



Tonga

CO-OPERATIVE SOCIETIES ACT

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CO-OPERATIVE SOCIETIES ACT

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CO-OPERATIVE SOCIETIES ACT

AN ACT TO PROVIDE FOR THE FORMATION OF CO-OPERATIVE SOCIETIES AND TO REGULATE THEIR OPERATIONS¹

Commencement [19th December, 1973]

PART I – PRELIMINARY

1 Short title

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

2 Parts

This Act is divided into parts as follows —

Part I PRELIMINARY (Sections 1-3)

Part II REGISTRATION (Sections 4-10)

Part III DUTIES AND PRIVILEGES OF SOCIETIES (Sections 11-24)

Part IV RIGHTS AND LIABILITIES OF MEMBERS (Sections 25-33)

Part V PROPERTY AND FUNDS OF REGISTERED SOCIETIES (Sections 34-38)

Part VI AUDIT, INSPECTION AND ENQUIRY (Sections 39-41)

Part VII DISSOLUTION (Sections 42-50)

Part VIII SURCHARGE AND ATTACHMENT (Sections 51-53)

Part IX DISPUTES (Sections 54-55)

Part X RULES (Section 56)

Part XI MISCELLANEOUS (Sections 57-67).

3 Definitions

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 with the society by them 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;

“**Delegate**” means the representative of a society elected to be its proxy in meetings of a secondary society with which the society is affiliated;

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

“**Liability of a member**” means the extent to which a member may be obliged to contribute money to meet the debts of a society on liquidation thereof;

“**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;

“**Minister**” means the Minister responsible for commerce;²

“**National society**” means a registered society of which all members are secondary societies with similar objects and which has been formed by the said secondary societies to represent them on a national level;

“**Net surplus**” means the difference between income received or accrued during the financial year and the total of expenditure made or accrued during the year and provisions and allowances for the depreciation of fixed assets, or the writing off of losses or bad debts and for the creation of reserves against bad debts or depreciation of stocks;

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

“**Primary society**” means a registered society consisting of individuals as members;

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

“**Registrar**” means the Registrar of co-operative societies appointed under section 4 of this Act and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that section;

“**Rules**” means rules made under this Act;

“**Secondary society**” means a registered society of which all members are primary societies.³

PART II – REGISTRATION

4 Appointment of Registrar and Assistant Registrars

The Minister may appoint a person to be Registrar of Co-operative Societies and may appoint persons to assist such Registrar, and may, by general or special order published in the Gazette, confer on any such persons all or any of the power of a Registrar under this Act.

5 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.

6 Condition of registration

- (1) No society, other than a society of which a member is a registered society, shall be registered under this Act, which does not consist of at least 5 persons, each of whom is qualified under section 25 of this Act for membership.
- (2) The word “co-operative” or “fetokoni’aki” (its Tongan equivalent) shall form part of the name of every society registered under this Act.
- (3) The word “limited” or “limiteti” (its Tongan 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.

7 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 5 persons qualified in accordance with the requirements of section 6(1) of this Act; 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 all the members of the society are not registered societies, by 5 other members, or, when there are less than 5 other members, by all of them.
- (3) No school society shall be registered save with the consent of the Minister, acting after consultation with the Minister charged with responsibility for Education.
- (4) 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.

8 Registration

- (1) If the Registrar is satisfied that a society has complied with the provisions of this Act and the rules, and that its proposed by-laws are not contrary to this Act or to the rules, 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 one month from the date of such refusal.
- (2) On registration the society shall pay such fees as may be required by the rules.

9 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.

10 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

11 Amendment of the by-laws of a registered society

- (1) Any registered society may, subject to this Act and the rules, amend its by-laws, including the by-laws which declares 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 rules, he may, if he thinks fit, register the amendment. An appeal shall lie to the Minister against the refusal of the Registrar to register any amendment of any by-laws.
- (4) An amendment which changes the name of a society shall not affect any right or obligations 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.

12 Address of society

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

13 Copy of Act, rules, by-laws, etc., to be open to inspection

Every registered society shall keep a copy of this Act and of the Rules 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.

14 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 rules, 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 rules or by-laws.
- (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.

15 Creation of charges in favour of registered societies

- (1) Subject to any prior claim of the Government 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 agricultural produce, felled timber or other forest produce, marine produce, fish, 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 amount payable to such society shall be a first charge upon his interest in the immovable property of the society.

16 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 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 or sums credited or payable to a

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

17 Shares or interest not liable to attachment or sale

Subject to the provisions of section 16, 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 neither his assignee in insolvency nor a receiver duly appointed shall be entitled to, or have any claim on, such share or interest.

18 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 rules 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 rules 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 rules 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.

19 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.

20 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.

21 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 rules, 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.

22 Amalgamation or transfer of societies

- (1) Any two or more societies 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 each such society held for the purpose, amalgamate as a single society, provided that each member has had clear 15 days written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. The resolution of the societies concerned shall on such amalgamation be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

- (2) Any society may by a resolution passed in accordance with the procedure laid down in subsection (1) transfer its assets and liabilities to any other society which is prepared to accept them:

Provided that when any such amalgamation or transfer of assets and 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 a creditor or creditors of any of the societies concerned objects or object to such amalgamation or transfer of assets and liabilities and gives or give written notice to that effect to the society or societies concerned one month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor or creditors have been satisfied.

23 Division of societies

- (1) Any 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 two 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 the 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 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 subsection (9) and Section (7), 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);
 - (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 clause (iii) of subsection (8), the Registrar may refuse to register the new societies.
- (10) The registration of the new societies shall be a sufficient conveyance 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).

24 Conversion of company into society

- (1) A company registered under the Companies Act may, by a special resolution determine to convert itself into a registered society.
- (2) A resolution for the conversion of a company into a registered society shall be accompanied by a copy of the by-laws of the society therein referred to, and shall appoint 7 persons, members of the company, who, together with the secretary shall sign the by-laws, and who may either be authorised to accept any alterations made by the Registrar therein, without further consulting the company, or may be required to lay all such alterations before the company in general meeting for acceptance as the resolution may direct.

- (3) With the by-laws a copy of the special resolution for conversion of the company into a registered society shall be sent to the Registrar, who shall thereupon proceed to deal with the resolution as if it were an application for registration under section 7 of this Act.
- (4) A copy of the resolution for the conversion of the company into a registered society under the seal of the company, together with the certificate of registration issued by the Registrar, shall be sent for registration to the office of the Registrar of Companies, and, upon the registration of such resolution and certificate, the conversion shall take effect.
- (5) Upon the conversion of a company into a registered society the registry of the company under the Companies Act shall become void, and shall be cancelled by the Registrar of Companies; but the registration of a company as a registered society shall not affect any right or claim for the time being subsisting against the company, or any penalty for the time being incurred by such company, and, for the purpose of enforcing any such right, claim, or penalty, the company may be sued and proceeded against in the same manner as if it had not become registered as a society. And every such right or claim, and the liability to such penalty, shall have priority as against the property of such society over all other rights or claims against or liabilities of the society.

PART IV – RIGHTS AND LIABILITIES OF MEMBERS

25 Qualification for membership

- (1) 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 majority according to law;
 - (b) be resident within or in occupation of land within the society's area of operations as described by the by-laws.
- (2) Notwithstanding the provisions of subsection (1) a pupil over the age of 6 shall be qualified for membership of a registered school society.

26 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 rules or by-laws.

27 Registration 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.

28 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 equality of votes the chairman shall have a 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 rules or by-laws.

29 Representation by proxy

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

30 Contracts with society of members who are minors

The minority or non-age 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 rules 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 or non-age.

31 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.

32 Restrictions on transfer 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 rules.
- (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 one 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.

33 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 2 years 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 2 years reckoned from the date of his decease.

PART V – PROPERTY AND FUNDS OF REGISTERED SOCIETIES**34 Loans made by a registered society**

- (1) A registered society shall not, except as provided in section 37, 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 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.

35 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 rules or by-laws.

36 Restrictions on other transactions with non-members

Save as provided in this Act, 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 rules.

37 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 the Government; or
- (c) with any other registered society approved for this purpose by the Registrar; or
- (d) in any other mode approved by the Registrar.

38 Disposal of profits

- (1) At least one-fourth of the net profits of every registered society, as ascertained by the audit prescribed by section 39, shall be carried to a fund to be called the reserve fund, which shall be employed as prescribed by the rules:

Provided that the Registrar may, at his sole discretion, either on application by a registered society, or *ex proprio motu*, vary such proportion of the net profits of that registered society to be carried to the reserve fund. 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 condition as may be prescribed by the rules 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 a 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

39 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 of 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 security.

40 Power of registrar to inspect societies' book 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.

41 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 authorized 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 creditor, 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 a Magistrate's Court having jurisdiction 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.

PART VII. – DISSOLUTION

42 Dissolution of committee

- (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, however, 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 two 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 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. 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 by him under this section to manage the affairs of a registered society and holding office

immediately prior to the date on which the direction 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 if the society is indebted to any bank, except after prior consultation with the bank in regard to the dissolution of the committee and to the persons by whom and the manner in which the affairs of the society are to be managed and administered.
- (8) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 43 of this Act.

43 Dissolution

- (1) If the Registrar, after holding an inquiry or making an inspection under section 41 of this Act or on receipt of an application made by three-fourths of the members of a registered society, is of 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 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. 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.

44 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 societies if at any time it is proved to his satisfaction that the number of the members has been reduced to less than 5. Every such order shall take effect from the date thereof.

45 Effect of cancellation of registration

Where the registration of a society is cancelled by an order under section 43 or under section 44 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 15, 16, 17 and 18 shall be deemed to be vested in any liquidator appointed for that society by the Registrar.

46 Liquidation after cancellation of registration of society

Where the registration of a society is cancelled under section 43 or section 44 the Registrar may appoint one or more persons to be, subject to his direction and control, the liquidator or liquidators of the society.

47 Liquidator's powers

- (1) A liquidator appointed under section 46 shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under section 48, have power to —
 - (a) determine from time to time the contribution to be made by members and past members or by the estates of deceased members of the society to its assets;
 - (b) appoint a day by proclamation or 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 borne;
 - (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 for winding it up beneficially:

Provided that nothing herein contained shall entitle the liquidator of a creditor society to issue any loan; and

- (1) 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 rules 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 summons 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 manner as is provided in the case of a civil court.

48 Power 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 47;
- (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; or
- (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.

49 Enforcement of order

- (1) The decision of an arbitrator on any matter referred to him under section 48 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 47 or section 48 shall be enforced by any civil court having jurisdiction over the place where the registered office of the society is situated in the manner as decree of that court.

50 Closure of liquidation

- (1) In the liquidation of a society whose registration has been cancelled the funds, including the 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 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 that 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 Gazette; and, all claims against the funds of the society liquidated shall be prescribed when 2 years have elapsed from the date of the publication of the Gazette notice.
- (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 not be divided among the members but shall be devoted to any object or objects described in the by-laws of the society whose registration has been cancelled, and, where no object is so described, shall be deposited by the Registrar in a bank or with a registered society, until such time as another society operating in the same area shall have been registered when such surplus shall be transferred to such new society for the purpose of forming a reserve fund under the Rules:

Provided always that in the event of no society operating in the same area being registered within a period of 3 years from the date that the closing of the liquidation is published in the Gazette, the said surplus may be used by the Registrar for any Co-operative purpose at his discretion.

PART VIII – SURCHARGE AND ATTACHMENT

51 Registrar may order repayment or restoration of money or other property due to a Society

- (1) Where in the course of an audit under section 38, or an inquiry or inspection under section 41, or the winding-up of a registered society, it appears that any sum of money or other property is due to the society from any person who has taken part in the organisation or management of the society or from any past or present officer of the society, the Registrar may, of his own motion or upon the application of the Committee or the Liquidator or any creditor or contributory of the society, as the case may be, examine into the conduct of such person or officer and make an order requiring him —
 - (a) to repay with such interest as the Registrar thinks fit such money or part thereof;

- (b) to restore such other property or part thereof; or
- (c) to contribute such sum as the Registrar thinks fit to the assets of the society by way of compensation.

Before making any such order against any person, the Registrar shall give that person an opportunity of being heard and of showing cause why such order should not be made.

- (2) Where an order under subsection (1) for the repayment of any sum to a registered society, or for the contribution of any sum to its assets by way of compensation, has not been complied with, such sum may be recovered by the society on application to the Magistrate having jurisdiction in the division in which the registered place of business of the society is situated or in which the person or officer against whom the order was made resides or carries on business, as though it were a fine imposed by a sentence of the Magistrate.
- (3) Neither the preceding provisions of this section nor the making of any order thereunder may be deemed or construed to preclude or otherwise affect the institution or maintenance of a prosecution against any person or officer referred to in subsection (1) in respect of any offence under any other written law.

52 Attachment of property

Where the Registrar is satisfied that any person with intent to defraud or delay the execution of any order which may be made against him under section 47 or section 51 or of any decision that may be given in a dispute referred to the Registrar or to any arbitrators under any rules in that behalf in full for the time being is about to dispose of the whole or any part of his property, the Registrar may, unless adequate security is furnished, order the conditional attachment of such property, and such attachment shall have the same effect as if made by a competent court.

53 Appeal to the Minister

Any person aggrieved by any order of the Registrar made under section 51 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

54 Settlement of disputes

- (1) If any dispute touching the business of a registered 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 persons 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.

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 or 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 an appeal under subsection (3) shall be final and shall not be called in question in any civil court.
- (5) The decision of the Registrar under subsection 2(a) and the award of the arbitrator or arbitrators under subsection 2(b) 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 these awards together with the decision of the Registrar under subsection (4) shall be enforced in the same manner as if they had been judgments in a civil court.

55 Case stated on question of law

- (1) Notwithstanding anything contained in section 54, the Registrar at any time when proceeding to a decision under this Act, or the Minister at any time when an appeal has been preferred 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 the Supreme Court.
- (2) Any Judge of the Supreme Court may consider and determine any question of law so referred, and the opinion given on such questions shall be final and conclusive.

PART X – RULES

56 Rules

- (1) The Minister may make all such rules 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 rules may —
 - (a) prescribe the forms to be used 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 the provisions of section 31 of this Act 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 other officers, and for the procedure at meetings 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 the 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, of 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 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 of such arbitrator or arbitrators;

- (x) prescribe the procedure to be followed by a liquidator appointed under section 46 and the cases in which appeals shall lie from the orders of such liquidator;
- (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 rules.

PART XI – MISCELLANEOUS

57 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.

58 Powers to exempt any Society from requirements as to registration

Notwithstanding anything contained in this Act, the Minister may by special 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.

59 Power to exempts Societies from provisions of the Act

The Minister may by general or special 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.

60 Power to exempt from stamp duty and registration fees

- (1) 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 Act for the time being in force, instruments executed by or in 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.
- (2) A notification exempting any registered society from the fees referred to in paragraph (b) of subsection (1) may provide for the withdrawal of such exemption.

61 Prohibition of the use of the word “co-operative” or “fetokoni’aki”

- (1) No person other than a registered society shall trade or carry on business under any name or title of which the words “co-operative” or “fetokoni’aki” (its Tongan equivalent) 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 guilty of an offence and shall be liable on summary conviction to a fine not exceeding \$10, and in the case of a continuing offence to a further fine not exceeding \$2 for each day during which the offence continues.

62 Companies law and trade unions law not to apply

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

63 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 by-laws 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 not exceeding \$40 with costs, and to be ordered to deliver up all such property or repay, all moneys applied improperly, and in default of such delivery or repayment, or of the payment of such fine to be imprisoned for any time not exceeding 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.

64 Banks to give information

Notwithstanding anything in any other written law, the Registrar may, where he considers it necessary to do so, require any bank —

- (a) to furnish any information regarding the transactions of any registered society with the bank;
- (b) to produce a copy showing the account of the society with the bank from the ledger kept by the bank; or
- (c) to produce any cheques paid to the credit of the society or endorsed by the society.

65 Appointment by the Minister of special members to committees of national and secondary societies

- (1) Notwithstanding any other provisions of this Act, the Minister may, subject to the provisions of this section, appoint special members to the committee of any national society or of any secondary society if such national society or secondary 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.⁴
- (2) 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 and vice-chairman (if any) of the committee.
- (3) For the purposes of this section —
 - (a) a society shall be deemed to be in receipt of financial assistance from the Government —
 - (i) if within the immediately preceding 3 years the society has received any grant of money from the Government;
 - (ii) if any money has been lent to the society by the Government and the loan has not been repaid; or
 - (iii) if 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; and
 - (b) the expression “one-third” shall mean the nearest whole number below one-third.

66 Special members

- (1) A special member of a committee appointed under section 65 shall remain a member of the committee until his appointment is determined by the Minister.
- (2) Where the Minister has appointed special members to a committee any such special member may require that any decision taken by such 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 powers conferred by subsection (2) a special member appointed to a committee shall, unless the Minister otherwise directs, have all the powers which are had by the ordinary members of that committee.

67 Penalty for non-compliance with the Act

Where any registered society —

- (a) fails to give any notice, send any return or document or to do or allow to be done any act or thing which is required by this Act or the Rules made thereunder;
- (b) wilfully refuses or omits to do any act or to furnish any information required for the purposes of this Act or of the Rules by the Registrar or other authorised person;
- (c) does anything forbidden by this Act or by the Rules;
- (d) wilfully furnishes false or insufficient information or returns,

the society and every officer who is bound by the Rules or otherwise to fulfil the duty whereof the breach is an offence, unless such officer is proved to have been ignorant of or to have attempted to prevent the commission of the offence, shall be liable to a fine not exceeding \$100 and every such offence if continued shall constitute a new offence in every week during which the default continues.

68 Saving

Any co-operative society duly registered in terms of the Agricultural Organisation Act shall be deemed to be a co-operative society properly registered within the terms of this Act:

Provided that, within one year from the date of commencement of this Act, the members thereof approve the adoption of by-laws in accordance with the provisions of this Act or the Rules made in pursuance thereof, and that these by-laws are submitted to the Registrar and are approved by him

ENDNOTES

¹ 1988 Revised Edition Cap. 118; Acts 15 of 1973, 15 of 1981

Amended by Act 5 of 2012, commencement 30 July 2012

² Amended by Acts 42 of 2010 and 5 of 2012

³ Amended by Act 15 of 1981

⁴ Amended by Act 15 of 1981