

## Legislation

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### OUTLINE OF THE WORKERS CO-OPERATIVE ACT IN JAPAN

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#### Introduction

The Japanese co-operative legislation is characterized by the separate laws that are specializing to regulate the particular categories of co-operatives and enacted in line with the industrial policies, and the strong government's control on incorporation and business activities. The Industrial Co-operative Act of 1900 was a uniform law following the German model and provided for the legal framework of credit, supply, marketing and production<sup>1</sup> co-operatives. After the Second World War, the allied force introduced the radical land reform as a part of economic democratization programs and helped to enact the Agricultural Co-operative Act in 1947 to cement the effects of reform through organizing farmers in agricultural co-operatives. Then, the other co-operative laws were enacted in line with industrial policies (fishery, forestry, banking, SMEs etc.) during 1948-1978. The exception was the Consumer Co-operative Act of 1948 that placed serious impediments to co-operative activities including the complete prohibition of non-member business, the limitation of operating areas within a prefecture and the lack of credit business. As a result, there are more than 10 co-operative laws in Japan that enable governments to make the strong control over co-operative activities for matters related to organization law as well as business laws. Such legal-administrative system based on laws and regulating ministries has resulted in the emergence of different organizational culture and political orientation of co-operatives while it contributed to the creation of fragmented political economy dominated by the iron triangle of ministries, legislature and trade associations (Masahiko Aoki's *compartmentalized pluralism*). It has been very convenient to ministries but might resulted in the lack of identity as a co-operative sector. After nearly 30 years efforts, the Workers Co-operative Act (WCA) passed the Diet on December 4th, 2020. WCA has some unique features compared to the existing laws and may give impacts to the existing co-operative laws. This paper describes the brief history leading to the enactment of WCA, explains the outline of WCA, discusses the potential impact to the existing co-operative laws and concludes with some suggestions to make full use of WCA to operationalize workers co-operatives and energize co-operative movement as a whole.

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<sup>1</sup> Later "production" was replaced by "services".

### **Brief history leading to the enactment of Workers Co-operative Act**

In addressing the unemployment and the lack of community services, two streams of workers co-operatives emerged. The first grew out of the trade union movement and the second out of the consumer co-operative movement.<sup>2</sup> The Japan Workers' Co-operative Union (JWCU) is a 16,000-member organization with an annual turnover exceeding JPY 35.1 billion in 2019. JWCU emerged during the 1970s from a trade union of middle-aged and older workers temporarily employed by a national unemployment relief project created in the postwar period. This public project provided daily employment in civil engineering and public sanitation works for unemployed people. The beneficiaries reached 350,000 in 1960 but this tax-funded relief project gradually dwindled when the economic boom largely enhanced job opportunities, and finally terminated in the 1971. The trade union had tried to secure their jobs through extreme actions including strikes, but they finally failed. Mr. Goshu Nakanishi, chairman of the union, proposed a policy of "democratic reformation." To secure jobs for union members, union officers created business units called Jigyodan across Japan to seek business opportunities from the public and private sectors. They encouraged workers to participate in management and to improve the quality of their work. These small business units became the workers co-operatives that constitute the current JWCU. In the 1980s and 1990s, workers co-operatives mainly engaged in building maintenance and sanitation work while they gradually shifted to develop more sustainable jobs to meet the needs of the times, particularly after the Long-term Care Insurance (LTCI) was introduced in 2000. Their current main businesses are elderly care, childcare, and support for youth and the poor. As the workers co-operatives were originally set up by union activists and precarious workers, one characteristic of this group is to look for opportunities to work with people with difficulties such as unemployment, psychiatric and intellectual disabilities, alcohol and drug dependency, etc.

The second stream is represented by the Workers' Collective Network Japan (WNJ) that is a 7,700-member organization with an annual turnover of JPY 13.2 million in 2019. Each of its 400 member organizations called Workers Collectives (W.Cos) has a membership of several to 100 members. In their early stages, W.Cos were operating stores and delivering goods for the Seikatsu Club consumer co-operatives. Later they entered businesses such as catering, community cafes, eldercare/childcare, and editing/translation. These W.Cos were formed in the 1980s by members of Seikatsu Club, predominantly housewives who made joint purchases of safer food including private brand products satisfying strict safety criteria or produce directly bought from farmers and who wished to work for supplementing family income. Seikatsu Club's key policy is to encourage members active participation in every stage of the product cycle from cultivation, production, distribution, consumption, and disposal or recycling. Inspired by the workers collective movement in the United States, W.Cos have a strong feminist stance to

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<sup>2</sup> Kubo Y., "Workers' cooperatives as a solution to social exclusion in Japan", *Waking the Asian Pacific Co-operative Potential*, Elsevier, 2020, pp. 355-363. Kurimoto, A. and Kumakura, Y. "Emergence and Evolution of Co-operatives for Elderly Care in Japan", *International Review of Sociology*, Vol.26, No.1, Routledge, 2016, pp.48-68.

counter society's dominant "male breadwinner" model, demonstrating that women could create jobs and make a positive impact on "society at large." They also involve young people with difficulties and senior citizens who help them find solutions and support them as co-workers.

Both groups were inspired by Dr. Alex Laidlaw's report "Co-operatives in the year 2000" that suggested co-operatives for productive labor as the second priority for the future. Since they lacked the legal instrument to incorporate, they had to rely on the different organizational forms such as limited companies (Companies Act), consumer co-operatives (Consumer Co-operative Act), enterprise unions (SME Co-operative Act), and nonprofits (Specified Non-Profit Activities Promotion Act or NPO Act). In the mid-1990s they started campaigns to establish a legal framework, first separately, then jointly. In 2008, bipartisan parliamentary group was formed to promote enactment. In 2017 the ruling party's working team prepared a bill that was approved by other parties and backed up by the Japan Co-operative Alliance (JCA) formed in 2018. In December 2020 Workers Co-operative Act (WCA) was enacted by the unanimous support in the Diet.

### Outline of Workers Co-operative Act

WCA is a full-fledged organizational law with 137 articles. It has some characteristics compared with existing co-operative laws.

#### a. Purpose of law with three basic principles

This Act purports to promote generating a variety of job opportunities and promote businesses responding diverse needs in communities through organizations, thereby to contribute to sustainable and viable communities through providing for necessary matters relating to the establishment, governance and so on of those organizations with basic principles; a) members' share investment, b) reflection of their voice in conducting business and c) their engagement in co-operative activities, reflecting the reality that the opportunities for each person to work in harmony with daily life and in accordance with his/her motivation and capability are not necessarily sufficiently secured (Article 1). This article contains the purpose (purport to ...), the means (through providing ...) and the context (reflecting ...). The purpose and the context show this act is related to the social policy rather than the industrial policy. The means are related to the matters of organizational law rather than business laws. These are characteristics quite different from existing co-operative laws. The basic principles are reiterated in Article 3 and correspond to the generally accepted *owner and user identity principle*. It's peculiar Article 1 has no notion on workers co-operative that appears in Article 2 on the incorporated status and main office location.

#### b. Mode of establishment

To establish a workers co-operative, more than three potential members need to be movers (Article 22) who shall make bylaws and convene the inaugural meeting (Article 23). Upon the

registration at the main office address, a workers co-operative is incorporated (Article 26). Thus, the establishment of a co-operative is based on the general incorporation rule like the companies and general incorporated associations/foundations while the government permission is not necessary. This is different from other co-operative laws that require the government permission.

c. Membership and worker's composition

The minimum membership is supposed to be five individuals who need to make the labor contract with a co-operative (Article 20) except for officers. As such, member-co-operative relationship is subject to the Labor Contract Act to avoid the risk of the second labor market in which workers may not be protected from employer's abuses. More than 80 % of members need to be engaged with co-operative operations while more than 75 % of engaged workers need to be members (Article 8). This corresponds to the World Declaration on Worker Cooperatives that reads "As a general rule, work shall be carried out by the members. This implies that the majority of the workers in a given worker cooperative enterprise are members and vice versa."<sup>3</sup> There is no provision on the prohibition of non-member business that characterizes the Japanese co-operative legislations but this provision allows less than 25% of workers to be non-members.

d. Scope of activities

There is no limitation in co-operative activities except for those stipulated in the decree (Article 7). This allows workers co-operatives to conduct a variety of businesses including farming, retailing, eldercare/childcare, recycling, renewable energy, community support and so on. There is a huge potential to set up co-ops conducting a variety of activities that were not allowed in the existing co-operative laws that enlist allowed activities. However, the worker dispatch business is not allowed (Article 7, Section 2). The financial business such as banking and insurance requires government authorization based on respective business laws (i.e., Banking Act and Insurance Business Act).

e. Governance

Workers co-operatives need to have bylaws and rules. They elect the board members (more than three) and the auditors (more than one) in the general meeting (Article 32). They can have the delegate meeting in case of co-operatives with more than 200 members (Article 71). The board members must be members while representative board member is authorized to make any kind of acts in or out of court in operating business (Article 42). In case the membership is less than 20, auditors can be replaced by members audit meeting consisting of all non-board members (Article 54).

f. Distribution of surplus

The surplus workers co-operatives can be distributed only after offsetting losses, deducting legal reserves (10% of surplus), reserves for job creation and education (5% respectively) (Article 76). The dividend is distributed to members in proportion to their labor contribution as provided by bylaws (Article 77). The dividend in proportion to shareholding and indivisible reserve are not provided in WCA.

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<sup>3</sup> ICA-CICOPA, World Declaration on Worker Cooperatives, 2005.

g. Tax concession

Workers co-operatives have no tax concession for the corporate income tax that is enjoyed by other co-operatives. However, they can enjoy the lower tax rate applied to SMEs that is equivalent to rate for co-operatives.

h. Government supervision and so on

Workers co-operatives are subject to government supervision including reporting, inspection, administrative order and so on. The competent administrative bodies are prefectures for primary co-operatives and the Ministry of Health, Labor and Welfare (MHLW) for federations. The latter publishes guidelines for operations. The rules concerning to the transformation from enterprise unions and nonprofit organizations are provided.

### **Impact of Workers Co-operative Act to the existing co-operative laws**

It is argued that WCA will give great impact to the existing co-operative laws. Firstly, the mode of establishment in WCA is very simple, namely a workers co-operative can be incorporated after the registration while government permission is not required. That is common practice in most of industrialized countries and the Japanese companies and general incorporated association/foundations follow this rule while the government still maintain the permission regime for other co-operatives and nonprofits. In this regard, WCA can be seen as a breakthrough and it is expected to bring about more liberal legislation. Secondly, the membership is not limited to the specific class of people while the minimum requirement of five members is extremely low compared with other laws (i.e., 300 members in case of CCA). This characteristic enables small number of citizens to set up a co-operative to meet the needs much easily. Thirdly, a range of activities is not limited and potentially any kinds of activity are possible. In addition to care workers co-operatives that are operating in many places, doctor's co-ops, worker-owned retail co-ops or renewable energy co-ops are possible. Thus, WCA may induce the review of the existing laws while the possibility of the Framework Act of Co-operatives needs to be examined.

### **Conclusion: Tasks to be tackled**

The enactment is only the beginning for the development of workers co-operatives. First, the existing workers co-operatives organizations need to be reorganized as primary co-ops and the federations in accordance with the provisions of WCA. JWCU has a variety of membership consisting of central/local Jigyodans (SME Co-operative Act, NPO Act or unincorporated), elderly persons co-operatives (Consumer Co-operative Act), social welfare corporations (Social Welfare Act) and so on. The transformation of corporate status and organization structure will

require time and energy. WNJ has simpler membership of primary/secondary W.Cos and associate organizations. Whether two groups will merge or not is another important issue.

Secondly, to create the supporting measures including favorable public policies and support structure is an important step forward so that emerging workers co-operatives can contribute to solving a large number of socio-economic problems and contributing to the attainment of the SDGs. The existing public policy measures can be utilized by workers co-operatives. For instance, the community-based integrated care system based on the LTCI, the needy persons support system, and the public services commissioning are the fields that they are widely involved. The policies for eliminating abandoned houses and farmland, are also concerned with them. The support structure for start-ups needs to be established to promote the establishment and give guidance as in the case of publicly funded NPO centers.

Thirdly, the collaboration between existing co-operatives and emerging workers co-operatives. The former has human and financial resources to extend variety kinds of help to the latter that may give inspiration for rejuvenating the former. There exist two networks to support emerging workers co-operatives. One is the Japan Co-operative Alliance (JCA) founded in 2018 to promote inter-co-operation following the Japan Joint Committee of Co-operatives (JJC) set up with limited function of the ICA affiliates in 1956. It is a national network of affiliated prefectural networks. The other is the National Council of Workers' Welfare (Rofukukyo) set up in 1950 as a coalition of worker-related co-operatives and trade unions. They also have prefectural and local networks. These networks can facilitate inter-co-operation among co-operatives. For instance, agricultural co-ops can help female members or wives set up workers co-operatives to process produce to local specialties. Consumer and health co-operatives have often contracted with workers co-ops to conduct such works as delivery, warehousing and cleaning. It is important to facilitate such collaboration to help workers co-ops to take off. It is expected such collaboration among older and newer co-operatives will energize co-operative movement as a whole.