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Organization and Operation Principles of Cooperative Groups in Vietnam

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Abstract

Nowadays, Decree No. 77/2019/ND-CP regulating cooperative groups has been applied and implemented for a relatively long time in Vietnam. However, from the actual organization and operation of the collaborative group, the provisions of Decree No. 77/2019/ND-CP still exist many limitations, shortcomings, and not reasonable. Therefore, the article studies the principles of organization and operation of the cooperative group under the current law in Vietnam to points out the weaknesses, shortcomings and proposes some recommendations to improve operational efficiency for this important collective economic model. Additionally, the law completion of the cooperative groups model also contributes to the attraction of the attention of investors before the background that Vietnam is an advantageous business investment environment..

Keywords Cooperative groups, group economy, commerce, law, principle

Introduction

Cooperative Groups is the first appearance model of the business model in Vietnam. “This collective economy first emerged in 1950 and soon gained popularity nationwide” (Hung, N.V et al, 2022_2, p. 03). Cooperative groups is the collective economy model designed by lawmakers with a simple approach but quite suitable for people who have a psychology of association and cooperation in carrying out production and business activities on a small scale. “Cooperative groups is considered to be the association, cooperation in the lower level of cooperative” (Nguyen Vinh Hung, 2023_1, p. 67). Maybe, Vietnam is a country that features trust and close bonds among members, so “cooperative groups is likely the same as Cooperative” (Nguyen Vinh Hung, 2023_2, p. 226) and cooperative groups is suitable to exist strongly and develop long-term stability. Therefore, the same with cooperative; a large number of cooperative groups is established and operated in Vietnam and can attract inhabitants to participate. The recent statistic about the cooperative groups shows that according to the statistic of the Department of Cooperation, Ministry of Planning and Investment “carried out in 50/63 province, there are around 98000 cooperative groups, attracting about 1.2 million members and creating nearly 1.1 million jobs for the countryside area. The average revenue of cooperative groups reaches 229 million dongs per year; interest is 35 million dongs per year, and the average income of frequent labor is 26 million dongs per year” (Online Newspaper Financial Magazine, 2017).

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“By 2023, there are approximately 140.000 cooperative groups with 2.000.000 members. The objectives suggested in the Co-operative and Collective economy development strategy 2021 - 2030 have just been approved by The Prime Minister” (Vneconomy Electronic Newspaper, 2021). This shows cooperative groups' tremendous attractive ability, role, and influence in developing Vietnam's economy.

Having the same collective economy model as cooperative, cooperative groups has to operate following principles prescribed by law. Moreover, unlike the company model, cooperative groups and cooperative “are organized and operated following the endemic principles” (Nguyen Vinh Hung et al., 2021_2, p. 14). Although, research shows that regulations about the organization and operation of cooperative groups have differences, problems, and huge complexity in the executive organization activities of management activities of cooperative groups. In other words, the regulations about the organization activities of the cooperative groups do not have similarity or consistency with the organization and operation principles of the cooperative groups. On the other hand, “together with the flow of the global economy, Vietnam has been a member of organizations such as ASEAN, APEC, ASEM, WTO, CPTPP, EVFTA, etc” (Hung, N.V et al., 2022_1, p. 01). Furthermore, Vietnam is country which “has many advantages for the rapidly economic development” (Nhung, D.H et al., 2023, p. 549). In the recent year, the attention of foreign investors to Vietnam is greater. At the same time, foreign investors usually wonder about suitable business forms for investing in Vietnam. Therefore, law regulation about the principle of organization and operation of cooperative group influent significantly to the decision in the business model of foreign investors. Therefore, it is necessary to research cooperative groups' organization and operation principles.

Literature Review

Cooperative group is a familiar research topic in Vietnam. However, only a few research works pay attention to the organization and operation principles approach. In other words, the research on cooperative groups focuses on many issues, but approaching it under the organization and operation has not been thoroughly explored. Therefore, within a limited range, popular research works in Vietnam related to cooperative groups include: Pham Van Bang (2013) with “*One-subject cooperation group in civil law and issues raised when amending and supplementing the 2005 Civil Code*”; Online Newspaper Financial Magazine (2017) with “*Promoting the development of the cooperative group model: What legal status?*”; Online Newspaper Vneconomy (2021) with “*Vietnam will have 140,000 collaborative groups and 45,000 cooperatives by 2030*”; Nguyen Vinh Hung & Nguyen Phuc Thien (2021) with “*Organizational principles and operation of cooperatives*”; Nguyen Vinh Hung (2023) with “*Law on business forms in Vietnam*”; Hung, N. V., Thinh, T. C., & Duy, N. D. năm 2022 với “*Cooperative Group In Current Vietnamese Commercial Environment*”; Nguyen Vinh Hung (2023) with “*Cooperative in current Vietnamese commercial environment*”.

Basically, the above research works mention many different legal content of cooperative groups. However, as discussed above, the deep research about the organization and operation principles of cooperative groups has not been done clearly, which is the basement for authors doing this research.

Research Methods

To research the organization and operation principles of cooperative groups in Vietnam, the author have used a combination of traditional research methods of the social sciences and legal

sciences such as the legal analysis method, the legal efficiency evaluation method, the legal comparative method, and the sociological investigation method.

In general, the above research methods are used in close and harmonious combination by the author to achieve the research objectives of this article.

Results and Discussion

Regulations on the organization and operation principles of cooperative groups in Vietnam

Unlike Decree No. 151/2007/NĐ-CP and the Civil Code 2015 of Vietnam, Decree No 77/2019/NĐ-CP stipulates some relatively new regulations on cooperative groups. In particular, recent cooperative groups in Vietnam is defined “as an organization that does not have legal status, are established based on a cooperation contract, includes two individuals, legal entity become voluntary establishment, effort, and property contribution to carry out specific jobs together, mutual benefit and shared responsibility”.³ Furthermore, the organization and operation principles of cooperative groups have many essential changes. Specifically, currently, the organization and operation principles of cooperative groups are prescribed as follows:⁴

The first principle, cooperatives groups operated base on the cooperation contract:

This is the completely new principle of the cooperative groups and the new principle prescribed in Decree No.77/2019/NĐ-CP. The spirit of this principle is to feature on the members of cooperatives groups the decision and agree freely. The connotation of these principle shows that all the problems related to the organization and operation of cooperation groups are reflected and recorded as complete, detailed, tight, and precise in the cooperation contract. By nature, a cooperation contract is one kind of civil law contract used to record members' agreement in the spirit of freedom, voluntary, and equality. Also, the cooperation contract of cooperative groups is the same as the company charter of some form of company in the Enterprise Law 2020⁵ of Vietnam usually considered a company establishment contract. The similarity between them shows when the cooperation and company establishment contract are regarded as the typical business law built by the company's members. Company establishment contract solves the relationship between the company's members, the company and its members, and the company and the legal authority. The company's charter is considered a company establishment contract. The company's charter is the commitment form among members about the company's establishment, organization, and operation and is the spirit of unification of all company members (Nguyen Vinh Hung, 2012, p. 41). Basically, the main content of the contract will stipulate the establishment, operation and is unified after the decision of all members of cooperative groups.⁶ A cooperation contract is the same as “private law” but it is only valid within the cooperative group to bind the members. This is the cooperative groups establishment contract and must cooperative groups have when registering for the establishment and exist throughout the operation process.⁷

The second principle, individuals and legal entities voluntarily establish, join and withdraw from cooperative groups.

³ Clause 1, Article 3 of Decree No. 77/2019/ND-CP dated October 10, 2019 on “Cooperative groups”.

⁴ Article 4 of Decree No. 77/2019/ND-CP dated October 10, 2019 on “Cooperative groups”.

⁵ Article 24 of Enterprise law 2020.

⁶ Clause 2, Article 12 of Decree No. 77/2019/ND-CP dated October 10, 2019 on “Cooperative groups”.

⁷ Clause 3, Article 12 of Decree No. 77/2019/ND-CP dated October 10, 2019 on “Cooperative groups”.

“Freedom in general and business freedom, in particular, is not only the goal of the civilized society but also the motivation to promote social development, social progress, economy development, and increase the living standard of citizens” (Mai Hong Quy, 2012, p. 03). Business freedom is currently a development trend and is appreciated in the rule of law, including Vietnam. This principle is the materialized spirit of business, contract, and association freedom. In principle, the establishment, joining, or withdrawing right from cooperative groups is a civil right and is ultimately decided by members’ freedom. This principle's spirit clearly shows that no subject has the right to interfere, demand, threaten, make difficult, or obstruct the establishment, joining, or withdrawing from cooperative groups of its members. The foundation and existence of cooperative groups is quite similar to the form of companies that “follow the general principles, which is one company founded by the investor’s will. This voluntariness is understood as the unity of the internal will and the will expression to join the company of investors” (Nguyen Vinh Hung, 2012, p. 40). The law stipulates the principles of voluntary establishment and organization of cooperative groups, which is also suitable with the general spirit of the Civil Code 2015 of Vietnam, because in civil relation, subjects is completely volunteer, and one party must not impose, forbid, force, threaten and prevent another party.⁸ Compared with Decree No. 151/2007/NĐ-CP, the voluntary principle in the establishment, organization and operation of cooperative groups is stipulated in more detail, strictly, and completely.⁹ This partly materialized the spirit of business freedom right in the background of building a socialist rule of law state in Vietnam.

The third principle, members of cooperative groups have democratic, equal right in the organization and operation decisions of cooperative groups. The decision by a majority unless the situation cooperation contract, the Civil Code 2015 of Vietnam, and relevant laws stipulate differently:

The content of this principle includes two main issues: guaranteeing freedom, democracy, the equal right of members in the organization and operation of cooperative groups; and the problem decision approach of cooperative groups. In the spirit of freedom in joining or withdrawing from the cooperative groups, members have the right to be treated fairly, equality and allowed to take part in all problems related to the existence and operation of cooperative groups. Members of cooperative groups is the co-owners so they have full right to decide the issue related to the destiny of cooperative groups. Compared with the stipulation in Decree No. 151/2007/NĐ-CP, currently, the majority decision principle or consensus principle is supplemented in Decree No.77/2019/NĐ-CP to make the stipulation more strictly, completely, and clearly. In the past, Decree No.151/2007/NĐ-CP just stipulated the “majority voting” in the organization and operation of cooperative groups.¹⁰ However, from business practice, it is not only giving authority to follow the principle of majority voting which members can decide all issues and enact them although they may be contrary to the content of the cooperation contract or contrary to the Civil Code 2015 of Vietnam and other relevant laws. In other words, the law does not allow the cooperative groups’ members to enact a majority voting right to conduct activities which contrary to the spirit of the cooperation contract, The Civil Code 2015 of Vietnam, and other relevant laws. As the previous analysis, a cooperation contract is the “private law” of

⁸ Article 4 of Civil Code 2015.

⁹ Clause 2, Article 2 of Decree No. 151/2007/ND-CP dated October 10, 2007 on “*Organization and operation of cooperative groups*”.

¹⁰ Clause 2, Article 2 of Decree No. 151/2007/ND-CP dated October 10, 2007 on “*Organization and operation of cooperative groups*”.

cooperative groups and its members make their own decision about the content immediately after its establishment, which forces their members to follow their collective commitments. In other words, similar to the company's charter, "this is the commitment of all company members, so it has the value to force all members to respect and enact fully" (Nguyen Vinh Hung, 2016_1, p. 22). On the other hand, the law is the general compulsory regulation and applies to all subjects, so the cooperative groups' members can not use the decisive right to decide by the majority on an issue contrary to the law. Any behaviors contrary to the law regulation violate the law and prohibit and handle strictly. It can be seen that the principle of unanimity in the organization and operation of cooperative groups upholds democracy and decision freedom of members; which "effectiveness of principle unanimity, reduce the situation of the majority have to obey the minority and make the members raise awareness about their right and obligations" (Nguyen Vinh Hung, 2016_1, p. 23).

Although the spirit of the organization and operation principle of cooperative groups always upholds the decision freedom and self-determination of its members, however, different from the stipulation of the recent Decree No. 151/2007/ND-CP, Decree No. 77/2019/ND-CP stipulates detail, closely related to the organization structure, representation structure, compulsory members number in each meeting, duration for reopening the meeting of it is postponed because of insufficient number of minimum members participating, the voting rate for the situation related to the organization and operation of cooperative groups, etc.¹¹ These stipulations make the operation management of cooperative groups quite complicated and similar to the situation of joint stock company. This reduces cooperative groups' members' initiative, flexibility, and creativity. As mentioned analysis, cooperative groups is a model in which association and cooperation among members are mainly the association and cooperation in small, odd for producing and business together. If the complicated stipulation of law does not only reduce cooperative groups' effectiveness but also decreases cooperative groups' attractiveness to investors.

The fourth principle, collective benefit and shared responsibility:

The spirit of this principle is clarified when cooperative groups, like commercial companies, "by themselves determine the business scheme, form, and time for raising capital, use property, search for markets, customers, sign and execute contracts on behalf of the company..." (Nguyen Vinh Hung, 2016_1, p. 22). In a nutshell, a cooperative group "is an economic organization established for the purpose of bringing profits to its members. During the operation, they always take responsibility for the results of production and business activities, and decide on the distribution of profits to members based on the percentage of contributions after fulfilling all the committed obligations" (Nguyen Vinh Hung, 2012, p. 42). Following the principle, when the cooperative group is favorable, the members are entitled to share the profits in proportion to their capital contribution. When a cooperative group has legal obligations to its creditors, the cooperative members are the joint guarantors for the group with all of their property. It is considered an unlimited liability and a mandatory obligation for all members of the collaborative group. Even the possessions that do not contribute to the capital as contracting are required by the creditor to pay off the debt based on the percentage of the capital contributed by the members in the cooperative group.¹² This principle demonstrates the spirit of cooperation, profit, and risk-sharing among the members of the cooperative group.

¹¹ Article 16 to Article 21 of Decree No. 77/2019/ND-CP dated October 10, 2019 on "Cooperative groups".

¹² Clause 2, Article 15 of Decree No. 77/2019/ND-CP dated October 10, 2019 on "Cooperative groups".

In short, the principles of organization and operation of the cooperative group are the pattern and orientation for this collective economic model to exist and operate. It is very crucial and necessary to prescribe the principles and conduct them in the organization and operation of the cooperative group. At the same time, it can be seen that the cooperative group model appreciates roles, trust, and unity among its members. Therefore, the law needs to give more self-determination rights to the members of the cooperative group in order to improve operational efficiency. However, legal regulations on the organization and operation of cooperative groups make its members face many obstacles, difficulties, and complications when managing and running the business. The authors believe that the current regulations are not really necessary for a business model that usually only works on a small scale and also makes it more complicated for the members of the cooperative group who only need to link and cooperate to produce and do business together within a tight range.

Recommendations

In Vietnam, “along with the private economic sector, the collective one (two common components are commune cooperatives and cooperative groups) is identified as a firm foundation for the economy; collective economic development is a mass policy of the Party and State” (Online Newspaper Financial Magazine, 2017). “The undertakings of collective economic development have always been concerned by the Party and State in the process of national economic construction and development” (Pham Van Bang, 2013). As analyzed above, the cooperative group model is very suitable for the conditions and circumstances in Vietnam and has enormous potential to attract investors. Therefore, solving the limitations and shortcomings in the laws on the organization and operation of the collaborative group is a vital factor for promoting the strong development of the collective economic model, which plays an important role; and thereby contributes more to the Vietnamese economy. Due to this, the authors believe that to address the drawbacks and inadequacies in current legal rules on the organization and operation of the collaborative group, it is essential to consider the following solutions:

Firstly, there is no need to prescribe strictly and rigidly on issues related to the organization and operation of the cooperative group:

As analyzed above, the current law of Vietnam stipulates quite detailed and inflexible on the organization and operation of cooperative groups. The authors believe these rules of law are not necessary for the cooperative group model since a cooperative group is a collective economic model formed on the basis of the willing association, sharing, and cooperation of a few individuals. Simplicity and flexibility in management are always very essential to attract investors when considering and choosing the form of the cooperative group for business. On the other hand, collaborative groups are only suitable for simple and fragmented production or other business fields and do not need many members to participate. If the law stipulates complexities about cooperative groups, it will discourage individuals who wish to establish and operate a business following the form of a cooperative group. In addition, most of the subjects who established cooperative groups often do not have a deep understanding of the related law and just want to link together in a simple, fast, convenient, easy way. If the legal regulations on the organization and operation of this business model are too complicated and strict, they will lead to difficulties and obstacles for those who wish to operate their group under the cooperative model. Moreover, the cooperative group's members are subject to unlimited liability: “joint responsibility” and “when the cooperative group’s property is not enough to pay the financial obligations or other duties, the members of the cooperative group are responsible for paying

Therefore, the authors are convinced that it is necessary to give more initiative and flexibility to the members in organizing and operating the cooperative group. In fact, even for a general partnership, which is also a business model with unlimited liability for property, “not only in Vietnam but in most countries in the world, the law system on the organizational structure of the general partnership is built with lax regulations. This is based on the fact that a general partnership always has a very high legal safety guarantee, so the law wants to create favorable conditions for members to organize and operate their business in an easy, convenient, and effective way” (Nguyen Vinh Hung et al., 2021_1, p. 50 - 51). Research shows that for general partnership, “there are not many regulations on these forms of businesses. They can self-organize the operating mechanism of the company, and they do not need to have an operating charter or legal capital rules” (Nguyen Nhu Phat et al., 2021, p. 151). As a result, “the right to self-determination and the role of general partners is enhanced and at the same time promoting creativity in business” (Nguyen Vinh Hung, 2016_2, p. 60).

Due to this, demonstrates that the principles of organization and operation of the cooperative group have identified fully, closely, clearly, and in detail core issues related to the organization and operation of the collaborative group; therefore, the law should remove rigid regulations on matters such as holding meetings, time for holding meetings, mandatory voting rates on issues of the cooperative group, etc. As a result, it will promote the freedom of creativity in business and strengthen the right of the group members to self-determination on all issues related to the cooperative group. Moreover, Decree No. 151/2007/ND-CP and the 2015 Civil Code did not set the law on these issues in detail, which contributes to facilitating and attracting more entities to establish more cooperative groups, and at the same time, encouraging the cooperative groups to operate more effectively and thereby, make greater contributions to the development of Vietnam economy.

Secondly, it is necessary to research and develop a separate Law on cooperative groups:

Since the country opened up to build a socialist-oriented market economy (December 1986) until now, the collective economic model including cooperative groups seems to have not received much attention and proper support from the State. There is a view that “the cooperative group model has not received thorough attention, despite its significant contributions to job creation and income growth in rural areas” (Online Newspaper Financial Magazine, 2017). And “cooperative groups have almost no significant interest compared to cooperative societies, etc, this area is being neglected” (Online Newspaper Financial Magazine, 2017). Even in Vietnam, after more than 30 years of renovation, there are still only two collective economic models: commune cooperatives and cooperative groups. Despite the fact that the commune cooperatives always receive the attention and support of the law with stipulated, solemn, full, and clear regulations called the Law on Cooperatives (enacted recently in 1996, 2003, and 2012), the cooperative groups are only regulated in sub-law documents such as Decrees and previously in a very limited scope in the Civil Codes.¹⁴ The authors think this is not really satisfactory and reasonable, based on the fact that the number of current cooperative groups is always much higher than that of commune cooperatives. Besides, cooperative groups can often adapt and

¹³ Clause 1, Article 3 and Clause 2, Article 15 of Decree No. 77/2019/ND-CP dated October 10, 2019 on “Cooperative groups”.

¹⁴ Civil Code 1995, 2005, 2015.

operate widely in many areas with diversity and richness in different fields. Therefore, it is necessary to appreciate, pay much attention to, and treat fairly to the cooperative groups, which is the basis for encouraging and promoting the strong and long-term development of this business model. One suggested that “it is vital to create a strong legal status for cooperative groups to be proactive in cooperation activities and contract signing” (Online Newspaper Financial Magazine, 2017). For the authors, a separate law on cooperative groups should be researched and developed. In other words, with the contribution, role, influence, and importance of the cooperative group to the economic and social development of Vietnam, this business model needs to be regulated by a separate law. Only by this, the collaborative group will have the necessary and firm legal status when participating in business and commercial relations and be recognized and treated fairly and equally as other types of companies and commune cooperatives. A separate law on cooperative groups also contributes to creative thinking about building and perfecting the legal system of Vietnam. Moreover, the economic and social circumstances that treasure the rural field and appreciate the agricultural economy make Vietnam always different from other developed countries in the world. Therefore, it can be predicted that the cooperative group model will still be chosen by many subjects when they need to link production and business in small areas in many different fields. This is a valuable suggestion for Vietnamese legislators to pay attention to and consider and thereby, help the cooperative group to survive and develop strongly in Vietnam during the period of profound international integration.

Conclusion

The cooperative group is a collective economic model that makes a great contribution to the economic and social development in Vietnam. In the light of a collective economic model, the cooperative group naturally needs many participants. Therefore, in order to organize and operate safely and effectively, cooperative groups have to comply with the legal principles prescribed by the governance. However, the legal regulations on the organization and operation of cooperative groups are inconsistent with the spirit of these principles. That greatly affects the operation of the cooperative group and discourages the investors. Therefore, implementing the solutions proposed by the authors brings great contributions to the cooperation group. In other words, the solutions recommended above are quite appropriate for cooperation groups under the current socio-economic context in Vietnam and they contribute to promoting the strong and long-term development of the particularly crucial collective economic model.

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