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Cooperatives Act 1993 [18 MIRC Ch 2]

18 MIRC Ch 2

MARSHALL ISLANDS REVISED CODE 2004

TITLE 18 – SECURITIES, COOPERATIVES, AND NON-PROFIT CORPORATIONS

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Commencement: October 12, 1993

Source: P.L. 1993-67 P.L. 1994-84

PART I - GENERAL PROVISIONS AND DEFINITIONS

§201. Short Title.

This Chapter may cited as the Cooperatives Act of 1993. [P.L. 1993-67, §1.1.]

§202. Purpose.

The purpose of this Chapter is to promote, foster, and encourage the intelligent and orderly marketing of certain products through the formation of cooperative associations; to eliminate speculation and waste in the production and marketing of certain products; to make the distribution of cooperative products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of cooperative products. [P.L. 1993-67, §1.2.]

§203. Definitions.

As used in this Chapter:

- (a) 'Cooperative products' includes fishery products, agricultural products, handicrafts, and indigenous products and non-indigenous products;
- (b) 'Fishery products' includes fish, crustaceans, mollusks, and marine products for human consumption;
- (c) 'Agricultural products' includes copra, food crops, and all agro-forestry products;
- (d) 'Handicrafts' includes those traditional products commonly known as such and made by hand;
- (e) 'Indigenous products' includes those products generated from local resources;
- (f) 'Non-indigenous products' includes those products produced or manufactured outside of the Republic;
- (g) 'Member' includes members of cooperative associations without capital stock and holders of common stock in cooperative associations organized with shares of stock; and
- (h) 'Cooperative' or 'cooperative association' means any entity organized under this Chapter. [P.L. 1993-67, §1.3; amended by P.L. 1994-84, §2.]

§204. Nonprofit Status.

Cooperative associations shall be deemed 'nonprofit,' inasmuch as they are not organized to make profit for themselves or for their members, but only for their members as producers and/or procurers of cooperative products. [P.L. 1993-67, §1.4; amended by P.L. 1994-84, §2.]

§205. Applicability of Associations Law.

The provisions of the Associations Law, P.L. 1990-9 1, and all powers and rights thereunder, apply to cooperative associations, except where such provisions are in conflict with or inconsistent with the express provisions of this Chapter. [P.L. 1993-6 7, §1.5.]

§206. Inapplicability of Securities and Investment Act.

No cooperative association is subject in any manner to the terms of the Securities and Investment Act,

18 MIRC 1. [P.L. 1993-6 7, §1.6.]

§207. Exemption From Unfair Business Practices Act.

No cooperative association, and none of the marketing contracts and agreements between the cooperative association and its members or any agreements authorized in this Chapter, shall be deemed to be engaged in prohibited practices, be a conspiracy or a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of the Unfair Business Practices Act, 20 MIRC 3. [P.L. 1993-67, §1.7.]

§208. Statutory Construction.

Any provisions of law which are in direct conflict with this Chapter shall not be construed as applying to cooperatives. Any exemptions under any laws applying to cooperative products in the possession or under the control of the individual producer shall apply similarly and completely to such cooperative products delivered by its members, in the possession or under the control of the cooperative association. [P.L. 1993-67, §1.8.]

§209. Merger or consolidation.

Any two or more cooperatives may be merged into one such constituent cooperative association or consolidated into a new cooperative association. Such merger or consolidation shall be made in the manner prescribed by the Associations Law for domestic corporations. [P.L. 1993-67, §1.9.]

§210. Election to be Governed by this Chapter.

Any cooperative corporation created prior to the effective date of this Chapter may at any time subject itself to the provisions of this Chapter by amending its articles of incorporation in accordance with the manner prescribed in Part II.. [P.L. 1993-67, §1.10.]

§511. Filing Fee.

The fee for filing articles of incorporation under this Chapter shall be fifty dollars (\$50). [P.L. 1993-67, §1.11.]

PART II- FORMATION AND ARTICLES

§212. Authority to Form Cooperative.

Five or more persons, a majority of whom are residents of the Republic engaged in the production of cooperative products, may form a cooperative association, with or without shares of stock, under the provisions of this Chapter. [P.L. 1993-67, §2.1.]

§213. Execution and Filings of Articles.

Articles of incorporation shall be signed, acknowledged, and filed in the manner prescribed by the

Associations Law for domestic corporations. [P.L. 1993-67, §2.2.]

§214. Contents of Articles.

The articles of incorporation for each cooperative association shall state:

- (a) The name of the cooperative association;
- (b) The purposes for which it is formed;
- (c) The atoll or island where the principal office for the transaction of business of the cooperative is to be located;
- (d) The number of directors thereof, which shall be not less than three and may be any number greater than three; the term of office of such directors; and the names and residence of those who are to serve as directors for the first year, or until election and qualification of their successors; and
- (e) That it is a cooperative association formed under this Chapter. [P.L. 1993-67, §2.3.]

§215. Number and Par Value of Shares.

(1) If the cooperative association is organized with shares of stock the articles shall state the number of shares which may be issued and, if the shares are to have a par value, the articles shall state the par value of each share and the aggregate par value of all shares.

(2) If the shares are to be without par value it shall be so stated. [P.L. 1993-67, §2.4.]

§216. Classes of Shares.

If the shares are to be classified, the articles shall contain a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges and restrictions granted to or imposed upon the holders of the respective classes of stock. [P.L.1993-67, §2.5.]

§217. Membership Rights and Voting Power Where No Shares Issued.

If the cooperative association is organized without shares of stock, the articles shall state whether the voting power and the property rights and interest of each member are equal or unequal; and if unequal the general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be and are determined and fixed; and shall also provide for the admission of new members who shall be entitled to vote and to share in the property of the cooperative association with the old members, in accordance with such general rule or rules. [P.L. 1993-67, §2.6.]

§218. Amendment of Articles.

The articles of incorporation of any cooperative association may be altered or amended in the manner and for the purposes prescribed by the Associations Law for domestic corporations. [P.L. 1993-67, §2.7.]

PART III -BY-LAWS PROVISIONS

§219. Adoption, Repeal or Amendment of By-Laws.

Each cooperative association shall within thirty (30) days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with this Chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such by-laws and is effectual to repeal or amend any by-laws, or to adopt additional by-laws. The power to repeal and amend the bylaws, and adopt new by-laws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked. [P.L. 1993-67, §2.8.]

§220. Prohibited Transfers.

The by-laws shall prohibit the transfer of the common stock or membership certificates of the cooperative to persons not engaged in the production of the products handled by the cooperative association. [P.L. 1993-67, § 2.9.]

§221. Quorum, Voting, Directors, Penalties.

The by-laws may provide:

- (a) The number of members constituting a quorum;
- (b) The right of members to vote by proxy or by mail or both, and the conditions, manner, form and effects of such votes; the right of members to cumulate their votes and the prohibition, if desired, of cumulative voting;
- (c) The number of directors constituting a quorum;
- (d) The qualifications, compensation and duties and term of office of directors and officers and the time of their election; and
- (e) Penalties for violations of the bylaws. [P.L. 1993-67, §2.10.]

§222. Membership, Fees, Dividends.

The by-laws may provide:

- (a) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.
- (b) The amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the cooperative association; the charge, if any, to be paid by each member for services rendered by the cooperative association to him and the time of payment and the manner of collection; and the marketing contract between the cooperative association and its members which every member may be required to sign.
- (c) The amount of any dividends which may be declared on the stock or membership

capital, which dividends shall not exceed twenty (20) percent per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any cooperative association organized hereunder. [P.L. 1993-67, §2.11.]

§223. Qualifications and Limitations Upon Membership Rights -Valuation of Interest.

The by-laws may provide:

- (a) The number and qualification of members of the cooperative association and the conditions precedent to membership or ownership of common stock;
- (b) The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock;
- (c) The manner of assignment and transfer of the interest of members and of the shares of common stock;
- (d) The conditions upon which and time when membership of any member shall cease;
- (e) For the automatic suspension of the rights of a member when he ceases to be eligible to membership in the cooperative association; and the mode, manner and effect of the expulsion of a member; and
- (f) The manner of determining the value of a member's interest and provision for its purchase by the cooperative association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership, or at the option of the cooperative association, the purchase fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders. [P.L. 1993-67, §2.12.]

§224. Meetings.

The by-laws may provide for the time, place, and manner of calling and conducting meetings of the cooperative association. [P.L. 1993-67, §2.13.]

§225. Division of Territory Into Districts - Directors From Districts.

The by-laws may provide that the territory in which the cooperative association has members shall be divided into districts and that directors shall be elected from the several districts. In such case, the bylaws shall specify the number of directors to be elected of each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the cooperative association. [P.L. 1993-67, §2.14; amended by P.L. 1994-84, §2.]

§226. Representatives and Advisers From Districts.

The by-laws may provide that the territory in which the operative association has members shall be divided into districts, and that the directors shall be elected by representatives or advisers who themselves have been elected by the members from the several territorial districts. In such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, manner and method of reapportioning the representatives or advisers and of redistricting the territory covered by the cooperative association. [P.L. 1993-67, §2.15, amended by P.L. 1994-84, §2.]

§227. Primary Elections to Nominate Directors.

The by-laws may provide that primary elections shall be held to nominate directors. Where the by-laws provide that the territory in which the cooperative association has members shall be divided into districts, the bylaws may also provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the cooperative association. [P.L.1993-67, §2.16.]

§228. Directors Nominated.

The by-laws may provide that one or more directors may be nominated by any public official or commission or by the other directors selected by the members. Such directors shall represent primarily the interest of the general public in such cooperatives. The directors so nominated need not be members of the cooperative association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors. [P.L. 1993-67, §2.17.]

§229. Directors Terms of Office.

The by-laws may provide that directors shall be elected for terms of from one to five years; provided, that at each annual election the same fraction of the total number of directors shall be elected as one year bears to the number of years of the term of office. [P.L. 1993-67, §2.18.]

§230. Executive committee.

The by-laws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board. [P.L. 1993-67, §2.19.]

§231. Voting by Mail.

(1) The by-laws may provide for either or both of the following types of voting by mail:

(a) That the secretary shall send to the members a copy of any proposal scheduled to be offered at a meeting, together with the notice of said meeting, and that the mail votes cast by the members shall be counted together with those cast at the meeting if such mail votes are returned to the association within a specified number of days; or

(b) That the secretary shall send to any member absent from a meeting an exact copy of the proposal acted upon at the meeting, and that the mail vote of the member upon such proposal, if returned within a specified number of days, shall be counted together with the votes cast at said meeting.

(2) The articles or by-laws may also determine whether and to what extent mail votes shall be counted in computing a quorum.

(3) If an association has provided for voting by mail, any provision of this chapter referring to votes

cast by the members shall be construed to include the votes cast by mail. [P.L. 1993-67, §2.20.]

§232. Referendum of Acts of Directors.

The by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least ten percent (10%) of all the members or by vote of at least a majority of the directors: Provided, however, that the rights of third parties which have vested between the time of such action, and such referendum shall not be impaired thereby. [P.L. 1993-67, §2.21.]

PART IV- OFFICERS

§233. Board of Directors.

The affairs of the cooperative association shall be managed by a board of not less than three directors elected by the members from their own number. [P.L. 1993-6 7, §3.1.]

§234. Meetings of Board.

Meetings of the board of directors may be held at any place within or without the Republic fixed by a quorum thereof unless otherwise provided in the articles of incorporation or by-laws. [P.L. 1993-67, §3.2.]

§235. Vacancy on Board.

When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, provided that when the by-laws provide for an election of directors by districts, the vacancy shall be filled by the election of a director from the district in which the vacancy occurs; or the board of directors may call a special meeting of the members in that district to fill the vacancy. [P.L. 1993-67, §3.3.]

§236. Officers Elected by Directors.

The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and a treasurer, who need not be directors or members of the cooperative association; and they may combine the two latter offices and unite both functions and titles in one person. The treasurer may be a bank or any depository and, as such, shall not be considered as an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as and where authorized by the board of directors. Any vacancy in any office, other than that of director, shall be filled by the board of directors. [P.L. 1993-67, §3.4.]

§237. Compensation of Officers and Directors.

A cooperative association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee. [P.L. 1993-67, §3.5]

§238. Petition for Removal.

Any member may bring a complaint against an officer or director by filing a complaint in writing with the secretary of the cooperative association, together with a petition signed by five percent (5%) of the members, requesting the removal of the officer or director in question. [P.L. 1993-67, §3.6.]

§239. Voting Required for Removal.

Except as provided in Section 241, the removal shall be voted upon at the next regular or special meeting of the cooperative association and, by a vote of a majority of the members, the cooperative association may remove the officer or director. [P.L. 1993-67, §3.7.]

§240. Right to Hearing on Complaint for Removal.

The director or officer, against whom such complaint have been brought, shall be informed in writing of the complaint previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the complaint against him shall have the same opportunity. [P.L. 1993-67, §3.8.]

§241. Removal of District Director.

If the by-laws provide for election of directors by districts with primary elections in each district, the petition for removal of a director shall be signed by twenty percent (20%) of the members residing in the district from which he was elected. The board of directors shall call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority of the members of that district, the director in question shall be removed from office. [P.L. 1993-67, §3.9.]

PART V - MEMBERS

§242. Eligibility for Membership.

(1) Under the terms and conditions prescribed in the by-laws, a cooperative association may admit as members, or issue common stock to, only such persons as are engaged in the production and/or procurement of cooperative products to be handled by or through the cooperative association, including the lessees and tenants of boats and equipment used for the production of such cooperative products and any lessors and landlords who receive as rent all or part of the cooperative product produced by such leased equipment.

(2) If a member of a nonstock cooperative association is other than a natural person, such member may be represented by any individual duly authorized in writing.

(3) One cooperative association may become a member or stockholder of any other cooperative association. [P.L. 1993-67, §4.1; amended by P.L. 1994-84, §2.] [Paragraphs numbered as subsections to conform to new Code Format (Rev.2003)]

§243. Certificate of Membership.

When a member of a cooperative association established without shares of stock has paid his membership fee in full, he shall receive a certificate of membership. [P.L. 1993-67, §4.2.]

§244. Liability for Debts of the Cooperative Association.

No member shall be liable for the debts of the cooperative association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof. [P.L. 1993-67, §4.3.]

§245. Meetings of Members.

Meetings of members shall be held at the place as provided in the by-laws; and if no provision is made, on the atoll or island where the principal place of business is located at a place designated by the board of directors. [P.L. 1993-67, §4.4.]

§246. Appraisal and Payment of Member's Property Interest Upon Expulsion.

In case of the expulsion of a member, and where the by-laws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his property interest in the cooperative association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion. [P.L. 1993-67, §4.4.]

PART VI- STOCK

§247. Issuance of Stock Certificate.

No cooperative association shall issue a certificate for stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the cooperative association as full or partial payment. The cooperative association shall hold the stock as security for the payment of the note; but such retention as security shall not affect the member's right to vote. A cooperative association, in its by-laws, may limit the amount of common stock which one member may own. [P.L. 1993-67, §5.1.]

§248. Common Stock-Voting Power.

One class of stock shall always be known as common stock and voting power may be restricted to holders of common stock. [P.L. 1993-67, §5.2.]

§249. Restriction on Transfer of Common Stock.

There shall be printed upon each common stock certificate a statement that the transfer thereof to any person not engaged in the production of the products handled by the cooperative association is prohibited by the bylaws of the cooperative association. [P.L. 1993-67, §5.3.]

§250. Limitation on Distinction Between Classes of Stock.

Except as to the matters and things stated in the articles of incorporation no distinction shall exist between classes of stock or the holders thereof. [P.L. 1993-67, §5.4.]

§251. Issuance of Non-par Stock.

If a cooperative association issues non-par value stock the issuance of such stock shall be governed by the terms of the Associations Law covering the issuance of non-par value stock in domestic corporations. [P.L. 1993-67, §5.5.]

§252. Power of Cooperative Association to Purchase Its Own Common Stock.

A cooperative association may, at any time, as specified in the by-laws, except when the debts of the cooperative association exceed fifty percent (50%) of its assets, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors and pay for it in cash within one year thereafter. [P.L. 1993-6 7, §5.6.]

§253. Purchases by Cooperative Association with Preferred Shares of Stock.

Whenever a cooperative association, organized with preferred shares of stock, purchases the stock or any property, or any interest in any property of any person, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case, the transfer to the cooperative association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [P.L. 199367, §5.6.]

PART VII- POWERS

§254. Authorized Activities.

A cooperative association may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, farming, packing, grading, storing, handling, or utilization of any cooperative products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof: or any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any such activities. [P.L. 1993-67, §6.1.]

§255. Power to Borrow and Make Advances to Members.

A cooperative association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members. [P.L. 1993-67, §6.2.]

§256. Power to Act as Agent.

A cooperative association may act as the agent or representative of any member or members in any of the two next preceding sections. [P.L. 1993-67, §6.3.]

§257. Power to Establish Reserves and Invest Funds Thereof.

A cooperative association may establish reserves and invest the funds thereof in bonds or in such other property as may be provided in the by-laws. [P.L. 1993-67, §6.4.]

§258. Power to Acquire Stocks and Bonds.

A cooperative association may purchase or otherwise acquire, hold, own, and exercise all rights of ownership in, sell, transfer, pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or cooperative association engaged in any related activity or in the warehousing or handling or marketing or packing or manufacturing or processing or preparing for market of any of the cooperative products handled by the cooperative association. [P.L. 1993-67, §6.5.]

§259. Power to Own Realty and Personality.

A cooperative association may buy, hold and exercise all privileges or ownership, over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the cooperative association, or incidental thereto. [P.L. 1993-67, §6.6.]

§260. Power to Levy Assessments.

A cooperative association may levy assessments in the manner and in the amount provided in its by-laws. [P.L. 1993-67, §6.7.]

§261. Power to Do Acts Necessary to Accomplish Purposes.

A cooperative association may do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects enumerated in this Chapter; or conducive to or expedient for the interest or benefit of the cooperative association; and contract accordingly; and in addition exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the cooperative association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of the Republic to ordinary corporations, except such as are inconsistent with the express provisions of this Chapter; and, do any such thing anywhere. [P.L. 1993-67, §6.8.]

§262. Use of Association's Facilities.

A cooperative association may use or employ any of its facilities for any purpose; provided, the proceeds arising from such use and employment go to reduce the cost of operation for its members; but the cooperative products of non-members shall not be dealt in an amount greater in value than such as are handled by it for its members. [P.L. 1993-67, §6.9.]

§263. Association's Interest in Other Corporations - Warehousing Corporations.

(1) A cooperative association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the cooperative products handled by the cooperative association, or the by-products thereof.

(2) If such corporations are warehousing corporations, they may issue legal warehouse receipts to the

cooperative association against the cooperative products delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of the Republic, its warehouse receipt delivered to the cooperative association on cooperative products of the cooperative association or its members, or delivered by the cooperative association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the cooperative association. [P.L. 1993-67, §6.10.]

§264. Agreements With Cooperatives or Other Cooperatives.

Any cooperative association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative or other corporation, association, or associations, formed in this or other country, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more cooperatives may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective business. [P.L. 1993-67, §6.11.]

PART VIII- MARKETING CONTRACTS

§265. Marketing Contracts.

A cooperative association and its members may make and execute marketing contracts requiring the members to sell, for any period of time, not over fifteen (15) years, all or any specified part of their cooperative products or specified cooperative products exclusively to or through the cooperative association or any facilities to be created by the cooperative association. [P.L. 1993-67§7.1.]

§266. Passage of Title of Products Sold to Cooperative Association.

If the members contract a sale to the cooperative association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the cooperative association upon delivery or at any other time expressly and definitely specified in the contract. [P.L. 1993-67, §7.2.]

§267. Sale or Resale by Cooperative Association - Payment to Members After Deductions.

The contract may provide that the cooperative association may sell or resell the cooperative products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding eight percent (8%) per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock. [P.L. 1993-67, §7.3.]

§268. Breach of Contract by Member-Provisions for Liquidated Damages and Costs.

The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the cooperative association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of cooperative products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the cooperative association; and any such provisions shall be valid and enforceable in the courts of the Republic; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties. [P.L. 1993-67, §7.4.]

§269. Breach of Contract by Member Cooperative Association's Right to Injunctive Relief and Specific Performance.

In the event of any such breach or threatened breach of such marketing contract by a member, the cooperative association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing sufficient bond, the cooperative association shall be entitled to a temporary restraining order and preliminary injunction against the member. [P.L. 1993-67, §7.5.]

§270. Presumption as to Landlord and Lessors.

In any action upon such marketing agreements, it shall be conclusively presumed that a landlord or lessor is able to control (the delivery of cooperative products produced by his equipment by) tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for non-delivery or breach shall lie and be enforceable against such landlord or lessor. [P.L. 1993-67, §7.6.]

§271. Contracts Specifically Enforceable.

A contract entered into by a member of a cooperative association providing for the delivery to such cooperative association of products produced or acquired by the member, may be specifically enforced by the cooperative association to secure the delivery to it of such cooperative products, any provisions of law to the contrary notwithstanding. [P.L. 1993-67, §7.7.]

PART IX - ALLOCATION AND DISTRIBUTION

§272. Allocation and Distribution of Net Earnings.

(1). At least once a year the members and/or the directors, as the articles or by-laws may provide, shall apportion the net earnings of the association in the following order:

(a) Not less than ten percent (10%) shall be placed in a reserve fund until such time as the fund shall equal at least fifty percent (50%) of the paid-up capital; and such funds may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so, in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of the Associations Law.

(b) In addition to such mandatory reserve, special reserves necessary to further protect the interests of the members shall be established when required-

(i) by the Registrar of Corporations;

(ii) by regulations; or

(iii) when authorized by the board of directors. [P.L. 1993-67, §8.1.]

[Section renumbered to conform to Code format (Rev.2003)]**PART X - AUDIT RECORDS****§273. Books - Auditing.**

To record its business operation, every association shall keep a set of books, which shall be audited at the end of each fiscal year by an experienced bookkeeper or accountant, who shall not be an officer or director, and which shall be subject to audit by the Office of Auditor-General. Where the gross sales amount to less than ten thousand dollars (\$10,000), the audit may be performed by an auditing committee of three, who shall not be directors, officers, or employees. A written report of the audit, including a statement of the amount of business transacted with members, and the amount transacted with non-members, the balance sheet, and the income and expenses, shall be submitted to the annual meeting of the association. **[P.L. 1993-67, §9.1]**

§274. Annual Report of Cooperative Association.

(1) Every association shall annually, within sixty days of the close of its operations for that year, make a report of its condition, sworn to by the president and secretary, which report shall be filed with the Registrar of Corporations. The report shall state:

- (a) The name and principal address of the cooperative association;
- (b) The names, addresses, occupations, and date of expiration of the terms, of the officers and directors, and their compensation, if any;
- (c) The amount and nature of its authorized, subscribed, and paid-in capital, the number of its shareholders, and the number admitted and withdrawn during the year, the par value of its shares and the rate at which any return upon capital has been paid. For non-share associations the annual report shall state the total numbers of members, the number admitted or withdrawn during the year, and the amount of membership fees received;
- (d) The receipts, expenditures, assets, and liabilities of the association;
- (e) Such other information as the Ministry of Finance or the Office of Planning deems necessary.

(2) A copy of this report shall be kept on file at the principal office of the association.

[P.L. 1993-67, §9.2.]

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