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Property ownership in cooperatives

Nguyen Phuoc

Ho Chi Minh City University of Food Industry, Vietnam

* Corresponding Author: **Nguyen Phuoc**

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Abstract

Cooperative property (cooperative) is divided into two types: property and undivided property. According to the Law on Cooperatives, property ownership of a cooperative is jointly owned by all members, not by individuals. In fact, for undivided assets, members do not own the cooperative's own assets that they create in the course of business activities, they are not allowed to divide the remaining assets after the cooperative is dissolved, on the grounds that to ensure the right to inherit property for future generations.

Keywords: Property, ownership, cooperative, property inheritance, property ownership

1. Introduction

1.1 Property ownership issues in cooperatives (cooperatives)

According to the Civil Code, property ownership includes the right to possess, use and dispose of the property of the owner in accordance with the law. In the collective economy, with the type of business cooperatives and unions of cooperatives, there are many different views on ownership, that is, there is an inevitable limit that regulates what members can do with respect to property rights own property.

Ownership of a member is defined as a member who has the right to a surplus value and the right to make decisions. What restricts the right of owners to fixed assets in cooperatives is not that they cannot take the property home, but that the limitation is only that they are entitled to a share of the existing profits earned by them. So, who owns the property rights of members in the cooperative?

Cooperative is a collective economic organization, co-owned, has legal status, established by at least 07 members voluntarily and cooperates and supports each other in production, business and job creation activities in order to meet the needs of customers meeting the common needs of members, on the basis of autonomy, self-responsibility, equality and democracy in cooperative management.

The current approach to ownership in cooperatives stipulates very clearly: The cooperative constitutes an entity separate from its members so that the cooperative's assets are jointly owned by the members, not the property. personal property. In fact, members do not own the assets of the cooperative they founded.

Cooperatives belong to all members for the express purpose of meeting their common needs. That is the need to use the same products and services arising regularly and stably from production, business and life activities of members and member cooperatives. For job-creating cooperatives, the common needs of members are the employment needs of members in the cooperative created by the cooperative.

2. Cooperative property inherited for future generations

Assets in a cooperative include property and undivided property.

2.1. Assets of the cooperative

First: Assets are formed from the following four sources:

- a. Contributed capital of members and member cooperatives;
- b. Mobilized capital of members, member cooperatives and other mobilized capital;
- c. Capital and assets formed during the operation of cooperatives and unions of cooperatives;
- d. State subsidies, support and other donations.

Second: Handling capital and assets when the cooperative is dissolved

Assets and capital are handled in the following order:

Firstly, Recovery of assets of cooperatives and unions of cooperatives;

Second, Liquidation of assets, except for undivided assets;

Third, to pay debts and fulfill financial obligations of cooperatives and unions of cooperatives.

Third: Handling remaining assets

Remaining assets are implemented in the following order of priority:

1. Payment of dissolution costs, including expenses for the recovery and liquidation of assets;
2. Payment of wages, allowances and social insurance debts of employees;
3. Payment of secured debts in accordance with the law;
4. Payment of unsecured debts;
5. The remaining asset value shall be returned to members and affiliated cooperatives according to the ratio of contributed capital to the total charter capital.

In case property is handled according to the above priority order but the remaining asset value is not enough to pay debts belonging to the same payment priority row, a partial payment shall be made in proportion to liabilities in that priority row.

We see, if the cooperative's assets are not enough to pay the debts, it is not possible to proceed with the order and procedures for dissolution, because the condition for dissolution is to pay off all debts and other property obligations.

Thus, in case it is not enough to pay the debts of the same priority row, the cooperative shall not make a partial payment in proportion to the payable debts in that priority row bankruptcy proceedings must be carried out in accordance with the bankruptcy law. According to the Bankruptcy Law, an insolvent enterprise or cooperative means an enterprise or cooperative that fails to fulfill its debt payment obligation within 3 months from the due date of payment.

2.2. Undivided assets of the cooperative

Undivided property is a part of the cooperative's assets, which must not be distributed to members or affiliated cooperatives upon termination of membership or membership of the cooperative or upon termination of operation of the cooperative. Cooperatives that terminate operations may be dissolved or go bankrupt

First: Undivided assets of the cooperative

Includes the following five types of assets:

- a. Land use rights allocated or leased by the State;
- b. Non-refundable State subsidies and supports;
- c. The agreed-upon donation or donation is an undivided

property;

- d. The annual deduction from the development investment fund is decided by the general meeting of members to be included in the undivided assets;
- e. Capital and other assets specified in the charter as undivided assets;
- f. The heir voluntarily leaves the inherited capital contribution to the cooperative

Second: Handling undivided assets of the cooperative upon dissolution or bankruptcy

When the cooperative is dissolved or goes bankrupt, the undivided assets shall be handled as follows:

- a. The part of the property value formed from the State's subsidies or non-refundable assistance shall be transferred to the local budget at the same level as the cooperative registration agency;
- b. The value of assets formed from the annual investment and development fund which has been decided by the general meeting of members to be included in undivided assets upon termination of membership or member cooperative status; the donation or donation under the agreement is an undivided property; capital and other assets prescribed by the Charter as undivided assets upon termination of membership or membership of a affiliated cooperative, the general meeting of members shall decide on an appropriate settlement plan;
- c. The value of assets formed from the annual development investment fund which has been decided by the general meeting of members to be included in undivided assets when the cooperative terminates its operation; the donation or donation under the agreement is an undivided property; capital and other assets specified by the charter as undivided assets when the cooperative terminates its operation, the general meeting of members shall decide to transfer it to the local government or another organization, giving priority to handing over to other cooperatives. located in the area for the purpose of serving the interests of the local community;
- d. The right to use land allocated or leased by the State shall comply with the provisions of the law on land.

In case of dissolution or bankruptcy, but the capital and assets of the cooperative are not enough to pay the debts, the cooperative may use the undivided assets in the following order to pay the debts:

1. The amount given or given under the agreement is an undivided property;
2. The annual deduction from the development investment fund shall be decided by the general meeting of members to be included in the undivided assets;
3. Capital and other assets stipulated by the charter as undivided assets.
4. From the above provisions, we can see:

First: The property of a cooperative is jointly owned by its members, not individually, the reason why the Vietnam Cooperative Law as well as the Cooperative Laws of other countries in the world do not distribute the remaining assets after dissolution. or bankruptcy is explained to ensure the right to inherit property for future generations.

Second: Ownership remains the common ground in cooperatives, given the fact that the cooperative is a separate

entity with independent members, so the assets created by previous generations cannot belong to the cooperative. current members and owners hypothetically limited generations of co-operative legislators and leaders have recognized the need to preserve the long-term survival of the cooperative organization.

Third: The nature of the cooperative's assets is different from the nature of the assets of a limited liability company or a joint stock company. For a limited liability company, members are not allowed to withdraw capital from the company in any form. Joint-stock companies, ordinary shareholders are not allowed to withdraw capital contributed by ordinary shares from the company in any form. The purpose of this regulation is to bind the obligations of the company's debts and protect the legal rights of creditors. On the contrary, the cooperative returns the contributed capital to the member upon termination of membership. Therefore, in a cooperative, there is always an undivided asset, that is, when the membership is terminated, the cooperative returns the contributed capital, but still has undivided assets for business operations, ensuring the ability to pay the payments. debt (if any). At the same time, the undivided property is under common ownership. If the cooperative terminates its operation, may dissolve or go bankrupt, this undivided property will be inherited to the next generation.

Fourth: Membership in most cooperatives is very low. Because the member's capital contribution is made according to the agreement on the minimum contributed capital and according to the provisions of the charter, not more than 20% of the charter capital of the cooperative. Thus, the contributed capital of each member is not less than the minimum contributed capital and does not exceed 20% of the charter capital.

Meanwhile, compared with the cooperatives of the Federal Republic of Germany, the capital contribution rate for each member is at least 0.1% - 0.5% of the charter capital and the highest is 1% - 3% of the charter capital.

Fifth: Members only own the cooperative on the basis of joint ownership or co-ownership, so if the member leaves the cooperative, there will be no more ownership. Theoretically, if all members leave the cooperative, they will receive their share of the capital contribution as mentioned above, which represents a small part of the total value of the cooperative's assets, and what remains will not belong to anyone in that cooperative, but to members of other cooperatives according to the cooperative laws of many countries, including Vietnam. Thus, members of other cooperatives are given priority to benefit from the assets of members of a cooperative.

However, in the world today there are many cooperatives, which only exist for a single generation. So it's clear that the assets are created thanks to the contributions of current members. So why should members pay their whole life to create assets, which does not bring property benefits to their heirs, but brings property benefits to a complete stranger. If, after a few generations, has ceased to exist and as a primary reason, is the fact that the property belongs to no one, really does not belong to the members.

3. Conclusion

The issue of property ownership in cooperatives, whether collective or individual ownership of each member is not a concern of most cooperatives in the world. Various views have been given above to explain why cooperatives are jointly owned by members.

Cooperative models and conditions in different regions ensure flexibility allowing cooperative models to meet the needs of members. In the author's opinion, there is a tendency to lean towards the view of joint ownership of business activities in a cooperative rather than the view of individual ownership of assets of each member, we must admit that the most important factor is to make sure the cooperative meets the needs of its members, regardless of who it belongs to.

In fact, in most cooperatives in countries around the world as well as in Vietnam, when the cooperative needs additional capital to operate its business, the members are not able to increase their capital contribution to the cooperative. Cooperatives have to borrow from many different sources. This loan must be repaid over the life of the capital using the current income of the cooperative. The fact that members participate in this obligation is not fair, because the more members join the cooperative, the more they have to pay. Once the loans have been paid off by the cooperative, the remaining assets belong to the entire cooperative, not to individuals, even the members have to repay the debt during the year of joining the cooperative.

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