

A study of the Latest Amendments to the Agricultural Cooperatives Act of Japan

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■ Abstract

The latest amendments to the Agricultural Cooperatives Act has been carried out by amending wide-ranged provisions of the Act, although some of them were not subject to arguments at the deliberations of the Diet. It contains a number of provisions which were deemed important from a practical point of view.

Many stakeholders, however, have found it difficult for them not only to understand the necessity of the latest amendments to the Act, but also to accept it forthrightly. No such amendment has ever been found in the history of the Act. The cause lies in the legislative process itself of the Amending Act.

The primary purpose of the Agricultural Cooperatives Act is “to promote the sound development of cooperative organizations of farmers”. An idea for making use of the agricultural cooperative associations as a means to realize a certain political purpose is not only inconsistent with the essential characteristics of autonomy and mutual self-help of cooperatives, but also likely to lead to distortion of these characteristics.

If the latest amendments to the Agricultural Cooperatives Act aimed to “transform the agricultural sector into a growth-oriented industry”, it must be observed that the main topic to be discussed was how to build up a supportive legal framework for agricultural cooperatives like supporting formation of new-typed agricultural cooperatives, rather than confining agricultural cooperatives, which have respectively diversified conditions and characteristic features, into a single framework.

■ Introduction

The bill of the Act Partially Amending the Agricultural Cooperatives Act and other related Acts (Act No. 63 of 2015) (hereinafter referred to as “Amending Act”) was introduced by the Cabinet in the 189th ordinary session of the Diet on April 3, 2015. At the House of Representatives, the bill was partially amended (a partial amendment of the supplementary provisions of the bill) and passed by a majority vote on June 30. On August 28, the bill of the Amending Act, which had been partially amended in the House of Representatives, was approved and enacted at the House of Councilors. And the Amending Act was finally promulgated on September 4 (enforced on April 1, 2016, excluding a part of the Act).

The Amending Act consists of (1) partial revision of the Agricultural Cooperatives Act, (2) partial revision of the Act on Agricultural Commission, etc., (3) partial revision of the Agricultural Land Act, (4) partial revision of the Agricultural and Fishery Cooperative Savings Insurance Act, (5) partial revision of the Act on Enhancement and Restructuring of Credit Business Conducted by The Norinchukin Bank and Specified Agricultural and Fishery Cooperatives, etc., and (6) repeal of the Agricultural Warehousing Business Act.

The latest amendments were implemented with an aim of giving an overhaul

particularly to agricultural cooperative organizations, agricultural commissions and agricultural production corporations so as to transform the agricultural sector into a growth-oriented industry in response to recent changes and the like in the conditions surrounding agriculture. Main contents of the partial amending the Agricultural Cooperatives Act are (1) clarification on principles of business operations of agricultural cooperative associations, (2) organizational management of the association to be ensured as an autonomous organization of members, (3) modification to composition of directors and supervisory committees, (4) establishment of provisions concerning incorporation-type corporate split and entity conversion of the agricultural cooperative association, (5) abolition of the system of the union of agricultural cooperatives, and (6) obligatory appointment of a financial auditor at the agricultural cooperative association. operating the banking business. In addition to these contents, some significant amendments are also included in the Amending Act.

The partial amending the Agricultural Cooperatives Act will be outlined and verified in the following sections, while other related Acts of the Amending Act are hereby excluded. And it must be noted in advance that the views and opinions expressed in this paper are the author's own.

1. Outline of major amendments

1.1 Clarification on principles of business operations of agricultural cooperative associations

The principles on business operations have been clarified with an amended provision stipulating that the objective of an agricultural cooperative association shall be to furnish the maximum services to its membership as well as to show utmost consideration for an increase in agricultural income by conducting its business activities that are authorized to perform. Furthermore, it is provided that the association must endeavor not only to generate profits by accurate implement the businesses such as marketing of agricultural and livestock products, but also to allocate the profits to investment for growth and development of those businesses as well as to payments of patronage refunds (art.7: amendment of former art. 8).

The former Article 8 was a provision stipulating that “an agricultural cooperative association shall have the objective to furnish the maximum service to its membership-by conducting businesses which are authorized to perform, and it shall not be allowed to do the businesses for the purpose of profit-making”. The latter part of this provision was reflexively drawn out of the former part of the provision. Namely, the latter part implied that the association shall not have an objective to pay dividend on the share capital.

Accordingly, the provision of the former Article 8 was written to confirm the essential characteristics of cooperatives that distinguish them from for-profit corporations such as joint stock companies. Properly, the Article 8 was not such a provision subject to amendment, unless the Amending Act did not have the aim to deny the essential characteristics of cooperatives. Nevertheless, the latter part of this former Article 8 has been deleted by the Amending Act, and a new provision is added: “An agricultural cooperative association shall show utmost consideration for an increase in agricultural income when it carries out the business activities” (art.7, para.2). Furthermore, another provision has also been added: “An agricultural cooperative association must, while ensuring the soundness of management through accurate business conduct in agricultural marketing and other operation, endeavor to make an investment for the growth and development of its business with the revenues generated from its business or to allot the

surplus for patronage refunds” (art.7, para.3). By adding these provisions to the Article 7, the provision of the former Article 8 has been caused to undergo a substantial change in quality including its significance. The new provision of Article 7.para.2 is an obligation to be considered. However, it is logically tantamount to order the members of a cooperative association to increase its agricultural incomes, because the businesses of the association are jointly conducted by members themselves. The new provision of Article 7.para.3 can be interpreted in the same way. Hence, it is safe to say that these newly added provisions lack an understanding of what cooperatives are.

Moreover, although these provisions have a legal form of an obligation to be considered or an obligation to be achieved, most significantly questionable is who will assess the achievements of the business activities implemented by an agricultural cooperative association. In the nature of the things, members themselves should assess those achievements (If so, these provisions were unnecessary). If a third party assesses the achievements of the activities done by the association under these provisions and intends to impose an external compulsion on the association in a certain way, we need pay attention to such assessment that will possibly lead to a denial of cooperatives. ^(Note 1)

1.2 Organizational management of an agricultural cooperative association to be ensured as an autonomous organization of members

(a) Establishment of a provision concerning compulsory prohibition of member’s use of the cooperative businesses and abolition of a provision concerning exclusive utilization of the businesses of the association:

In addition to the amendment to the former Article 8, a new provision is established by the Amending Act to stipulate that an agricultural cooperative association shall not enforce its membership to use its business services when the association implements the authorized businesses, by referring to a viewpoint of ensuring the organizational management of the association as an autonomous organization (art.10-2). It can be interpreted that the purport of this provision is similar to that of a provision of the Consumer Cooperatives Act which states “members shall not be enforced to use the business services of a consumer cooperative association against their will” (art.12, para.1 of the Consumer Cooperatives Act). The purport of the new provision, however, is not directly connected with the viewpoint of ensuring the organizational management of the association as an autonomous organization. If the Amending Act places emphasis on a philosophy that agricultural cooperative associations are intrinsically autonomous organizations, whether members use association’s business services or not is a matter which should be left to their autonomous discretion, to my understanding.

By the way, there is still room for discussion on whether members of the association have an obligation to use its business services or not. If the Act imposes an obligation to use those services on members, such obligation will be likely to lead to a denial of cooperatives. Nevertheless, it seems to be natural to think that member’s participation in the business transaction with the association is an inevitable consequence derived from a cooperative’s purpose of mutual assistance and a position as its member. As member’s long-term non-utilization of business services of the association is cited as one of the reasons for membership expulsion by the Agricultural Cooperatives Act of Japan, it can be

(Note 1) Refer to AKEDA Tsukuru, 2015, *Reviews on organizational characteristics of agricultural cooperatives and their exclusion from application of the Anti-Monopoly Act*, Agriculture & Economics (Double issue for July and August 2015), pp.65-66 (written in Japanese).

recognized that members are obliged to use the business services of the association in an abstract and general sense. In the case of cooperatives in western countries, it is usual particularly for (marketing) agricultural cooperatives to lay down such a provision in their byelaws or other rules as stipulates members' obligation to supply all (or more than a certain proportion) of their farm products to their cooperative, as well as a breach of duty, although the provision varies depending on the kind of an agricultural cooperative. In the United States of America, the cooperatives act of each state has a provision concerning Marketing Contracts or Marketing Agreements on the premise that members are obliged to use the business services of their cooperative, which modeled itself on the provision of the Japanese Agricultural Cooperatives Act concerning the exclusive utilization contract of businesses of an association. In comparison with this contract system in the United States, the provision concerning the exclusive utilization contract of the former Agricultural Cooperatives Act was applied in an extremely restrictive manner. Some persons related to legislation had pointed out that protection of the exclusive utilization contract itself should be legally consolidated.^(Note 2) Under thus situation, it is hard to find out any positive reasons why the provision concerning the exclusive utilization contract had to be abolished. If we see things from a different angle, however, it may also be possible to observe that the abolition of the said provision has improved the degree of freedom, because we can consider it possible, under the principle of freedom of contract, to make a marketing agreement including a certain damages for breach of contract between members and their agricultural cooperative association on the basis of their free will.

(b) Abolition of revolving fund system:

The revolving fund system was introduced in the Agricultural Cooperatives Act when the Act was revised in 1951, in reference to the system available in the United States. The relevant provisions concerning this system made it possible for an agricultural cooperative association to enforce its members to "contribute" all or a part of the patronage refunds to the association for a limited period of time not exceeding five years on the basis of a decision made at the general assembly in accordance with its articles of incorporation (former art.13-2 and former art.52-2). The revolving fund was so named because the fund yearly contributed by current members was used to turn out the oldest part of the fund provided by senior members, namely to replenish the fund after reimbursing a part of the fund to those senior members. In comparison with practical workings of the revolving fund at the cooperatives in the United States, the system has been hardly exploited by the agricultural cooperative associations in Japan, because of the rigid legal stance to the system. Nevertheless, the system itself possesses significance as practice of the theory that the capital of a cooperative should be contributed by its members in proportion to the size of their transactions with the cooperative. As for mutli-purpose agricultural cooperatives in Japan, however, the revolving fund system has lost its significance since the revolving fund was excluded from the equity capital under a new global regulatory framework known as Basel Accord on Capital Adequacy for financial institutions. Therefore, the abolition of the system could be agreeable. It must be observed, however, that the system is still of significance for single-purpose agricultural cooperatives as a fundraising means appropriate for cooperatives. This amendment has no direct connection with organizational management of the cooperative to be ensured as an autonomous

(Note 2) Refer to Agricultural Policy Division of the Ministry for Agriculture, Forestry and Fisheries, 1947, *Comments on the Agricultural Cooperatives Act*, Nihonkeizai Shimbunsha, p.22 & p.91 (written in Japanese), and Takekazu Ogura, 1982, *Collected Works of Takekazu Ogura Vol.7 (Aspects of structural problems)*, Nosangyoson Bunkakyokai, p.291 (written in Japanese).

organization of members, either. Instead, if the autonomy of the cooperative is talked about, leaving this revolving fund system to the provision of the articles of incorporation of each cooperative will be the most optimal way.

(c) Deregulation of government agency's standards for authorizing establishment of an agricultural cooperative association and an amendment of the articles of incorporation , etc.:

Establishment of an agricultural cooperative association is subject to the authorization of the administrative agency. When the administrative agency would grant an approval to an application for establishment of an association or a federation, it was provided in the former Agricultural Cooperatives Act that the agency might not authorize the establishment, if the agency recognized, (1) in the case of an agricultural cooperative association, partly or whole overlapping of the territory with a neighboring association could pose an obstacle to the development of agriculture in the territory of the relevant association (former art.60, item 3), and (2) in the case of a federation of agricultural cooperative associations, the federation implementing businesses activities similar to a part or whole of the activities of the union of agricultural cooperatives could pose an obstacle to the development of businesses of the said union (former art.60, item 4). These provisions are now applied mutatis mutandis to the provisions concerning the authorization of an amendment of the articles of incorporation (art. 44, para.3).

Those two provisions have been deleted by the Amending Act in order to soften the regulations regarding establishment of an agricultural cooperative association. At the same time, the Act has also deleted the provision stipulating that agricultural cooperative associations, which are members of a federation, shall make a resolution by votes at their respective general assembly on an agenda whether the federation of those associations should amend its articles of incorporation to launch such a business as is actually implemented by other federation of the associations in the same territory of the relevant federation (former art.46-2).

It had been some questionable that these deleted provisions needed to remain in the former Act in order to legally protect agricultural cooperative associations. Such amendments, therefore, might be regarded as consistent with the aim of the Amendment Act. From a viewpoint of an aspect of the cooperative movement, however, it must be observed that agricultural cooperative associations and their federations should respectively maintain a self-regulating policy as their movement theory that they do not interfere with each other in the territory of other association or federation, if we refer to the concept of solidarity of cooperatives and a principle on cooperation among cooperatives which were adopted in the statement on the Cooperative Identity at the 1995 General Assembly of the International Co-operative Alliance (ICA).

On the other hand, the administrative agency has an authority to make a judgement on the establishment of the association under the current provision of the Agricultural Cooperatives Act, stating "it is found to be very difficult for the cooperative to achieve its purpose, such as lacking the managerial basis necessary for conducting the activities" (art.60, item2), which is now one of the reasons for not granting the approval to the application for establishing the association. If we observe this authorization system in accordance with a viewpoint that an agricultural cooperative association should further devote itself to being an autonomous organization, the system must be never regarded as appropriate. The relevant provision will have room for reconsideration.

1.3 Composition of board and supervisory committee members

It is newly provided that a majority of the fixed number of board members of an agricultural cooperative association (excluding an association setting up a supervisory committee) shall be, in principle, certificated farmers called as “Nintei-nogyosha” or persons who have practical capabilities of marketing agricultural and livestock products, conducting other business activities of the association, or managing a corporation (art.30, para.12). As for an agricultural cooperative setting up a supervisory committee, it is provided that not only a majority of the committee shall be certificated farmers in principle, but also all the board members shall have practical capabilities of marketing agricultural and livestock products, conducting other business activities of the association, or managing a corporation (art.30-2, para.4 and art.30-2, para.7).

According to the explanation regarding reasons for submitting the bill of the Amending Act, the above-mentioned provisions were made from “a viewpoint of facilitating establishment of the responsible management system contributing to an increase in agricultural income”. However, board members or supervisory committee members must assume responsibility not to farmers in general, but to members of the agricultural cooperative association who delegate the management of the association to them. Besides, restrictions on qualification for the board members and supervisory committee members must not violate rights of members to vote or their eligibility for election of those board or committee members. We cannot make a judgement easily on whether above-mentioned amendments unfairly violate the rights of members. It is still questionable, however, whether the Amending Act has a reasonable grounds to impose a regulation on the composition of board and supervisory committee members at a private organization of farmers for the simple reason that this regulation may contribute an increase in agricultural income. It might be also regarded as inconsistent with the current legal system which allow a member of the agricultural cooperative association to elect anyone among members of the association freely by a secret ballot.

In addition to these amendments, it is newly provided in the Amending Act that due consideration shall be paid so that composition of board members of an agricultural cooperative association (excluding associations setting up supervisory committees) does not have any significant differences in age and gender (art.30, para.13 and art.30-2, para.4).

1-4 Entity conversions of an agricultural cooperative association, and so on.

In the Amending Act, new provisions concerning a split of an agricultural cooperative association and a conversion of the association to a joint stock company and the like have been made in addition to the existing provisions concerning an amalgamation of the associations and a business transfer of the association. As far as a conversion to a joint stock company is concerned, such conversion of an agricultural producers' cooperative corporation had already been authorized under the former Agricultural Cooperatives Act (former art.73-2 et seq.). Accordingly, the Amending Act has newly made it possible for an agricultural cooperative association as well (excluding the associations operating the banking business or the insurance business) to convert itself into a joint stock company.

Provisions concerning legal procedures for the organizational split and conversion are made on the basis of those for the amalgamation of agricultural cooperative associations. Namely, the provisions consist of various rules of legal procedures ranging from formation and approval of the plan, advance and ex post facto disclosure of information, protections for members and creditors up to a nullity suit, etc. As for the organizational conversion, it

depends upon a kind of the legal entity after conversion whether the conversion should need the authorization of the administrative agency or only the notification to the agency. The terms of protection for members also depend upon the kind of conversion. Clarifications on these procedures are omitted in the following due to limitation of space.

(a) Establishment of provisions concerning incorporation-type corporate split:

The split is a legal act that an agricultural cooperative association makes other legal entity inherit all or a part of rights and obligations of the business from the said association. There are generally two forms of the split, namely a form of an incorporation-type corporate split and an absorption-type corporate split. Under the Amending Act, the incorporation-type corporate split shall be only authorized and only the businesses excluding banking and insurance businesses be allowed to be inherited to the newly-established agricultural cooperative (art.70-2~art.70-8).

When an agricultural cooperative association is split, all the members, including associate members, of the association should not necessarily become members of the inheritance association. Members of the split association who do not join the inheritance association should be reimbursed with an amount of money equivalent to respective residual equity according to the rules of the split plan. Under the Corporation Tax Act, however, most of these cases could be regarded as ineligible splits and those splits will be subject to heavy taxation.

Meanwhile, it seems necessary to make more definite regulations regarding the relations between the dividend restriction and allocation of shares among members of the split association or reimbursement of money equivalent to the residual equity, which take place in case of a corporate split.

It is theoretically possible that the legal entity, which is to be established in case of cooperate split, will be provided with a legal form other than a cooperative association. The Amending Act, however, has excluded this possibility. It is also theoretically possible for multiple associations to establish a new cooperative association connectedly and make it inherit all or a part of rights and obligations of the businesses from the said associations. In the Amending Act, however, there are not any provisions concerning thus joint incorporation-type split. On the other hand, when the scale of assets to be inherited at the split is small, a provision concerning procedures of a simplified split has been made in the Amending Act, which is conforming to the provision concerning those of simplified amalgamation procedures (art.70-4).

It should be pointed out, furthermore, that the inheritance of assets at corporate split will need to be equipped with requirements of perfection against the third party, because the split association continues to remain after the split, while the inheritance of rights and obligations is not implemented comprehensively as in the case of the amalgamation of associations.

(b) Entity conversion:

Entity conversion means that an agricultural cooperative association converts itself into a legal entity with a different type of corporate form maintaining identity of its legal personality. Entity conversions to be authorized under the Amending Act are limited to the following four ones; (1) conversion to a joint stock company, (2) conversion to a general incorporated association, (3) conversion to a consumer cooperative, and (4) conversion to a medical corporation.

All the agricultural cooperative associations, however, are not necessarily authorized to convert themselves into these organizations. With regard to conversion to a joint stock company, for instance, associations with share capital, except ones operating the banking

business or the insurance business, are only entitled to the conversion (art.73-2). An association without equity capital or an agricultural producers' cooperative corporation without equity capital is only allowed to convert itself into a general incorporated association (art.77). As for the conversion to a consumer cooperative, associations with equity capital, excluding ones not only operating the banking business or the insurance business, but also doing businesses in a territory exceeding the area of the relevant prefecture, are only entitled to the conversion (art.81). As far as the conversion to a medical corporation is concerned, an association that has been operating its own hospital is only entitled to the conversion (art.87).

If there are no obstacles in the technique of legislation and members and creditors are also fully protected, it must be theoretically possible for an agricultural cooperative association to convert itself into an entity with a legal form other than above-mentioned forms (including those of reversible conversion) as well as to amalgamate with other legal formed entities. As far as choice of a legal form is concerned, the Act should be fundamentally neutral. It is still questionable, therefore, whether reasonability will be found out in the new provision which authorizes only one-sided organizational conversions to entities of specific legal forms, even though there is no need for such conversions among the associations.

On the other hand, a provision has been made in the Amending Act to stipulate that members of an agricultural cooperative association, who oppose to the entity conversion to a joint stock corporation or a consumer cooperative, shall be not only guaranteed the right to leave the association, but also to fully get a reimbursement of his/her equity from the association (art.73-4 and art.86). A pragmatic approach could be required in some cases. However, there seems to be still room to examine a question on whether the withdrawal procedures stipulated by these provisions, which could provide windfall profits to some members without considering their respective contributions to the association, should be deemed fair and reasonable.

1.5 Abolition of the system of the union of agricultural cooperatives

The system of the union of agricultural cooperatives is to be abolished under the Amending Act. It is provided not only that a prefectural union of agricultural cooperatives may convert to a federation of agricultural cooperative associations within a period of three and half years since the Act is enforced, but also that the Central Union of Agricultural Co-operatives (JA-ZENCHU) may convert to a general incorporated association within the same period (art.9~art.27 of supplementary provisions of the Amending Act).

The union has been an organization at the core of the autonomous movements promoted by members. It is concurrently a legal entity granted with a special status under the Agricultural Cooperatives Act. We can trace an origin of the special legal position conferred on the union back to post-war regrets for previous cooperative policies executed by the then government. Namely, the union has been endowed with a special character of conducting a part of works of the national and prefectural governments on behalf of themselves so as to play the role of supplementing the governmental functions.^(Note 3) As far as abolition of this union system is concerned, thorough arguments should have been

(Note 3) Refer to Takekazu Ogura, 1953, *Views of the Union of Agricultural Cooperatives*, Keiei-Jitsumu (Management and Business) April 1953, pp.8-11 (written in Japanese), and Masayuki Yokoo, 1956, *Agricultural Cooperatives Act Theory*, Nogyo-Kyodo-Kumiai-Kenkyukai, p.415 (written in Japanese)

pursued on the basis of a majority of intentions of union's member associations. At the same time, those arguments should have been pushed further to an agenda on the future roles to be played by the national and prefectural governments in their administrative guidance including administrative inspections of the agricultural cooperative organizations. Neither explanations by the government on the reason for the proposal of the bill for the Amending Act nor its responses at the deliberations of the Diet have made it clear why the system of the union should be abolished. This has resulted from a clear fact that the above mentioned arguments were not exhaustively carried out.

Aside from this issue, union's functions themselves required by member associations have not theoretically any relationship with an organizational form of the union, if we see the functions from a viewpoint of an aspect that the union is an organization at the core of the autonomous movements promoted by members. Therefore, it must be observed that the most important issue in reconsidering the functions played by the union was how to evaluate a union's function of auditing agricultural cooperative associations, which function needs to be granted under the Act and should be fulfilled integrally with its another function of management guidance for member associations. When this auditing function of the union was examined in 2008 according to the supplementary provision of the Act Partially Amending the Agricultural Cooperatives Act of 2001, which ordered the Government to review the application of provisions of the Act after more than five years passed since the enforcement of the revised Act, the Ministry of Agriculture, Forestry and Fisheries (MAFF) finally announced its evaluation that an external audit by the certified public accountant, which does not integrate with guidance for an agricultural cooperative association, cannot replace JA-ZENCHU's audit that is integrally functioning with its guidance activities for the association. ^(Note 4) It goes without saying that the reasons for the above-mentioned amendment are not persuasive, because those reasons did not touch upon the MAFF's evaluation of 2008, while any changes have not taken place in the objective conditions surrounding the auditing function played by the union since the year of 2008.

In Germany, the cooperative audit system, which was a model for the Japanese audit system for agricultural cooperatives, is still functioning in effective manners. It must be here pointed out that an appropriate role of the audit system for the cooperatives would be one of significantly important themes that should be reconsidered.

1.6 Obligatory appointment of a financial auditor at an agricultural cooperative association operating the banking business

This amendment was made as a set with the amendment of the provision concerning abolition of the system of the union of agricultural cooperatives. In other words, the amendment was regarded as measures necessary to ensure that agricultural cooperative associations should be on an equal footing with private financial institutions. Namely, it has followed the revision of the Shinkin Bank Act (credit associations act), etc., which modeled after a provision, concerning a company with financial auditor, laid down in the Companies Act. In the Amending Act, it is provided that an agricultural cooperative association operating the banking business larger than a certain size and a federation of the associations larger than a certain size of an organization shall have a financial auditor, while other associations with share capital are given an option that they may have a financial auditor by respectively amending the articles of incorporation (art.37-2).

(Note 4) Refer to Ministry for Agriculture, Forestry and Fisheries, 2008, *Results of Five-year-later Reviews under Supplementary Provision of the 2001 Revised Agricultural Cooperatives Act*, July 2008 (written in Japanese)

The financial auditor is one of institutions, which is regulated in the same way as the Shinkin Bank Act, the Labor Banks Act, the Act on Financial Businesses by Cooperatives, the Small and Medium-Sized Enterprise Cooperatives Act, and the Consumer Cooperatives Act respectively stipulates obligation of the accounting audit by the third party who is a Certified Public Accountant or an audit firm.

2. Other amendments

2.1 Protection of policyholders of insurance business

On the basis of the Act Partially Amending the Insurance Business Act, etc. (Act No. 45 of 2014), this amendment was made to regulate the whole of insurance business industry in the country, including the insurance business of an agricultural cooperative association, by making new provisions concerning obligations of information services at the conclusion of a contract and confirmation of intentions of policyholders, prohibition of self-contract by an insurance agency, and prohibited acts in the insurance business (art.11-20~art.11-25).

2.2 Addition of the business of storing materials produced by members

As a kind of the bridge between the repealed the Agricultural Warehousing Business Act and the Amending Act, the necessary provisions have been newly made. Namely, in the Amending Act, a business of storing materials produced by members is added to the list of businesses which an agricultural cooperative association is authorized to perform. And the Act has made it possible for the association conducting the said business to issue a warehouse receipt (art.10, para.1, item 8 and art.11-13~art.11-16).

On the other hand, provisions concerning non-members' patronage in the Agricultural Cooperatives Act is to be applied to non-members' use of this storage business, since the said business is authorized as one of the businesses of the association under the Agricultural Cooperatives Act.

2.3 Development of legal procedures concerning director's self-contract, etc.

(a) Development of provisions concerning restrictions on the transactions involving of conflict of interest:

A provision has been made to stipulate that the transactions between an agricultural cooperative association and its director (or member of its supervisory committee), which need to be approved at the board (or the supervisory committee), shall include so-called indirect transactions. The provision concerning obligation of an after-the-fact report, when the transaction is completed, has been newly laid down (art.35-2, para.2 and art.35-2, para.4).

(b) Deletion of the provision concerning non-competition clause:

So-called non-competition clause, which states that any person running or engaging in a business virtually competing with that of an agricultural cooperative association shall not be eligible to be elected as a director or other executive of the relevant association (former art.42), has been deleted.

On the other hand, it is stipulated in the Amending Act that the provision of the Article 12 of the Companies Act concerning the non-competition clause for a manager shall be

applied mutatis mutandis to the non-competition clause for a general manager of the association. The Article 12 of the Companies Act is equivalent to the Article 14 of the former Commercial Code which had been applied mutatis mutandis to the general manager of the association until the former Agricultural Cooperatives Act was revised in 2005 (Act No.87). Even if it were regarded as inappropriate that the existing provision was applied to directors and members of the supervisory committee who have the duty of loyalty to the association, a mere deletion of the said non-competition clause was not enough. It seems to be reasonable that the Article 356 Paragraph 1 Item 1 of the Companies Act concerning the duty not to compete, which is applied to directors of companies, should also be applied mutatis mutandis to the directors and supervisory committee members of the association.

(c) Simplification of procedures for changes and deletions of the Operational Rules of trust business, etc.:

With regard to minor changes to the Operational Rules of trust business, Operational Rules of real estate supply business and Operational Rules of agricultural management, it has been stipulated in the Amending Act that an agricultural cooperative association need not obtain the approval from the administrative agency on those minor changes in the same way as the Operational Rules regarding the banking and insurance businesses. Alternatively, it has been provided that the association shall only give the notification both of minor changes and deletions of those Rules to the administrative agency (art.11-42, para.3~para.4, art.11-48, para.3~para.4, art.11-51, para.3~para.4).

(d) Softening of auditors' obligation to attend the board meeting of an agricultural cooperative association setting up a supervisory committee:

Under the former Agricultural Cooperatives Act, auditors of the association setting up a supervisory committee were obliged to attend meetings both of the board and the supervisory committee, which had been pointed out as an excessively heavy burden for auditors. Under the Amending Act, therefore, such obligation is softened by the provision which makes it possible for auditors of the association with the supervisory committee to designate an auditor from among themselves who shall attend the board of directors meeting (art.35-5, para.5, etc.).

As far as the association with the supervisory committee is concerned, however, it was rather reasonable to consider setting up a new system which does not require the auditor by following an example of a company with the audit and supervisory committee.

2.4 Others

In addition to above-mentioned amendments, the following amendments have also been made, which are all of significance from a practical viewpoint. It may safely be said that every amendment should be regarded as rational one.

(a) Rationalization of procedures for protection of creditors:

When the general meeting has decided on a reduction of the unit amount of the contribution and on an amalgamation of association, etc., the cooperative shall, within two weeks from the date of the resolution, prepare an inventory of property and a balance sheet and keep them at its principal office for the protection of creditors under the former Act.

However, the Amending Act has made it unnecessary for the association to prepare these documents. It has also been stipulated that even though an association without equity

capital should take steps to protect creditors in cases of an amalgamation and an entity conversion to a general incorporated association (art.49, para.1~para.2, art.65, para.4, and art.80.).

It must be observed that these amendments are considered as rationalization of legal procedures, which has been so far desired.

(b) Development of provisions concerning a capital reserve:

The Amending Act has confined the provision concerning the capital reserve only to the reduction surplus in case of reduction of the unit amount of the contribution.

As for a provisions of the reserve in case of an amalgamation or an incorporation-type split of an agricultural cooperative association, it has been delegated to an ordinance of the Ministry of Agriculture, Forestry and Fisheries (art.51, para.3~para.4). Although the ministerial ordinance concerning the said record of the reserve is not yet promulgated, it may be possible to say that this amendment of the provision concerning the reserve should be regarded as a technical change which was required to make an additional provision concerning the incorporation-type split of the association.

(c) Change from authorization to notification regarding the resolution on dissolution of an agricultural cooperative association (excluding associations operating the banking business or the insurance business):

With regard to the resolution on dissolution of an agricultural cooperative association excluding associations operating the banking business or the insurance business, it has been provided that the association need not require authorization of the administration agency. Alternatively, only the notification is stipulated as a necessary procedure to be implemented by the association (art.64, para.2 and art.64, para.4).

(d) Establishment of a provision concerning legal arrangement of a dormant agricultural cooperative association:

As for an association ceasing business operation more than a certain period of time (a dormant association), a provision of procedures was established to regard the association as a dissolved association (art.64-2). It can be observed that this is a desirable amendment because the dormant association could be put into an illegal use.

(e) Establishment of a provision concerning continuation of an agricultural cooperative association:

Under the former Act, it was interpreted that a special resolution of the general assembly might enable the relevant association to cancel the dissolution and continue its business operation unless the association disposed its residual assets even though the association decided to dissolve itself. This interpretation has been put in an express provision under the Amending Act (art.64-3).

(f) Establishment of a provision concerning transformation between an association without share capital and an association with share capital:

It was deemed as possible under the former Act not only for an association without share capital to transform itself into an association with share capital, but also for an association with share capital to transform into an association without share capital if necessary steps were taken. The provisions of procedures for these transformations have been established in the Amending Act (art.54-4 and art.54-5).

3 Investigation on a desirable way of regulating the associate members' patronage of the businesses operated by an agricultural cooperative association

The Amending Act states in its supplementary provision that investigates on a desirable way of regulating the associate members' patronage of the business services provided by an agricultural cooperative association shall be completed to reach a conclusion, within five years since the date of enforcement of the Act, after reviewing the results of surveys on how the business services of the association are patronized by regular and associate members as well as on how the associations and the Norinchukin Bank (Central Cooperative Bank for Agriculture and Forestry) respectively perform organizational and business reforms during these five years (art.51. para.2~para.3 of supplementary provisions of the Revised Act).

Reinforcement of an aspect of the association's characteristics as a regional association in accordance with changes of a rural community in which the association exists should not be criticized, because the association was originally designed to be endowed with two characters of being a functional association of farmers as well as being a regional association.

In an aspect of patronage of the association's businesses, however, the system of associate members and the system of non-member's patronage are to fulfill the same function. Legislative persons concerned have already recognized that it is an issue to be examined whether those two systems are necessary or not. (Note 5) There will be no denying that the provision concerning associate member and non-member's patronage to be rationally amended on the basis of its real situation, although there still remains a question as to whether the above-mentioned stance of the investigations adopted in the Amending Act is reasonable or not.

The issue left for deliberation here is a viewpoint for the investigations on the desirable way of regulating the associate members' patronage. Even an associate member is a person who has become a member by the payment of the number of units of contribution he/she offers as well as a regular member. Under the system of cooperatives, the right of using business services of the association is a right inherent to members, which forms a core of the equity right, or a kind of the property right. Accordingly, it must be paid a full attention that imposing restriction on the associate member's right of using business services of the association might lead to infringement of property rights that guaranteed by the Constitution. How to regulate the associate members' right concerning patronage of the business operated by the agricultural cooperative should not be a type of issue to be solved simply by imposing restriction on the associate members' right to use the business services of the association.

■ Afterword

The latest amendment to the Agricultural Cooperatives Act has been carried out by amending wide-ranged provisions of the Act, although some amendments were not subject to arguments at the deliberations of the Diet. It contains a number of provisions, which were deemed important from a practical point of view. While the ministerial ordinances

(Note 5) Refer to Note 2 (Agricultural Policy Division of the Ministry for Agriculture, Forestry and Fisheries) p.69 (written in Japanese)

have not yet been issued at the moment, I could not but restrict myself to a brief explanation on the amendments in this paper, partly due to space considerations. And this paper is concluded hereby expressing my comprehensive evaluation and expectation on the Amending Act in the following paragraphs.

It seems to me that there has not been a revision of the Agricultural Cooperatives Act in its history such as the latest one. The need for the revision has yet been hardly understood or not forthrightly accepted by many stakeholders, especially people who are utilizing and applying the provisions of the Act at the primary cooperative level. Furthermore, explanations by governmental officials at the deliberations of the Diet were so abstract and did not remain convincing enough, which made it difficult for policy makers to deepen their argument on contents of the revision including a basic question why the revision is necessary. It must be observed that this problem has originated in the process itself of the Amending Act's legislation which lacked demonstrative deliberations on the basis of opinions invited from the grass-roots level.

As the Article 1 of the Agricultural Cooperatives Act states, the primary purpose of the Act is “promoting sound development of a cooperative organization of farmers”. And “improving agricultural productivity and thereby raising the socio-economic status of farmers” is an objective of the Act to be incurred as the result achieved by the primary purpose, but not vice versa. Nevertheless, the chief aim of the latest amendments to the Act is “transforming the agricultural sector into a growth-oriented industry” as is emphasized in the reason for a proposal of the Amending Act bill. This can be regarded as a way of thinking that utilizes the cooperative organization of agricultural cooperative associations as a means to realize a specific political purpose. It is not only inconsistent with the characteristics of autonomy and self-administration of cooperatives, but also likely to lead to distortion of these characteristics.

By the way, new types of agricultural cooperatives (such as new generation cooperatives) were born in Western countries since 1990s as a system to help producers earn a large share of the added value in the food chain as much as possible, while markets of their agricultural products were turning to be buyer's markets. Since then, legal environments have been developed to support these cooperatives in the countries. Supposing that the Amendment to the Agricultural Cooperatives Act aims at “transformation of the agricultural sector into a growth-oriented industry”, and consequently thereby “creating an environment in which core farmers find it easier to play an active role in development of their regional agriculture”, the main topic to be discussed might be a legal framework to support the formation of new-typed agricultural cooperative organizations, rather than confining agricultural cooperatives, which have respectively diversified environments and characters, into a stereotyped framework, although such discussion must be done on the assumption that needs for these new organizations really exist among farmers themselves.

Changing the actual environments with the law is like putting the cart before the horse. On the other hand, it is a great challenge, needless to say, for an agricultural cooperative association not to fail to carry out reforms in real aspects of its activities so that the association can grow not only its presence as a significant and indispensable organization for member farmers and the relevant social community, but also enhance community members' recognition for socio-economic functions played by the association.

■ Appendix

Main points of the amendments to the Agricultural Cooperatives Act by the Law № 63 of 4 September 2015

Items	Existing Law	New Law
Objective or characteristic of the cooperative association	<ul style="list-style-type: none"> The objective of each agricultural cooperative association (meaning an agricultural cooperative association and a federation of agricultural cooperative associations; the same shall apply hereinafter) shall be to furnish the maximum service to its membership consistent with the functions which is authorized to perform and not to pay dividends on the paid-up capital. (art.8) 	<ul style="list-style-type: none"> The objective of each agricultural cooperative association shall be to furnish the maximum service to its membership consistent with the functions which is authorized to perform. (art.7, para.1) [※Annot.1] An agricultural cooperative association shall show utmost consideration for an increase in agricultural income when it carries out the business activities (art.7, para.2; newly added) An agricultural cooperative association must, while ensuring the soundness of management through accurate business conduct in agricultural marketing and other operation, endeavor to make an investment for the growth and development of its business with the revenues generated from its business or to allot the surplus for patronage refunds. (art.7, para.3; newly added)
Utilization of the business by membership	<ul style="list-style-type: none"> An agricultural cooperative association may contract with membership for the exclusive utilization of a part of the business of the association by the member for a specific period of time not exceeding one year. (art.19) 	<ul style="list-style-type: none"> relevant article was cancelled. An agricultural cooperative association must not enforce membership to utilize its business. (art.10-2; newly added)
Revolving fund	<ul style="list-style-type: none"> An agricultural cooperative association may enforce membership to contribute all or a part of the patronage refunds based on the resolution of general assembly within the limits of 5 years. (art.13-2) 	<ul style="list-style-type: none"> relevant article was cancelled.

<p>Composition of directors and supervisory committees</p>	<ul style="list-style-type: none"> • At least two thirds of the directors shall be voting members(except the directors of the agricultural cooperative association which has the supervisory committee).(art.30,para.11) • At least of three fourths of supervisory committees shall be voting members.(art.30-2, para.4) 	<ul style="list-style-type: none"> • In addition to the requirements listed in the left, majority of the directors of primary agricultural cooperative association shall be nintei-nogyosha[※Annot.2] (or be officers in case of corporation),or professional managers. (art.30, para.12) • In addition to the requirements listed in the left, majority of the supervisor committees of primary agricultural cooperative association shall be nintei-nogyosha (or be officers in case of corporation). (art.30-2, para.4) • The directors of the agricultural cooperative association which has the supervisory committee shall be professional managers. (art.30-2, para.7)
<p>Entity conversion</p>		<ul style="list-style-type: none"> • An agricultural cooperative association (except the ones operating the banking business or the insurance business) may convert to a joint stock company.(art.73-2 et seq.) • An agricultural cooperative association which does not have the capital subscription may convert to a general incorporated association.(art.77 et seq.) • An agricultural cooperative association(except those which do not have the capital stock) not operating the banking business or the insurance business may convert to a consumer cooperative association.(art.81 et seq.) • An cooperative association having the hospital for membership may convert to a medical corporation.(art.81 et seq.)

corporate split		<ul style="list-style-type: none"> • An agricultural cooperative association which has the capital stock may transfer all or a part of the rights and obligations in connecting with its business(except the banking business or the insurance business) to a new agricultural cooperative association incorporated in the corporate split. (art.70-2 et seq.)
Right of associate membership [※Annot. 3]		<ul style="list-style-type: none"> • Regarding how to regulate the right of associate membership to use the business of the agricultural cooperative association, we will discuss within five years after the enforcement of revised law, and make a conclusion.(art.51,para.2 of supplementary provisions of the Law №63 of 4 September 2015)
Auditing of the agricultural cooperative association	<ul style="list-style-type: none"> • Financial statements of the agricultural cooperative association(except those of less than a certain scale) shall be audited by the Central Union of Agricultural Co-operatives(JA-ZENCHU). (art.37-2) 	<ul style="list-style-type: none"> • Financial statements of the agricultural cooperative association(except those of less than a certain scale) shall be audited by a financial auditor(who shall be a Certified Public Accountant or an audit firm).(art.37-2)
Unions of agricultural cooperatives		<ul style="list-style-type: none"> • The Central Union of Agricultural Co-operatives may convert to a general incorporated association within a fixed period of time, and the Union shall be deemed to have dissolved upon expiration of that fixed period of time if the Union fails to convert.(art.21-art27 of supplementary provisions of the Law №63 of 4 September 2015) • A prefectural union of agricultural cooperatives may convert to a federation of agricultural cooperative associations within a fixed period of time, and the union shall be deemed to have dissolved upon expiration of that fixed period of time if the union fails to convert.(art.12-art.20,27 of

		supplementary provisions of the Law №63 of 4 September 2015)
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Annot.1: The upper limit of the dividend rate to shareholder's equity is 8% per year in the Federation, and 7% per year in the primary agricultural cooperative. This regulation was not changed.

Annot.2: "Nintei-nogyosha" refers to a person who has certified by a local authority as a person who is engaged in agriculture with willingness and skills now and in the future, according to the Farming Infrastructure Promotion Act (the Law №65 of 28 May 1980).

Annot.3: an associate membership refers to a person who has contributed capital to an agricultural cooperative association in order to use the business of the association without voting right.

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