative laws must obtain approval (authorization) for establishment from their respective competent authorities. A standard form of articles of incorporation (model by-laws) is provided by the supervising ministry in all types of cooperative. In case of a social cooperative under the Framework Act, authorization for establishment from the Ministry of Economy and Finance is required while general cooperatives have no need for authorization other than reporting of the articles of association to the competent authority.

Legal provisions regarding admission of new members, limitation of share contribution units, equal voting rights of members, and withdrawal of members are, by and large, same in all nine cooperative laws. A member shall contribute at least one unit, as prescribed in the articles of association and the number of share contribution units per member should not exceed 30 percent of the total number of contribution units. Each member has one vote on a resolution or election, regardless of the number of his/her share contribution units. A member may withdraw from the cooperative by notifying the cooperative of his/her intention to withdraw. A member who withdraws (or expelled) from a cooperative or a social cooperative may claim for refund of his/her contribution in a way as stipulated by articles of association. But, if a cooperative is unable to fully repay its debts with its assets, it may claim a withdrawing member to pay his/her apportionment of deficits when it calculates the amount of the share that shall be refunded. Agricultural Cooperatives Act (ACA) has a provision regarding associate members. A district agricultural cooperative may admit a local resident living in the area of operation as an associate member if he/she is appropriate to use cooperative businesses, as prescribed in the bylaws. In this case, the cooperative may request the associate member to pay admission fee and expenses.

The governance system of a cooperative is composed of general assembly, board of directors, and auditors. In case of a district agricultural cooperative, a representative meeting can take the place of the general assembly, as prescribed in bylaws. In this case all representatives must be members. A district agricultural cooperative should have 7 to 25 directors and 2 auditors including chairperson. At least two thirds of directors must be members. In case of the cooperatives under FAC whose number of members is fewer than 10 may choose not to organize the board of directors, following a resolution by a general meeting.

China

The SFC Act provides that, to establish or modify any of the statutory registration effects, the applicant shall apply for a business license at the administrative department for industry and commerce. The conditions for the establishment of a FSC are more than five members, the domicile of an FSC and members' capital contribution the method and amount of which are subject to each cooperative's own bylaws.

As to the membership, every citizen, firm, government-affiliated agency or civil society organization, which is engaged in activities associated with a FSC and can make use of the services provided by the FSC, is deemed qualified to become a member of the FSC upon abidance to the by-laws and other

procedures. However, agencies that have a public administration function shall not become members of a FSC. Therefore, the Act allows some stakeholders, such as providers, retailers, processors, and service organizations, which are engaged in related business operations with cooperatives, to become members of a FSC. However, the number of non-producer members is restricted as the Act states that “no less than eighty percent of the members shall be farmers”. 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.

An FSC has a general meeting of members as its governing body, and in FSCs with more than 150 members, the by-laws may establish a meeting of delegates in substitution for the general meeting of members. The Act also provides that an FSC shall have a board chair as its legal representative, but whether to establish a board of directors is at the discretion of the cooperative. And, as the business activities of a relatively small FSC involve the full participation of all members, whether to set up a specialized management organ is also at the discretion of the FSC. A FSC with a management organ established may choose to set up an executive supervisor or a board of supervisors, according to actual need. The Act provides that election and voting at the general meeting of members of an FSC shall be conducted on a one-person-one-vote basis. Meanwhile, in order to resolve capital deficiencies of cooperatives an additional voting rights system is provided, up to 20 % of the total number of the members' votes.

Mongolia

Co-ops need to be registered in the national register. Credit and savings co-operatives must apply for certificates from the Financial Regulatory Commission while some co-operatives (veterinary, artisanal mining etc.) must be certified by another regulatory bodies.

Membership is open to any individual while secondary co-operatives can be joined by any legal entity including nonprofits, private businesses, partnership as far as a majority of members are co-ops. Governance structure consists of general or delegate meetings, board of directors and auditing boards. All board members must be co-op members.

c) Financial Structure and Taxation

A minimum share capital is not generally prescribed by law for the cooperative establishment except for federations (Japan). There is no “investor members” but financial cooperatives can issue financial instruments. The profits need to be allocated to reserves by the cooperative. In the case of cooperative dissolution or conversion into another type of business organization, cooperative capital and assets can be distributed among members while cooperatives serving general interests such as Japanese Koseiren and South Korean social cooperatives cannot distribute residual assets that need to be transferred to another public interest bodies. The taxation rules are equally applied to cooperatives except for Japan and China but the co-operative advantage over conventional businesses is shrinking in Japan.

Japan

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). 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 maximum number of shares owned by one member shall be specified in the bylaw. The responsibility of a member shall not exceed the amount of his/her subscribed share (limited liability). A member cannot transfer the share to the other member without consent of a cooperative. A member can request to reimburse all or a part of shares by the provision of the bylaw, when it withdraws. 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.

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 the paid-up share. 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. 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. A cooperative may not admit "investor members" (except for an agriculture cooperative or its federations carrying on banking business). The Law on Preferred Equity Investment by Cooperative Structured Financial Institution (1993) allows financial cooperatives to issue preferred shares to nonmembers 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 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 (a joint stock company, a general incorporated association, a consumer cooperative and a medical corporation) was added to the ACA in 2015. 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.

Corporate Tax Act provides for the different tax rates in accordance with corporation's status as enlisted in the Appendixes for public bodies, public interest corporations etc. and cooperatives etc. Now cooperatives 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. The patronage refunds are considered as discounts and are therefore not taxed on cooperatives. The Welfare Federations of Agricultural Cooperatives (*Koseiren*) became tax-exempt in 1984.

South Korea

There is no minimum share capital prescribed by laws for the co-operative establishment. All cooperative laws in Korea stipulate that a member should contribute at least one share unit, as prescribed in bylaws, and limit the number of share contribution units per member. The number of contribution units per member shall not exceed 30% of the total number of contribution units in the Framework Act or 20% in the Consumer Cooperatives Act. Co-operative laws have no legal provision allowing any cooperative to issue any financial instrument or to admit investor members. A district agricultural cooperative or the National Federation may issue preferred shares which have preferential right to receive dividends to common shares but have no voting right. Under the Framework Act, a withdrawing member of a general cooperative or a social cooperative may claim for refund of his/her share from the fiscal year immediately subsequent to the fiscal year in which he/she withdraws (including the time when expelled). Agricultural Cooperatives Act provides the same legal right for the refund of share to a withdrawing member. All cooperative laws have legal provisions regarding legal reserves and voluntary reserves. However, the percentage of surplus which a cooperative must set aside as legal reserve is different according to the type of a cooperative. A social cooperative is not allowed to distribute the surplus to members.

In case of a social cooperative, residual property should not be distributed to members. When a social cooperative is dissolved, the ownership of the residual property left over after repaying debts and contributions shall be vested to the federation of social cooperatives, a social cooperative for similar purposes, a non-profit corporation or a public-service corporation, or The National Treasury.

Co-operatives are subject to the general taxation system. Also, Korean tax laws don't recognize "patronage refunds" as different from "dividends" and treat them differently, nor provide for tax exemption of profits allocated to legal reserves or non-distributable assets. Cooperatives established by eight special cooperative laws get preferential taxation treatment under the Restriction of Special Taxation Act while cooperatives organized under the Framework Act don't get any preferential tax treatment.

China

In order to reflect the basic characteristics of cooperatives, and protect the interests of farmer members, the Act establishes that "surplus is to be distributed mainly in proportion to the volume of transactions between the cooperative and its members". It specifically provides that "the total amount returned to members as patronage dividend shall not be less than 60% of the distributable surplus". In order to protect the interests of investor members, the FSC Act provides that the remaining surplus, after the payment of patronage refund, shall be distributed to members on the basis of the capital contributions and reserve fund recorded in each member's account. Co-operatives are exempted from Value Added Tax and Stamp Duty while the income derived from agriculture, forestry, animal husbandry and fishery projects may be entirely or partially exempted from the Enterprise Income Tax.

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.

Co-operatives are taxed the same as other businesses at 10% while allocated reserves are not taxed.

d) Other Specific Features

Cooperatives are not subject to external control by the State or any other public authority although government exercises strong supervision on co-operatives, inter alia, on financial co-operatives. The principle of cooperation among cooperatives is stipulated in the Korean legislation while there is no provision in the other legislations. The special form of central union of agricultural co-operatives existed in the Japanese legislation but it was abandoned in 2019 while central union of SMEs cooperatives still operates.

Japan

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. The State had delegated the power of control to representative organizations of the agricultural cooperative; JA Zenchu (national central union) and JA Kenchu (prefectural central unions) had been exclusively designated by central and prefectural governments and have compulsory membership of agricultural co-operatives and federations. JA Zenchu exercised a strong commanding power by conducting compulsory auditing of cooperatives, publishing model bylaws and making proposition on co-op-related matters to the government.

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, but JA Zenchu was replaced by general incorporated associations (GIA) in 2019 by the amended ACA. CCA also provides for federations for business and representation both at prefectural and national levels. Laws on financial co-operatives provide for federations for business and GIAs for representation at national level. There was no umbrella organization to represent all cooperatives but the Japan Cooperative Alliance (JCA) was set up as a GIA in April 2018 to promote cooperation among different types of cooperatives.

South Korea

In the past, the government considered cooperatives as an instrument of bringing economic development and provided financial assistance and support to the cooperatives through preferential taxation and other means. The Framework Act made it clear that the government shall respect the autonomy of cooperatives when supervising them and the cooperation by the government should not

encroach the autonomy of cooperatives. It provided that public institutions should make preferential purchase of goods or services produced by a social cooperative.

All cooperative laws have a legal provision about federal bodies to promote common interests of cooperatives. The Framework Act stipulates that each cooperative, federation of cooperatives, social cooperative, or federation of social cooperatives shall endeavor to cooperate reciprocally with other cooperatives, cooperatives under other Acts, foreign cooperatives, and related international organizations, promote mutual understanding with them, and develop joint projects.

China

Regarding the legislation for federations among FSCs, as there are few FSCs that form federations, the Act has no provisions on federations. In other words, FSCs legally established in China operate independently. After the Law took effect, an objective need for federations of cooperatives emerged, and as a result, local regulations were established on the general requirement for cooperative federations. The registration problem of cooperative federations has, nonetheless, remained fundamentally unresolved by China's cooperative legislation.

Mongolia

Unless cooperatives are in violation of law, the state cannot intervene or control their activities. The provisions on secondary cooperatives are included in the Cooperative Act; the minimum number of members is 2 cooperatives, 51% of membership must be cooperatives and any legal entity is permitted to join.

IV. DEGREE OF CO-OPERATIVE FRIENDLINESS

The degree of co-operative friendliness widely varies among countries and sectors. Generally, the state is supportive to the co-operative development, but the contrasting view are expressed on the degree of “cooperative friendliness”.

Japan

It depends on sectors. Agricultural Co-operative Act has been very co-operative friendly giving policy support and financial assistances while its amendment in 2015 deprived of special treatment aiming to strengthen co-op's competitiveness. Consumer Co-operative Act 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.

South Korea

It is generally agreed that cooperative legislation is friendly to cooperatives. Specially the Framework Act complements existing eight special cooperative laws and contains many provisions supportive of cooperatives while respecting their autonomy. However, cooperative scholars and practitioners point out some provisions which may hamper the development of cooperatives 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.

China

The respondents to Questionnaire express positive evaluation to the FSC Act rating “very or quite friendly” but also argue that laws for other types of cooperatives need to be enacted.

Mongolia

The legal framework is only limitedly friendly to co-operative development due to various barriers. It has been influenced from Canadian and German laws. The best practices are seen where the legislation reflects on the ICA Principles.

V. RECOMMENDATIONS FOR THE IMPROVEMENT OF THE NATIONAL LEGAL FRAMEWORK

Japan

Co-operative laws should be given more autonomy in business conduct and governance. Workers Co-operative Act needs to be enacted while there is no consensus on the need of the general co-operative law among co-operatives. The Framework Act on Co-operatives could be enacted following the Korean example in the future.

South Korea

Various laws related to cooperatives should be harmonious and functioning organically, and the government should change its policies to make cooperative support more effectively than regulation on cooperatives.

China

The respondents to Questionnaire express the need to enact the general cooperative law or state's support to cooperatives education.

Mongolia

There are a set of recommendations on the distinction of co-operatives into for-profit and non-profit, a regulating ministry with a wider scope, range of credit and savings co-operative's services, function of secondary co-operatives and clearer financial support mechanism.

VI. CONCLUSIONS

As expected, one might be overwhelmed by the great variety of cooperative laws despite the commonality derived from long history of mutual influencing in East Asia. Japan had introduced the co-operative law in 1900 modelling German law while the Japanese pattern of multipurpose co-operatives were implanted in the colonized Korea and Taiwan. After the WWII, the national legislation on co-operatives had followed quite different trajectories due to the different political and socio-economic environment. South Korean legislators generally took the historical precedence from the Japanese legislation but made a breakthrough by enacting the Framework act of Cooperatives in 2011

that is seen as a great step forward to the desirable legislation by many people including Japanese. Chinese and Mongolian legislators abandoned the Soviet-type co-operative legislation and started formulating cooperative laws matching the internationally recognized Co-operative Values and Principles. Only a common type of co-operatives in these countries are the agricultural co-operatives in which the strong government initiatives are observed in the legislation in some aspects such as government's permission for the establishment and its supervision on co-operative activities.

Yet, co-operatives in this region face the challenges of globalization, ICT revolution and demographic transition. It is imperative to modernize cooperative legislation to create more enabling and supporting environment for cooperative development. In this regard, this exercise of comparison of national legislations can lead to deepening our understanding on cooperative laws and give a starting point of joint inquiries towards creating better legislation.

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