



Tuvalu

CO-OPERATIVE SOCIETIES ACT

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CO-OPERATIVE SOCIETIES ACT

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Tuvalu

CO-OPERATIVE SOCIETIES ACT

AN ACT TO PROVIDE FOR THE FORMATION AND TO REGULATE THE OPERATIONS OF CO-OPERATIVE SOCIETIES¹

Commencement [1st September 1952]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Co-operative Societies Act.

2 Interpretation

In this Act unless the context otherwise requires —

“**bonus**” means a share of the profits of a registered society divided among its members in proportion to the volume of business done by them with the society from which the profits of the society were derived;

“**by-laws**” means the registered by-laws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of the by-laws;

“**committee**” means the governing body of a registered society to whom the management of its affairs is entrusted;

“**dividend**” means a share of the profits of a registered society divided among its members in proportion to the share capital held by them;

“**member**” includes a person or registered society joining in the application for the registration of a society, and a person or registered society admitted to membership after registration in accordance with the by-laws;

“**officer**” includes a chairman, secretary, treasurer, member of committee, or other person empowered under the regulations or by-laws to give directions in regard to the business of a registered society;

“**registered society**” means a co-operative society registered under this Act;

“**Registrar**” means the Registrar of Co-operative Societies appointed under section 3 and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that section.

PART II - REGISTRATION

3 Appointment of Registrar and assistant registrars

The Minister may appoint a person to be Registrar of Co-operative Societies for Tuvalu and may appoint persons to assist such Registrar, and may, by notice, confer on any such persons all or any of the powers of a Registrar under this Act.

4 Societies which may be registered

Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability as the Registrar may decide:

Provided that the liability of a society which includes at least one registered society among its members shall be limited.

5 Conditions of registration

- (1) No society, other than a society of which a member is a registered society, which does not consist of at least 10 persons each of whom is qualified under section 23 for membership under this Act shall be registered under this Act.
- (2) The word “co-operative” or its vernacular equivalent shall form part of the name of every society registered under this Act.
- (3) The word “limited” or its vernacular equivalent shall be the last word in the name of every society with limited liability registered under this Act.
- (4) When, for the purposes of this section, any question arises as to age, residence, or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar whose decision shall be final.

6 Application for registration

- (1) For the purposes of registration an application shall be made to the Registrar.
- (2) The application shall be signed —
 - (a) in the case of a society of which no member is a registered society, by at least 10 persons qualified in accordance with the requirements of section 5(1); and
 - (b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and, where the members of the society are not all registered societies, by 10 other members, or, when there are less than 10 other members, by all of them.
- (3) The application shall be accompanied by copies of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

7 Registration

- (1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the regulations, and that its proposed by-laws are not contrary to this Act or to the regulations, he may, if he thinks fit, register the society and its by-laws. An appeal shall lie to the Minister against the refusal of the Registrar to register any society within 1 month from the date of such refusal.
- (2) On registration the society shall pay such fee as may be required by the regulations.

8 Societies to be bodies corporate

The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, and to do all things necessary for the purpose of its constitution.

9 Evidence of registration

A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration of the society has been cancelled.

PART III - DUTIES AND PRIVILEGES OF SOCIETIES

10 Amendment of the by-laws of a registered society

- (1) Any registered society may, subject to this Act and the regulations, amend its by-laws, including the by-laws which declare the name of the society.
- (2) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered under this Act, for which purpose copies of the amendment shall be forwarded to the Registrar.
- (3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Act or to the regulations, he may, if he thinks fit, register the amendment; and an appeal shall lie to the Minister against the refusal of the Registrar to register any amendment of any by-law.
- (4) An amendment which changes the name of a society shall not affect any right or obligation of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.
- (5) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.
- (6) In this section, “amendment” includes the making of a new by-law and the variation or rescission of a by-law.

11 Address of society

Every registered society shall have an address, registered in accordance with the regulations, to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

12 Copy of Act, regulation, by-laws, etc., to be open to inspection

Every registered society shall keep a copy, written both in English and in the vernacular of the place where its registered office is situated, of this Act and of the regulations and of its by-laws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

13 Disposal of produce to or through a registered society

- (1) A registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of its members whether the produce of agriculture, animal husbandry, forestry, fisheries, handicrafts or

otherwise, may provide in its by-laws or may otherwise contract with its members —

- (a) that every such member who produces any such article shall dispose of the whole or any specified amount, proportion or description thereof to or through the society; and
 - (b) that any member who is proved or adjudged, in such manner as may be prescribed by the regulations, to be guilty of a breach of the by-laws or contract shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the aforesaid regulations.
- (2) No contract entered into under the provisions of this section shall be contested in any court on the ground only that it constitutes a contract in restraint of trade.

14 Creation of charges in favour of registered societies

Subject to any prior claim of the Crown on the property of the debtor and, to the lien or claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon —

- (a) any debt or outstanding demand payable to a registered society by any member or past member shall be a first charge on all crops or other agricultural produce, felled timber or other forest produce, marine produce, fish (fresh-water and salt-water), livestock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackle and nets, raw materials, stock in trade and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given him by the society:

Provided that nothing herein contained shall affect the claim of any *bona fide* purchaser or transferee without notice;

- (b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be a first charge upon his interest in the immovable property of the society.

15 Charge and set off in respect of shares or interest of members

A registered society shall have a charge upon the shares or interest in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus, or profits payable to a member or past member or to the estate of a deceased member in respect of any debt due to the society from such member or past member or estate, and may set off any sum credited or payable to a member or

past member or estate of a deceased member in or towards payment of any such debt.

16 Shares or interest not liable to attachment or sale

Subject to section 15, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy shall not be entitled to, or have any claim on, such share or interest:

Provided that where a society is dissolved the property and the shares of any member who has been adjudicated in bankruptcy shall be vested in the trustee in bankruptcy.

17 Transfer of interest on death of member

- (1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the regulations made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the regulations or by-laws:

Provided that —

- (a) in the case of a society with unlimited liability such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;
 - (b) in the case of a society with limited liability, the society may transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the regulations and by-laws for membership of the society, or, on his application within 6 months of the death of the deceased member, to any person specified in the application who is so qualified.
- (2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.
 - (3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

18 Deposits by or on behalf of minors

- (1) A registered society may receive deposits from or for the benefit of minors and it shall be lawful for a registered society to pay such minors the interest which may become due on such deposits. Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor; and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian of that minor for the use of the minor.
- (2) The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge of the liability of the society in respect of that money.

19 Register of members

Any register or list of members kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein —

- (a) the date at which the name of any person was entered in such register or list as a member;
- (b) the date at which any such person ceased to be a member.

20 Proof of entries in books of society

- (1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed by the regulations, be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.
- (2) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded unless the court for special reasons so directs.

21 Amalgamation or transfer of societies

- (1) Any 2 or more registered societies may by a resolution passed by a three-fourths majority of the members present at a special general meeting of such society held for the purpose, amalgamate as a single society:

Provided that no such resolution may be put to the meeting without the prior approval of the Registrar in writing and that each member shall be given a clear 15 days' written notice of the resolution and the date of the meeting. Such amalgamation may be effected with or without any dissolution or division of the funds of the amalgamating societies or either of them and the

resolution of the societies concerned shall on such amalgamation be a sufficient conveyance or assignment to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

- (2) Any registered society may by a resolution passed in accordance with the procedure laid down in subsection (1) transfer its assets and liabilities to any other registered society which is prepared to accept them and such resolution shall be a sufficient conveyance or assignment to vest the assets and liabilities in the other society:

Provided that when any such amalgamation or transfer of its liabilities involves the transfer of its liabilities by any society to any other society, it will not be made without giving 3 months' notice to the creditors of both or all such societies:

Provided further that if any creditor of any of the societies concerned objects to such amalgamation or transfer of assets and liabilities and gives written notice to that effect to the society or societies concerned 1 month before the date fixed for such amalgamation or transfer the amalgamation or transfer shall not be made until the dues of such creditor have been satisfied.

22 Division of societies

- (1) Any registered society may, with the approval of the Registrar, by a resolution passed by a three-fourths majority of the members present at a special general meeting of the society held for the purpose, resolve to divide itself into 2 or more societies, provided that each member has had 15 clear days written notice of the resolution and the date of the meeting. The resolution (hereinafter in this section referred to as a preliminary resolution) shall contain proposals for the division of assets and liabilities of the society among the new societies in which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.
- (2) A copy of the preliminary resolution shall be sent to all the members and creditors of the society. A notice of the resolution shall also be given to all other persons whose interests will be affected by the division of the society.
- (3) Any member of the society may, notwithstanding any by-law to the contrary, by notice given to the society within a period of 3 months from his receipt of the resolution, intimate his intention not to become a member of any of the new societies.
- (4) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within the said period intimate his intention to demand a return of the amount due to him.
- (5) Any other person whose interest will be affected by the division may by notice given to the society object to the division unless his claim is satisfied.

- (6) After the expiry of 3 months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice by other persons given under subsection (2), another special general meeting of the society, of which at least 15 clear days notice shall be given to its members, shall be convened for considering the preliminary resolution. If at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the Registrar are not material, he may, subject to the provisions of section 7 and of subsection (9), register the new societies and the by-laws thereof. On such registration, the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of such cancellation.
- (7) The opinion of the Registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom.
- (8) At the special general meeting referred to in subsection (6) provision shall be made by another resolution for —
- (i) repayment of the share capital of all the members who have given notice under subsection (3);
 - (ii) satisfaction of the claims of all the creditors who have given notice under subsection (4); and
 - (iii) satisfaction of the claims of such of the other persons who have given notice under subsection (5) as the Registrar decides or securing their claims in such manner as the Registrar directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (6).

- (9) If within such time as the Registrar considers reasonable the share capital of the members referred to in subsection (8) is not repaid or the claims of the creditors referred to in that subsection are not satisfied, or the claims of the other persons are not satisfied or secured as provided in paragraph (iii) of that subsection, the Registrar may refuse to register the new societies.
- (10) The registration of the new societies shall be a sufficient conveyance or assignment to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under subsection (6).

PART IV - RIGHTS AND LIABILITIES OF MEMBERS

23 Qualification for membership

In order to be qualified for membership of a co-operative society a person other than a registered society, must —

- (a) have attained the age of 16 years;
- (b) be resident within or in occupation of land within the society's area of operations as described by the by-laws.

24 Members not to exercise rights till due payment made

No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the regulations or by-laws.

25 Restriction of membership in society

Except with the sanction of the Registrar, no person shall be a member of more than one registered society whose primary object is to grant loans to its members.

26 Votes of members

No member of any registered society shall have more than one vote in the conduct of the affairs of the society:

Provided that in the case of an equality of votes the Chairman shall have the casting vote:

Provided further that in the case of societies of which a registered society is a member that society may have such voting powers as are provided in the regulations.

27 Representation by proxy

A registered society which is a member of any other registered society may appoint any one of its members or, with the consent of the Registrar, any other person as its proxy for the purpose of voting in the conduct of the affairs of such other registered society.

28 Contracts with society of members who are minors

The minority of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance

necessary to be executed or given under this Act or the regulations made thereunder, and shall not be a ground for invalidating or avoiding any contract entered into by any such person with the society; and any such contract entered into by any such person with the society, whether as principal or as surety, shall be enforceable at law or against such person notwithstanding his minority.

29 No individual to hold more than one-fifth of share capital of any society

No member, other than a registered society, shall hold more than one-fifth of the share capital of any co-operative society.

30 Restrictions on transfer of share or interest

- (1) The transfer or charge of the share or interest of a member or past member or deceased member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the regulations.
- (2) In the case of a society registered with unlimited liability, a member shall not transfer any share held by him or his interest in the capital of the society or any part thereof, unless —
 - (a) he has held such share or interest for not less than 1 year; and
 - (b) the transfer or charge is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the committee.

31 Liability of past member and estate of deceased member for debts of society

- (1) The liability of a past member for the debts of a registered society as they existed on the date on which he ceased to be a member shall not continue for a period of more than 1 year reckoned from that date.
- (2) The estate of a deceased member shall not be liable for the debts of the society as they existed on the date of his decease for, a period of more than 1 year reckoned from the date of his decease.

PART V - PROPERTY AND FUNDS OF REGISTERED SOCIETIES

32 Loans made by a registered society

- (1) A registered society shall not, except as provided in section 35, make any loan to any person other than a member: Provided that, with the consent of the Registrar, a registered society may make loans to another registered society.
- (2) Except with the permission of the Registrar, a registered society shall not lend money on the security of any movable property other than the produce or goods in which the society is authorised to deal.
- (3) The Minister may, by general or special order, prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

33 Deposits and loans received by a registered society

A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the regulations or by-laws.

34 Restrictions on other transactions with non-members

Save as provided in sections 32 and 33, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the regulations.

35 Investment of funds

A registered society may invest or deposit its funds —

- (a) with any bank or person carrying on the business of banking approved for this purpose by the Registrar; or
- (b) in any securities issued or guaranteed by a Government under the British Crown; or
- (c) with any other registered society approved for this purpose by the Registrar; or
- (d) in any other mode approved by the Registrar.

36 Disposal of profits

- (1) At least one-fourth of the net profit of every registered society, as ascertained by the audit prescribed by section 37, shall be carried to a fund to be called the general reserve fund, which shall be employed as prescribed by the regulations; and the remainder of such profits and any profits of past years available for distribution may be divided among the members by way of dividend or bonus, or allocated to any funds constituted by the society to such extent or under such conditions as may be prescribed by the regulations or by-laws:

Provided that in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Minister.

- (2) Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to the general reserve fund, contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purpose or to a common-good fund.

PART VI - AUDIT, INSPECTION AND INQUIRY**37 Audit**

- (1) The Registrar shall audit or cause to be audited by some person authorised by him by general or special order in writing the accounts of every registered society once at least in every year.
- (2) The audit under subsection (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.
- (3) The Registrar and every other person appointed to audit the accounts of a society shall have power when necessary —
 - (a) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give material information in regard to any transactions of the society or the management of its affairs; or
 - (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

38 Power of Registrar to inspect societies' books, etc.

The Registrar, or any person authorised by general or special order in writing by the Registrar, shall at all times have access to all the books, accounts, papers and securities of a registered society, and shall be entitled to inspect the cash in hand;

and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

39 Inquiry and inspection

- (1) The Registrar may of his own motion, and shall on the application of a majority of the committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working, and financial condition of a registered society; and all officers and members of the society shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him may require.
- (2) The Registrar shall, on the application of a creditor of the registered society, inspect or direct some person authorised by him in writing in this behalf to inspect the books of the society, if the applicant —
 - (a) proves that an ascertained sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
 - (b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.
- (3) The Registrar shall communicate the results of any such inspection to the creditor and to the society into whose affairs inquiry has been made.
- (4) Where an inquiry is held under subsection (1) or an inspection is made under subsection (2), the Registrar may apportion the costs or such part of the costs, as he may think right, between the registered society, the members demanding an inquiry, the officers or former officers of the society, and the creditors, if any, on whose application the inquiry was made.
- (5) Any sum awarded by way of costs against any society or person under this section may be recovered, on application to the court in the place where the registered office of the society is situated or the person resides or carries on business for the time being, in like manner as a fine imposed by the court.

40 Dissolution of the committee of a society

- (1) If the Registrar is of the opinion that the committee of any registered society is not performing its duties properly he may, after giving an opportunity to the committee to state its objections, if any, to its dissolution, and after considering such objections at a general meeting of the society summoned by him, by order in writing —
 - (a) dissolve the committee; and

- (b) direct that the affairs of the society shall be managed and administered by a suitable person or persons appointed as hereinafter provided.
- (2) Every direction under paragraph (b) of subsection (1) shall have effect for such period not exceeding 2 years as may be specified in the order containing such direction:
- Provided that the Registrar may in his discretion from time to time amend the order for the purpose of extending the period during which the direction shall have effect so, however, that the aggregate period during which the direction shall so have effect shall not exceed 4 years.
- (3) Where any order is made under subsection (1) the Registrar shall by the same or a subsequent order appoint a fit and proper person or 2 or more such persons to manage and administer the affairs of the society, and may from time to time remove or replace any person so appointed.
- (4) Subject to the general direction and control of the Registrar, any person or persons appointed under this section to manage the affairs of a registered society —
- (a) shall have the power to recover the assets and discharge the liabilities of the society and take such other steps as may be necessary in its interests; and
- (b) may exercise all the powers, rights and privileges of a duly constituted committee of the society.
- (5) The Registrar may fix the remuneration payable to any person or persons appointed by him under this section to manage the affairs of a registered society; and the amount of such remuneration and other expenses, if any, incurred in the management of the society shall be payable from its funds.
- (6) It shall be the duty of the person or persons appointed under this section to manage the affairs of a registered society, and who are holding office immediately prior to the date on which the direction given under paragraph (b) of subsection (1) ceases to have effect, to arrange, prior to the date aforesaid, for the appointment of a new committee in accordance with the by-laws of the society.
- (7) No order under subsection (1) shall be made by the Registrar in respect of any registered society without the Minister's prior approval.
- (8) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 41.

PART VII - DISSOLUTION

41 Dissolution

- (1) If the Registrar, after holding an inquiry or making an inspection under section 39 or on receipt of an application made by three-fourths of the members of a registered society, is of the opinion that the society ought to be dissolved, he may make an order for the cancellation of the registration of the society.
- (2) Any member of a registered society may, within 2 months from the date of an order under subsection (1), appeal from such order in the prescribed manner to the Minister.
- (3) Where no appeal is presented within 2 months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period; and where an appeal is presented within 2 months, the order shall not take effect until it is confirmed.
- (4) Where the Registrar makes an order for the cancellation of the registration of a society under subsection (1) he may make such further order as he may think fit for the custody of the books and documents and the protection of the assets of the society until the order cancelling registration takes effect.
- (5) No registered society shall be wound up save by an order of the Registrar.

42 Cancellation of registration of a society due to lack of membership

The Registrar may, by order in writing, cancel the registration of any registered society other than a society which includes among its members one or more registered society, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than 10, and every such order shall take effect from the date thereof.

43 Effect of cancellation of registration

Where the registration of a society is cancelled by an order under section 41 or under section 42 the society shall cease to exist as a corporate body from the date on which the order takes effect, hereinafter referred to as the date of dissolution:

Provided that any privileges conferred on the society by or under sections 14, 15, 16 and 17 shall be deemed to be vested in any appointed for that society by the Registrar.

44 Liquidation after cancellation of registration of society

Where the registration of a society is cancelled under section 41 or section 42 the Registrar may appoint one or more persons to be, subject to his direction and control, the liquidator or liquidators of the society.

45 Liquidator's powers

- (1) A liquidator appointed under section 44 shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under section 46 have power to —
 - (a) determine from time to time the contribution to be made by members and past members or by the estate of deceased members of the society to its assets;
 - (b) appoint a day by notice before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
 - (c) decide any question of priority which arises between creditors;
 - (d) refer disputes to arbitration and institute and defend suits and other legal proceedings on behalf of the society by his name or office;
 - (e) decide by what persons and in what proportions the costs of liquidation are to be born;
 - (f) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
 - (g) compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
 - (h) call such general meetings of members as may be necessary for the proper conduct of the liquidation;
 - (i) take possession of the books, documents and assets of the society;
 - (j) sell the property of the society;
 - (k) carry on the business of the society so far as may be necessary for winding it up beneficially:
Provided that nothing herein contained shall entitle the liquidator of a credit society to issue any loan; and
 - (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.
- (2) Subject to such regulations as may be made in this behalf, any liquidator appointed under this Act shall in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents by the same means and so far as may be in the same manner as it is provided in the case of a civil court.

46 Powers of Registrar to control liquidation

A liquidator shall exercise his powers subject to the control and revision of the Registrar, who may —

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) by order in writing limit the powers of a liquidator under section 45;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
- (g) make an order for the remuneration of the liquidator;
- (h) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator.

47 Enforcement of order

- (1) The decision of an arbitrator on any matter referred to him under section 46 shall be binding upon the parties, and shall be enforceable in like manner as an order made by the Registrar under that section.
- (2) An order made by a liquidator or by the Registrar under section 45 or section 46 may be enforced by the court having jurisdiction over the place where the registered office of the society is situated in like manner as a decree of the court.

48 Limitation of the jurisdiction of the civil court.

Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society under this Act.

49 Closure of liquidation

- (1) In the liquidation of a society whose registration has been cancelled, the funds, including the general reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, provided the by-laws of the society permit, to the payment of a dividend at a rate not exceeding 10 per cent per annum for any period for which no disposal of profits was made.
- (2) When the liquidation of a society has been closed and any creditor of the society has not claimed or received what is due to him under the scheme of

distribution, notice of the closing of the liquidation shall be published in the manner provided for subsidiary legislation and in such other manner as the Registrar may require; and all claims against the funds of the society liquidated shall be proscribed when 2 years have elapsed from the date of the publication.

- (3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1) and the payment of any claims for which an action is instituted under subsection (2) shall be available for use by the Registrar for any co-operative purpose at his discretion.

PART VIII - SURCHARGE AND ATTACHMENT

50 Power of Registrar to surcharge officers, etc., of a registered society

- (1) Where, in the course of the winding up of a registered society, it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.
- (2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

51 Appeal to Minister

Any person aggrieved by any order of the Registrar made under section 50 may appeal to the Minister within 21 days from the date of such order and the decision of the Minister shall be final and conclusive.

PART IX - DISPUTES

52 Settlement of disputes

- (1) If any dispute touching the business of a registered disputes society arises —
 - (a) among members, past members and persons claiming through members, past members and deceased members; or

- (b) between a member, past member, or person claiming through a member, past member or deceased member, and the society, its committee, or any officer of the society; or
- (c) between the society or its committee and any officer of the society; or
- (d) between the society and any other registered society,

such dispute shall be referred to the Registrar for decision; and a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, shall be deemed to be a dispute touching the business of the society within the meaning of this subsection.

- (2) The Registrar may on receipt of a reference under subsection (1) —
 - (a) decide the dispute himself; or
 - (b) refer it for disposal to an arbitrator or arbitrators.
- (3) Any party aggrieved by the award of the arbitrator or arbitrators may appeal therefrom to the Registrar within such period and in such manner as may be prescribed.
- (4) A decision of the Registrar under subsection (2) or under subsection (3) shall be final and shall not be called in question in any civil court.
- (5) The award of the arbitrator or arbitrators under subsection (2) shall, if no appeal is referred to the Registrar under subsection (3), or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the award had been a judgment of a civil court.

53 Request Opinion of a Judge

Notwithstanding anything contained in the last foregoing section, the Registrar at any time when proceeding to a decision under this Act, or the Minister at any, time when an appeal has been referred to him against any decision of the Registrar under this Act, may refer any question of law arising out of such decision for the opinion of a judge, whose opinion given on such question shall be final and conclusive.

PART X - REGULATIONS

54 Regulations

- (1) The Minister may make all such regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Act.

- (2) In particular and without prejudice to the generality of the power conferred by subsection (1), such regulations may —
- (a) prescribe the forms to be used, the fees to be paid and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such applications;
 - (b) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members from time to time, and the payment to be made and interest to be acquired before exercising rights of membership;
 - (c) subject to section 29, prescribe the maximum number of shares or portion of the capital of a registered society which may be held by a member;
 - (d) prescribe the extent to which a registered society may limit the number of its members;
 - (e) provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled and for the liabilities of past members;
 - (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
 - (g) provide for the appointment, suspension and removal of the members of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;
 - (h) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and rescinding by-laws, and the conditions to be satisfied prior to such making, alteration or rescission;
 - (i) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
 - (j) prescribe the conditions to be observed by a registered society applying for financial assistance from Government;
 - (k) prescribe the payments to be made, the conditions to be complied with, and the forms of the bonds, instruments or other documents to be executed, by members applying for loans or cash credits, the period for which loans may be made or credits granted, and the maximum amount which may be lent and the maximum credit which may be allowed to individual members with or without the consent of the Registrar;
 - (l) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;
 - (m) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
 - (n) provide for the formation and the maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of any registered society;

- (o) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies;
- (p) prescribe the accounts and books to be kept by a registered society, and for the periodical publication of a balance sheet showing the assets and liabilities of a registered society;
- (q) provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit, and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and co-operative propaganda and prescribe for the administration of such a fund;
- (r) prescribe the returns to be submitted by registered societies to the Registrar, and the persons by whom and the form in which the same are to be made;
- (s) provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified;
- (t) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, a register of shares;
- (u) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;
- (v) prescribe the manner in which any question as to the breach of any by-law or contract relating to the disposal of produce to or through a society may be determined, and the manner in which the liquidated damages for any such breach may be ascertained or assessed;
- (w) prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators;
- (x) prescribe the procedure to be followed by a liquidator appointed under section 44;
- (y) prescribe the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Act or the regulations.

PART XI - MISCELLANEOUS

55 Recovery of sums due to Government

- (1) All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government may be recovered in the manner provided for the recovery of debts due to the Government under the law for the time being in force.

- (2) Sums due from a registered society to the Government and recoverable under subsection (1) may be recovered, first from the property of the society; secondly, in the case of a society of which the liability of members is limited, from the members subject to the limit of their liability; and thirdly, in the case of other societies, from the members.

56 Special powers of Minister to exempt any society from requirements as to registration

Notwithstanding anything contained in this Act the Minister may by order in each case and subject to such conditions as he may impose, exempt any society from any of the requirements of this Act as to registration.

57 Special power of Minister to exempt societies from provisions of Act

The Minister may by order exempt any registered society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to any society or class of societies with effect from such date or with such modifications as may be specified in the order.

58 Power to exempt from stamp duty and registration fees

The Minister by notification in the *Gazette* may, in the case of any registered society or class of registered societies, remit —

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society, or by an officer or member, and relating to the business of such society, or any class of such instruments are respectively chargeable; or
- (b) any fee payable under the law of registration for the time being in force.

59 Prohibition of the use of the word “co-operative”

- (1) No person other than a registered society shall trade or carry on business under any name or title of which the word “co-operative” is part without the sanction of the Minister:

Provided that nothing in this section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the commencement of this Act.

- (2) Any person who contravenes the provisions of this section shall be liable on summary conviction to a fine of \$10, and in the case of a continuing offence to a further fine not exceeding \$2 for each day during which the offence continues.

60 Punishment of fraud or misappropriation

If any person obtains possession by false representation or imposition of any property of a society, or having the same in his possession withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society, and authorised by this Act, he shall on the complaint of the society, or of any member authorised by the society, or the committee thereof, or of the Registrar or any assistant registrar by his authority, be liable on summary conviction to a fine of \$40 with costs, and to be ordered to deliver up all such property or to repay all moneys applied improperly, and in default of such delivery or repayment or of the payment of such fine to be imprisoned for 3 months, but nothing in this section shall prevent any such person from being proceeded against for an indictable offence if not previously convicted of the same offence under this Act.

61 Formation of proposed societies

- (1) No person shall collect moneys in the nature of subscriptions for the purpose of the formation of a society to be registered under this Act without first obtaining the permission in writing of the Registrar.
- (2) Any person who contravenes this section shall be liable on summary conviction to a fine of \$20 and to imprisonment for 3 months.

62 Special members of committees of secondary societies

- (1) Notwithstanding any other provision of this Act, the Minister may in accordance with this section appoint special members to the committee of any secondary society if the society is in receipt of financial assistance from the Government or if the Minister considers such appointments to be necessary in the interests of the national economy.
- (2) Special members appointed under this section —
 - (a) shall be appointed from among persons who in the opinion of the Minister possess suitable academic or professional qualifications or sufficient experience in business, trade or commerce or a co-operative movement to enable them properly to discharge their functions; and
 - (b) may be appointed from among persons who are not members of any registered society.²
- (3) The number of special members appointed to a committee under this section shall not exceed one-third of the number of ordinary members including the chairman of the committee.
- (4) For the purposes of this section a society shall be deemed to be in receipt of financial assistance from the Government if —

- (a) within the immediately preceding 3 years the society has received any grant of money from the Government; or
 - (b) any money has been lent to the society by the Government and the loan has not been repaid; or
 - (c) any loan made to the society has been guaranteed by the Government and either the guarantee is still outstanding or the guarantee has been honoured by the Government and the society has not paid to the Government all sums (including interest, if any, thereon) paid by the Government under the terms of the guarantee.
- (5) In this section “secondary society” means a registered society the members of which are registered societies.

63 Tenure of office and powers of special members

- (1) A special member of a committee appointed under section 62 shall remain a member of the committee until his appointment is terminated by the Minister.
- (2) Where the Minister has appointed special members to a committee under section 62 any such special member may require in writing that any decision taken by the committee shall not have effect until the approval of the Minister has been obtained and, where any such requirement is made in respect of any such decision, the decision shall be of no force or effect and shall not in any way be acted upon until the Minister has signified his approval thereof.
- (3) In addition to the power conferred by subsection (2), a special member appointed to a committee under section 62 shall, unless the Minister otherwise directs, have all the powers had by the Ordinary members of that committee.

64 Certain Acts not to apply

The provisions of the Companies and Business Registration Act and the Trade Unions Act shall not apply to a registered society.

65 Penalty for non-compliance with certain provisions

- (1)
 - (a) Any registered society or an officer or a member thereof, wilfully neglecting or refusing to do any act or to furnish any information required for the purposes of this Act by the Registrar or other persons duly authorised by him in this behalf; or
 - (b) any person wilfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act, or failing to furnish any information lawfully required from him by a person authorised to do so under the provisions of this Act, shall be guilty of an offence under this Act.
- (2) Every offence referred to in subsection (1) shall be punishable with a fine of \$200.

ENDNOTES

¹ 1990 Revised Edition, - Cap. 64 - Acts 9 of 1951, 5 of 1960, 8 of 1968, 9 of 1971, 31 of 1974, 5 of 1985, 1 of 1988 and LN 16/1974

Amended by Act 4 of 1996, commencement 30 August 1996, (by Act 4 of 2009)

² Amended by Act 4 of 1996