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# Papua New Guinea Consolidated Legislation

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## Co-operative Societies Act 1982

Chapter 389.

[Co-operative Societies Act 1982.](#)

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 389.

[Co-operative Societies Act 1982.](#)

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## INDEPENDENT STATE OF PAPUA NEW GUINEA.

### AN ACT

entitled

#### *Co-operative Societies Act 1982.*

Being an Act to provide for the establishment of Co-operative Societies and for related purposes.

#### PART I. – PRELIMINARY.

##### 1. INTERPRETATION.

In this Act, unless the contrary intention appears—

- “Assistant Registrar” means an Assistant Registrar appointed under Section 2, and includes the Registrar;
- “the Board” means a Board of Directors elected under Section 67;
- “bond” includes debenture whether registered or unregistered;
- “certificate” means a certificate of registration as a society issued under Section 28;
- “charge” includes a mortgage and an agreement to give or execute a charge or mortgage whether on demand or otherwise;
- “the commencement date” means 8 April 1982, being the date on which the *Co-operative Societies Act 1982* came into force;
- “the Court” means the National Court;
- “financial year” means a year ending on 31 December of each year, or such other period as the Registrar may approve in relation to a society or class of societies;
- “member” means a person who is entered on the books of the society as a member of that society;
- “net surplus” means that amount of the income of the society remaining after the deduction from the gross income of the society of all expenses and provisions for expenses or losses chargeable against that gross income;
- “officer” includes a Director, Secretary, Treasurer or other person empowered under the rules to give directions concerning the business of a society;

“person” includes a society and corporation not being a society when that corporation is approved by the Registrar;  
“Registrar” means the Registrar of Co-operative Societies appointed under Section 2;  
“rules” means the rules of a society approved under Section 29 and includes any amendment so approved;  
“society” means a society, association, federation or composite society registered under this Act;  
“this Act” includes the regulations.

## **PART II.** – ADMINISTRATION.

### ***Division 1.***

Registrar and Assistant Registrars, etc.

#### **2. APPOINTMENT OF REGISTRAR AND ASSISTANT REGISTRARS.**

(1) The Minister may by notice in the National Gazette appoint–

- (a) a Registrar of Co-operative Societies; and
- (b) one or more Assistant Registrars of Co-operative Societies.

(2) The Registrar and Assistant Registrar shall have such powers and functions as are provided in this Act or as are prescribed.

#### **3. ACTING REGISTRAR.**

During the absence from duty of the Registrar by reason of illness, leave of absence or other cause or during a vacancy in the office of Registrar, all powers and functions of the Registrar may be exercised by an Acting Registrar appointed by the Minister.

#### **4. DELEGATION.**

The Registrar may by writing under his hand delegate to a person any of his powers or functions (except this power of delegation).

#### **5. SEAL OF OFFICE.**

(1) The Registrar shall have a seal of office.

(2) All documents required to be issued by the Registrar shall be issued over his seal of office and all courts and persons acting judicially shall presume that the seal was duly affixed.

#### **6. CUSTODY OF DOCUMENTS, ETC.**

The Registrar shall have custody and be responsible for all documents that are required by this Act to be lodged in the office of the Registrar.

### ***Division 2.***

Advisers.

#### **7. APPOINTMENT OF ADVISER.**

The Registrar may, by writing over his seal at the request of a society appoint a person to be an adviser to the society.

## 8. FUNCTIONS.

The functions of an adviser shall be—

- (a) to assist the society in relation to which he is appointed; and
- (b) to advise that society in the implementation of its functions; and
- (c) to carry out such other functions in the furtherance of the aims of the society as may from time to time be agreed on between the society, the adviser and the Registrar.

## 9. SERVICES OF ADVISER TO BE WITHOUT CHARGE.

The services of an adviser shall be without charge or cost to the society in relation to which he is appointed.

### ***Division 3.***

General Powers and Functions of Registrar.

## 10. INFORMATION IN RESPECT OF APPLICATION.

The Registrar may, in relation to an application made under this Act, require the applicant to provide such further information as, in his opinion, is necessary to determine whether or not the application should be granted.

## 11. INFORMATION AS TO SOCIETIES.

(1) Notwithstanding anything in this Act, the Registrar may, in relation to a society, at any time request that society to furnish him evidence to his satisfaction that—

- (a) the society is bona fide carrying on business in accordance with this Act; and
- (b) the society is, in its operations, complying with the requirements of this Act.

(2) A society must not, without just cause (proof of which is on it) refuse to comply with a request made under Subsection (1).

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K40.00.

## 12. EXAMINATION OF DOCUMENTS, ETC.

(1) The Registrar, or a person authorized in writing by the Registrar, may at all reasonable times examine and take copies of all documents relating to the affairs of a society whether in the custody of the society or otherwise.

(2) The Registrar, or a person authorized by him, may at any time in the presence of an officer of a society, inspect, examine and count any cash and securities in the custody of that society.

(3) A person who, without lawful excuse (proof of which is on him) impedes or interferes with the Registrar or authorized person in the exercise of the powers conferred on him under this section is guilty of an offence.

Penalty: A fine not exceeding K80.00.

## 13. QUESTIONS DURING INSPECTION.

A member, Director of the Board, officer or employee of a society shall not without reasonable excuse (proof of which is on him) refuse or fail to answer fully and adequately a question put to him by the Registrar, or person authorized under Section 12, in the exercise of a power or function conferred by that section.

#### **14. SPECIAL MEETING.**

(1) The Registrar may—

- (a) on the application of the majority of the Board; or
- (b) on the application of not less than one-third of the members; or
- (c) on his own motion,

by written notice to a society, convene a special meeting of the society.

(2) Before giving notice under Subsection (1) the Registrar may require the applicants to give security, to the satisfaction of the Registrar, in respect of any costs likely to be reasonably incurred.

(3) A notice under Subsection (1) shall specify—

- (a) a description of the applicants; and
- (b) the time and place where the meeting is to be held; and
- (c) the matters to be considered at the meeting.

(4) The Registrar shall take such steps as to him seem necessary to ensure that members of the society are advised of the contents of a notice issued under Subsection (1) in order that they may attend the special meeting.

(5) A meeting convened under this section shall have all the powers of a meeting called in accordance with the rules of the society and, in addition, notwithstanding a rule to the contrary, the power to elect its own chairman.

(6) The reasonable costs to the State as assessed by the Registrar of convening a meeting under this section shall be payable—

- (a) by the applicants; or
- (b) by the society; or
- (c) by an officer, member or former officer or former member,

by some or all of them in proportions determined by the Registrar, and may be recovered as a debt due to the State.

#### **15. ENQUIRY MAY PRECEDE MEETING, ETC.**

Where an application is made to the Registrar under Section 14(1) he may, before convening a special meeting under that section or instead of calling such a meeting, make such enquiry as he thinks fit, either personally or by some person authorized by him for the purpose, into the workings and operation of the society to which the application relates.

#### **16. REMOVAL OF DIRECTOR, OFFICER OR EMPLOYEE.**

(1) The Registrar may, by written notice to a society on the grounds to be stated in the notice, direct that—

- (a) a Director; or
- (b) an officer; or
- (c) an employee,



of the society shall, on and after a date to be shown in the notice, cease to hold office as a Director or officer or be employed as an employee, as the case may be.

(2) A person to whom a direction under Subsection (1) applies and who had notice of that direction and who, after the last date on which the direction can be questioned, exercises or purports to exercise the powers and functions of a Director, officer or employee, as the case may be, of the society, is guilty of an offence.

Penalty: A fine not exceeding K80.00.

Default penalty: A fine not exceeding K40.00.

## **17. INSPECTION OF COPIES OF DOCUMENTS, ETC.**

(1) The Registrar shall, on application by a person and on payment of the prescribed fee, permit that person to inspect the certificate of registration and the rules of a society and any other document required to be lodged with the Registrar under this Act.

(2) The Registrar shall, on payment of the prescribed fee, issue a certified copy of a certificate, the rules or other document referred to in Subsection (1).

## **18. APPEAL FROM DECISION OF THE REGISTRAR.**

A person aggrieved by a decision of the Registrar under this Act may, within one month of receiving notice of that decision or within such further time as the Minister allows, appeal to the Minister who may—

- (a) annul the decision; or
- (b) vary the decision; or
- (c) confirm the decision; or
- (d) substitute another decision,

and the Minister's decision is final.

## **19. ANNUAL REPORT.**

(1) The Registrar shall, as soon as practicable after 31 December in each year, forward to the Minister a report, in a form approved by the Minister, of the functioning of this Act and the principal matters transacted by him in the course of the year immediately preceding that date.

(2) The Minister shall cause the report under Subsection (1) to be tabled at the sitting of the Parliament next following his receipt of the report.

## **PART III. – FORMATION AND REGISTRATION OF SOCIETIES.**

### ***Division 1.***

Proposed Societies.

## **20. INTERPRETATION OF DIVISION 1.**

For the purpose of this Division, “an eligible person” means an automatic citizen of Papua New Guinea who is of or over the age of 18 years.

## **21. PROPOSED SOCIETIES.**

Subject to this Act, any number of eligible persons not being less than seven who desire to promote common economic and social interest in accordance with co-operative principles may apply

for registration as a society.

## **22. PRE-REGISTRATION REQUIREMENTS.**

The Registrar shall not consider an application for registration unless he is satisfied that a meeting of the proposed society has been held and—

- (a) the meeting has been attended by at least seven eligible persons; and
- (b) the meeting has agreed to a written statement showing—
  - (i) the objects of the proposed society; and
  - (ii) the reason for believing that the proposed society will be able to achieve its objects; and
  - (iii) the rules under which the proposed society will operate.

## **23. ELECTION OF BOARD AND OFFICERS.**

As soon as seven or more eligible persons present at the meeting, referred to in Section 22, have—

- (a) agreed to the statement referred to in that section; and
- (b) signed an application form for membership of the proposed society, those persons may, in accordance with the rules of the proposed society, elect—
- (c) a Board of Directors; and
- (d) such other officers as are provided for in the rules of the proposed society.

## **24. APPLICATION FOR REGISTRATION.**

Within two months of their election under Section 23, the Board shall apply or cause application to be made to the Registrar for registration as a society under this Act.

## **25. ATTACHMENTS TO APPLICATION.**

An application for registration shall be in duplicate and shall be forwarded to the Registrar accompanied by the following documents:—

- (a) two copies of the statement referred to in Section 22 (b); and
- (b) two copies of the proposed rules signed by any two Directors of the proposed society; and
- (c) two copies of a list showing the full names, descriptions and addresses of all the Directors; and
- (d) two copies of a list of eligible persons who have applied for membership of the proposed society; and
- (e) the full name, address and office of other office-holders (if any) elected at the meeting; and
- (f) two copies of a statement showing the name of the society.

### ***Division 2.***

Registration and Incorporation.

## **26. POWERS OF REGISTRAR ON REGISTRATION.**

On receipt of an application under Section 24 the Registrar may—

- (a) register the proposed society as a society; or

- (b) in writing, request the proposed society to amend their application to conform to this Act and treat the amended application as a fresh application under this section; or
- (c) by notice over his seal to the proposed society, refuse, on grounds to be stated in the notice, to register the proposed society.

## **27. REFUSAL TO REGISTER.**

(1) The Board of a proposed society, the registration of which is refused, shall, within two months after the decision of the Registrar to refuse to register the proposed society can no longer be questioned, refund to the members of the proposed society the amount subscribed by them, less an amount in proportion to the amount subscribed, equal in the aggregate to such sum (if any) certified by the Registrar as being reasonably incurred in connection with the application for registration.

(2) A Board must not refuse or fail to comply with the requirements of Subsection (1) and, in the case of a failure or refusal, each Director is guilty of an offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K4.00.

## **28. PUBLICATION OF REGISTRATION.**

Where the Registrar registers a society under this Act he shall—

- (a) issue a certificate of registration in the prescribed form; and
- (b) cause notice of registration to be published in the National Gazette.

## **29. APPROVAL OF PROPOSED RULES.**

On registration of a society the Registrar shall endorse his approval on all or portion of the proposed rules and the whole, or that proportion of the proposed rules so approved, shall be the rules of that society.

## **30. INCORPORATION.**

On and from the date shown in the certificate as the date on which a society was registered, the society—

- (a) shall be a corporation by the name under which it is registered, or such other name under which it may from time to time be registered; and
- (b) shall have perpetual succession and a common seal; and
- (c) has power to—
  - (i) hold property; and
  - (ii) enter into contracts; and
  - (iii) institute and defend actions, suits and legal proceedings; and
  - (iv) do all things necessary for the furtherance of its objects as set out in its rules.

## **31. LIMITATION OF LIABILITY.**

The liability of a member of a society shall, subject to this Act, be limited—

- (a) to the nominal value of shares held by him; and
- (b) to any fees or charges due and unpaid by him to the society.

### 32. NAME OF SOCIETY.

- (1) The name of a society shall include the word “Co-operative” as part of it.
- (2) The word “Limited” or the contraction “Ltd” shall be the last word in the name of a society.
- (3) A description of a society shall not be deemed to be inadequate or incorrect by reason of—
  - (a) the abbreviation “Ltd” instead of the word “Limited”; or
  - (b) the abbreviation “Co-op” instead of the word “Co-operative”; or
  - (c) the symbol “&” instead of the word “and”; or
  - (d) any of such words instead of the corresponding abbreviation or symbol, contained in the name of a society.

### 33. RESTRICTION ON REGISTRATION OF NAMES.

Except with the consent of the Minister, the Registrar shall not register a society by a name, if that name is, in the opinion of the Registrar, undesirable or is a name or a name of a kind which the Minister has, under Section 22 of the [Companies Act 1997](#), directed the Registrar of Companies not to accept for registration under that Act.

### 34. CHANGE OF NAME OF SOCIETY.

- (1) A society may, by special resolution, change its name.
- (2) Within one month of the passing of the special resolution referred to in Subsection (1), a society shall apply to the Registrar to have the change of name endorsed on the certificate of the society.
- (3) An application under Subsection (2) shall be accompanied by the certificate held by the society and a copy of the special resolution over the seal of the society.

### 35. ENDORSEMENT OF CHANGE OF NAME.

- (1) On receipt of an application under Section 34, the Registrar may, subject to Section 33—
  - (a) endorse the new name on the certificate; and
  - (b) notify the society of the endorsement; and
  - (c) cause the change of name of the society to be notified in the National Gazette; and
  - (d) require the society to take such steps as may to him seem necessary or desirable to ensure that notice of the change of name is brought to the attention of persons interested or affected.
- (2) A society must not refuse or fail to comply with a requirement under Subsection (1)(d).

Penalty: A fine not exceeding K100.00.

### 36. EFFECT OF CHANGE OF NAME.

- (1) A right or obligation of a society, a member or any other person shall not be affected by a change in the name of the society, and legal proceedings by or against the society shall not be rendered defective by the change of name.
- (2) Any legal proceedings that might have been continued or commenced by or against a society in its former name may be continued or commenced by or against that society in its new name.

### 37. REGISTERED OFFICE.

(1) A certificate shall show the address of the registered office of the society to which it relates.

(2) A change in the address of the registered office shall, within two weeks of the change, be notified to the Registrar who shall—

- (a) endorse the notice of the change of address on the certificate; and
- (b) cause notice of the change of address to be notified in the National Gazette.

(3) A notification under Subsection (2) shall be accompanied by the copy of the certificate of registration held by the society.

### **Division 3.**

Powers of a Society.

### **38. GENERAL POWERS.**

(1) Subject to this Act, a society shall have power to do all things necessary or convenient to carry out its objects as expressed in its rules.

(2) In addition to and not in derogation of the powers referred to in Subsection (1), a society may, if permitted by its rules, in furtherance of its objects do all or any of the following things:—

- (a) raise money on loan for any of the objects of the society;
- (b) receive money on deposit;
- (c) acquire, by purchase or otherwise, shares in any other society;
- (d) make advances to its members against products delivered to the society;
- (e) invest in shares of companies carrying on business in the country or elsewhere when that investment is approved or is of a class approved by the Registrar.

### **39. SPECIFIC LIMITATIONS ON UNDISCHARGED LIABILITY.**

(1) The Registrar may, from time to time, by written notice to a society, specify an amount as being the aggregate of the amount of undischarged liability that the society may incur.

(2) In a notice under Subsection (1), the Registrar may, from time to time—

- (a) vary the amount of undischarged liability specified; or
- (b) specify the total amounts of undischarged liability of various classes that may be incurred.

(3) A society must not refuse or fail—

- (a) to comply with a notice under Subsection (1); or
- (b) to comply with any direction of the Registrar with regard to—
  - (i) the reduction of its total undischarged liability; or
  - (ii) a variation in the amount of a class of its undischarged liability.

Penalty: A fine not exceeding K200.00.

### **40. MONEY ON DEPOSIT TO BE AUTHORIZED.**

Where a rule of a society authorizes that society to raise money on loan, that rule, in the

absence of express provision to the contrary, shall not be deemed to authorize the society to receive money on interest bearing deposit but the society may raise money by charging its property or by the issue of bonds or otherwise.

#### **41. BOND.**

(1) Subject to this section, a bond referred to in Section 40—

- (a) shall be in the prescribed form; and
- (b) shall be issued, transferred and redeemed in the prescribed manner; and
- (c) shall be replaced when lost or destroyed subject to the prescribed conditions; and
- (d) shall not be issued on the security of any property of the society.

#### **42. MONEY ON DEPOSIT.**

(1) Subject to Section 40, where a society has power to receive money on interest bearing deposit, it shall not receive money on a term that less than one month's notice may be given for its repayment.

(2) A person lodging money with a society on deposit shall not be bound to see to its application or be prejudiced by the fact that the society was not authorized to receive the loan or that the society exceeded its powers in accepting the loan or deposit.

#### **43. RESTRICTION OF AGREEMENTS.**

(1) The Registrar may, where in his opinion it is necessary or desirable in the interests of a society to do so, by written notice to the society, prohibit the entering into an agreement by that society where the consideration or the value of the consideration passing under the agreement exceeds an amount specified in the notice.

(2) A prohibition under Subsection (1) may be expressed to relate to an agreement or class of agreements.

(3) The Registrar shall take all steps that are, in his opinion, reasonably necessary to bring a notice under Subsection (1) to the attention of persons likely to be affected.

(4) Subject to Subsection (5) an agreement entered into in contravention of this section is void and of no effect.

(5) Notwithstanding Subsection (4), a court may, on application by a party to an agreement avoided under that subsection, not having notice of a prohibition, make such order as to restitution or otherwise as to it seems just and equitable.

#### **44. CONTRACTS IN RESTRAINT OF TRADE.**

(1) A society, if so authorized by its rules, may make a contract with a member requiring him—

- (a) to have specified dealings with the society for a period not exceeding three years; and
- (b) in particular to sell products through that society,

with provision for the payment by him to that society of a specified sum as liquidated damages for the breach of any term of the contract.

(2) A contract referred to in Subsection (1) shall be binding on the society and the member notwithstanding that, but for this Act, the contract would be invalid as being in restraint of trade.

**Division 4.**

## Registration of Charges.

**45. REGISTRATION OF CHARGES.**

(1) In this section “charge to which this section applies” means—

- (a) a charge on uncalled share capital of a society; and
- (b) a charge or an assignment created or evidenced by an instrument, including instruments creating or evidencing absolute bills of sale or absolute assignments or transfers of book debts, which, if executed by an individual, would be invalid or of limited effect if not registered under the [Instruments Act 1953](#); and
- (c) a floating charge on the undertaking or property of a society; and
- (d) a charge on calls made but not paid; and
- (e) a charge on a ship or aircraft or any share in a ship or aircraft; and
- (f) a charge on goodwill, on a patent or licence under a patent, on a trade mark, or on a copyright or a licence under a copyright; and
- (g) a charge on the book debts of a society.

(2) Subject to this Division, where a charge to which this section applies is created by a society, there shall be lodged with the Registrar for registration within 60 days after the creation of the charge a statement in the prescribed form and—

- (a) the instrument (if any) by which the charge is created or evidenced; or
- (b) a copy of that instrument together with a statutory declaration in the prescribed form verifying the execution of the charge and the copy as being a true copy of the instrument.

(3) If this section is not complied with in relation to a charge to which this section applies, the charge is, so far as any security on the society’s property or undertaking is conferred by it, void against the liquidator and any creditor of the society.

(4) Subsections (2) and (3) do not prejudice any contract or obligation for repayment of the money secured by a charge to which this section applies and, when the charge becomes void under this section, the money secured becomes payable immediately.

(5) Where a charge to which this section applies created in the country affects property outside the country—

- (a) the instrument creating or purporting to create the charge; or
- (b) a copy of that instrument accompanied by the verifying statutory declaration,

may be lodged for registration under Subsection (2), notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the place in which the property is situated.

(6) A charge to which this section applies need not be registered, and is not subject to avoidance, under the [Instruments Act 1953](#), and on registration under this Division, a charge which, but for this subsection would need to be registered under that Act shall, for all purposes, have effect and be as valid as if it had been duly registered under that Act.

(7) Where—

- (a) a charge requiring registration under this section is created before the expiration of 60 days after the creation of a prior unregistered charge; and
- (b) the charge comprises all or any part of the property comprised in the prior charge; and
- (c) the subsequent charge is given as a security for the same debt or any part of that debt as is secured by the prior charge,

then, to the extent to which the subsequent charge is a security for the same debt or part of that debt and so far as respects the property comprised in the prior charge, the subsequent charge shall not be operative or have any validity unless it is proved to the satisfaction of the Court that it was given in good faith for the purpose of correcting some material error in the prior charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

#### **46. DUTY TO REGISTER CHARGES.**

(1) Documents and particulars required to be lodged for registration under Section 47 may be lodged for registration by the society concerned or by a person interested in the documents.

(2) If Section 47 is not complied with the society is guilty of an offence.

Penalty: A fine not exceeding K80.00.

Default penalty: A fine not exceeding K40.00.

(3) Where registration under Section 47 is effected by some person other than the society, that person is entitled to recover from the society the amount of any fees properly paid by him on the registration.

#### **47. SOCIETY TO REGISTER CHARGES.**

(1) Where a society acquires any property which is subject to a charge of any kind that would, if it had been created by the society after the acquisition of the property, have been required to be registered under this Division, the society shall lodge with the Registrar for registration within 60 days after the date on which the acquisition is completed—

- (a) a statement in the prescribed form and the instrument (if any) by which the charge was created or is evidenced; or
- (b) a copy of the instrument together with a statutory declaration in the prescribed form.

(2) If Subsection (1) is not complied with the society is guilty of an offence.

Penalty: A fine not exceeding K80.00.

Default penalty: A fine not exceeding K20.00.

#### **48. REGISTER OF CHARGES.**

(1) The Registrar shall—

- (a) keep a register in the prescribed form of all the charges lodged for registration under this Division; and
- (b) enter in the register with respect to those charges the following particulars:—

- (i) if the charge—

(A) is a charge created by the society—the date of its creation; and



(B) was a charge existing on property acquired by the society—the date of the acquisition of the property; and

- (ii) the amount secured by the charge; and
- (iii) a description sufficient to identify the property charged; and
- (iv) the name of the person entitled to the charge.

(2) The Registrar shall issue a certificate in the prescribed form of every registration stating, if applicable, the amount secured by the charge.

(3) A certificate issued under Subsection (2) is conclusive evidence that the requirements as to registration have been complied with.

#### **49. ENTRY OF SATISFACTION AND RELEASE.**

(1) Where, with respect to a registered charge—

- (a) the debt for which the charge was given has been paid or satisfied in whole or in part; or
- (b) the property or undertaking charged or any part of it has been released from the charge or has ceased to form part of the society's property or the undertaking of the society concerned,

the society may lodge with the Registrar in the prescribed form a memorandum of satisfaction in whole or in part, or of the fact that the property or undertaking or any part of it—

- (c) has been released from the charge; or
- (d) has ceased to form part of the society's property or undertaking,

and the Registrar shall enter particulars of that memorandum in the register.

(2) The memorandum referred to in Subsection (1) shall—

- (a) be verified by a statutory declaration in the prescribed form; and
- (b) be supported by such evidence as the Registrar requires to satisfy him of the payment, satisfaction, release or ceasing referred to in Subsection (1).

#### **50. EXTENSION OF TIME AND RECTIFICATION OF REGISTER.**

The Court, on being satisfied that—

(a) the omission to register a charge within the time required or the omission or mis-statement of any particular with respect to any such charge or a memorandum of satisfaction—

- (i) was accidental or due to inadvertence or to some other sufficient cause; or
- (ii) is not of a nature to prejudice the position of creditors or members; or

(b) on other grounds it is just and equitable to grant relief,

may, on the application of the society or a person interested and on such terms and conditions as to the Court seem just and expedient, order that—

- (c) the time for registration be extended; or
- (d) the omission or mis-statement be rectified.

**Division 5.****Rules.****51. CONTENTS OF RULES.**

Subject to this Act, the rules of a society shall be divided into paragraphs numbered consecutively, and shall set out—

- (a) the name of the society with the word “Co-operative” as part of the name and the word “Limited” or the contraction “Ltd.” as the last word of the name; and
- (b) that the liability of the members is limited; and
- (c) where the office of the society is to be situated; and
- (d) the objects of the society; and
- (e) whether the society intends to avail itself of any powers authorized by this Act as incidental to its objects; and
- (f) the manner in which the capital of the society is to be raised; and
- (g) the manner in which the funds of the society are to be managed, and, in particular, the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for and on behalf of the society; and
- (h) the purposes to which the funds of the society are to be applied and the manner in which they are to be invested or lent; and
- (i) in the case of any society which is authorized to make an advance to a member—
  - (i) the manner in which an application for an advance is to be made; and
  - (ii) the conditions with which an applicant is to comply; and
  - (iii) the manner in which an advance is to be made and repaid; and
  - (iv) the deduction (if any) for premium; and
  - (v) the conditions on which a borrower may redeem the amount due from him before the expiration of the period for which the advance was made; and
  - (vi) the terms on which a mortgage may be redeemed; and
- (j) the manner in which any gain or surplus that may result from the transactions of the society is to be distributed among the members; and
- (k) the manner in which any loss that may result from the transactions of the society is to be provided for; and
- (l) the mode and conditions of admission to membership and the payment to be made or the share or interest to be acquired before the exercise of the rights of membership; and
- (m) the rights and liabilities of members, and of the estates of deceased members and of members whose estates have been sequestrated or assigned; and
- (n) the manner in which the shares or interests of members may be transferred; and
- (o) the circumstances in which members may be expelled and the rights and liabilities of expelled members; and
- (p) the number of Directors, the qualification of Directors, the manner of electing, remunerating and removing Directors and filling a vacancy in the Board, whether Directors are to be elected annually or half-yearly, the period

for which Directors are to hold office, and whether Directors are to retire by rotation or otherwise; and

- (q) the powers and duties, the requisite notice of meetings, the quorum for meetings and the procedure at meetings of the Board; and
- (r) the intervals between general meetings of the society, the manner of calling special and general meetings, the requisite notices of meetings and the quorum of meetings; and
- (s) the procedure at meetings of the society, including the rights of members in voting, the manner of voting, and the majority necessary for carrying resolutions; and
- (t) the manner of a poll; and
- (u) the manner of appointing, remunerating and removing officers of the society and the security to be given by any officer having the receipt or charge of any moneys belonging to the society; and
- (v) the form, custody and use of the seal of the society; and
- (w) the circumstances and the manner in which fines may be imposed on members of the society by the Board and the amount of the fines, not exceeding the prescribed maximum; and
- (x) whether disputes between the society and any of its members or any person claiming by or through any member under the rules, are to be settled by reference to arbitration or by some other specified manner; and
- (y) the manner of altering and rescinding the rules and making additional rules; and
- (z) the nominal value of each share in the society; and
- (za) the maximum proportion of the shares which may be held by a member, not exceeding the prescribed proportions; and
- (zb) the periodic subscription by which or the manner in which shares are to be paid for; and
- (zc) any other prescribed matters.

## **52. COPIES OF RULES.**

On tender of an amount, fixed by the society, but in any case not exceeding K0.40, the society shall supply a person with a copy of its rules.

## **53. AMENDMENT TO RULES.**

(1) An amendment to a rule shall be made in accordance with the rules.

(2) Within one month of an amendment referred to in Subsection (1) being made, the society shall forward to the Registrar two copies of the amendment together with evidence to the satisfaction of the Registrar that the amendment has been properly made in accordance with the rules.

## **54. APPROVAL OF AMENDMENT.**

On receipt of an amendment referred to in Section 53(2) the Registrar may—

- (a) approve the amendment; or
- (b) return the amendment to the society with a direction that the society reconsider and resubmit the amendment in accordance with that subsection.

## **55. EFFECT OF APPROVAL.**

An amendment shall have no force or effect until it has been approved under Section 54 and it shall then be deemed to be part of the rules for all purposes.

## **56. BINDING NATURE OF RULES.**

All members of a society and persons claiming through them shall be bound by its rules.

## **57. MODEL RULES, ETC.**

The Registrar may from time to time prepare and distribute to societies and proposed societies copies of model rules and model amendments.

### ***Division 6.***

Shares.

## **58. CAPITAL OF SOCIETY.**

(1) The share capital of a society shall be the aggregate of the nominal value of the shares of the society which are from time to time subscribed.

(2) Subject to Section 59 the share capital of a society shall not be repaid except on the liquidation of the society.

## **59. CAPITAL REDUCTION.**

(1) The share capital of a society may be reduced with—

- (a) the written authority of and in a manner approved by the Registrar; and
- (b) the written authority of all the creditors of the society.

(2) This section shall not be deemed to prevent a society refunding share capital in accordance with Section 62.

## **60. MAXIMUM AND MINIMUM HOLDINGS.**

A person shall not without the permission of the Registrar, hold a greater proportion than one-fifth of the total number of shares issued by a society or such lesser number as may from time to time be fixed by the rules.

## **61. CONSENT TO TRANSFER, ETC.**

A sale or transfer of a share in a society shall not be effectual without the consent of the Board of the society.

### ***Division 7.***

Death of Shareholder.

## **62. REPAYMENT OF VALUE OF SHARES.**

Where a shareholder dies, an amount equal to—

- (a) the nominal value of the shares standing in his name; or
- (b) the net value of those shares as certified by the Registrar,

whichever is the less, shall within 12 months of the date of his death, be paid by the society to the person who, in the opinion of the Registrar, is entitled to administer the estate of the deceased shareholder.

## **63. REGISTRAR, SOCIETY, ETC., NOT TO BE LIABLE.**

The Registrar or a society shall not be liable at the suit of any person in respect of a payment bona fide made under this Division.

## **PART IV. – OPERATION OF SOCIETIES.**

### ***Division 1.***

Membership.

#### **64. MEMBERSHIP.**

A person may become a member of a society—

- (a) on signing an application for membership in accordance with Section 23;
- or
- (b) by being admitted to membership under its rules.

#### **65. DETERMINATION OF MEMBERSHIP.**

Subject to Part VII a person shall cease to be a member of a society when—

- (a) all the shares standing in his name in the society are transferred in accordance with this Act to another person; or
- (b) he is expelled in accordance with the rules of the society; or
- (c) he becomes bankrupt and his trustee disclaims under Section 102(1) to (6) of the [Insolvency Act 1951](#); or
- (d) on his death; or
- (e) on the happening of any other event or contingency in relation to which the rules provide that a member shall cease to be a member.

### ***Division 2.***

Board of Directors.

#### **66. BOARD OF DIRECTORS.**

(1) The business and operations of a society shall be managed and controlled by a Board of Directors, and for that purpose the Board shall have and may exercise, subject to this section, all the powers of the society as if they had been expressly conferred on the Board by the society.

(2) The exercise of the powers of the Board shall be subject to any restrictions or limitations imposed—

- (a) by this Act; or
- (b) by the rules of the society.

#### **67. APPOINTMENT OF BOARD.**

(1) The Board shall be elected at a general meeting of a society, or proposed society, as the case may be, in accordance with the rules.

(2) Subject to this Act, the number and qualifications of Directors shall be as determined by the rules but no society shall have less than three Directors.

(3) A person shall not be qualified to be elected or to remain a Director unless he is a member of the society.

(4) A Director shall hold office, retire or be removed from office in accordance with the rules.

## 68. DEFECT IN APPOINTMENT.

An act or proceeding of the Board shall not be questioned on the ground that there was a defect in the appointment or qualification of a Director.

## 69. LIABILITY OF DIRECTORS.

A Director or a former Director shall not be liable to a society for a loss to the society occasioned by an act or omission of the Board of which he is or was a member other than an act or omission resulting or arising out of his—

- (a) gross negligence or wilful misconduct; or
- (b) failure to comply with a provision of this Act or the rules.

## 70. MEETINGS OF BOARD.

Meetings of the Board shall be held as often as provided by the rules and in the absence of a provision in the rules, as often as the Board may think necessary and in any case not less often than once in each period of three months.

## 71. CHAIRMAN.

Subject to any provision of the rules, the Board may elect a Chairman who shall hold office and retire and may be removed from office in accordance with the rules.

## 72. DETERMINATION OF APPOINTMENT AS DIRECTOR.

The office of a Director shall be deemed to be vacated on the happening of any event or contingency in relation to which the rules provide that a Director shall cease to hold office and, in addition and not in derogation of any provision of the rules—

- (a) if he becomes bankrupt or assigns his estate for, or for the benefit of, or compounds with, his creditors; or
- (b) if he is committed to an institution under the [Public Health Act 1973](#); or
- (c) if he is convicted of an offence—
  - (i) under this Act; or
  - (ii) punishable by a term of imprisonment and is sentenced to a term of imprisonment; or
- (d) if he is absent from three consecutive meetings of the Board without the consent of the Board; or
- (e) if he ceases to be a member of the society; or
- (f) if he resigns from office after giving one months notice in writing of his intention to do so; or
- (g) if he is removed from office by resolution of a general or special meeting of the society or by a direction of the Registrar under Section 16; or
- (h) if he has, except as permitted by Section 73, a direct or indirect pecuniary interest in an agreement with the society otherwise than in the capacity of a member and in common with other members of another society or incorporated company consisting in each case of not less than 25 members.

## 73. PERMITTED DEALINGS BY A DIRECTOR.

(1) Permitted dealings by a Director are—

- (a) loans made or guaranteed to a Director by a society in accordance with a

- special resolution; and
- (b) purchases by a Director in accordance with a special resolution; and
- (c) any other dealings authorized by the rules; and
- (d) prescribed dealings.

(2) A Director concerned shall not vote on a special resolution referred to in Subsection (1).

#### **74. MINUTES.**

Minutes of meetings of the Board shall be kept and confirmed as prescribed or as provided for in the rules.

### ***Division 3.***

Meetings.

#### **75. QUORUM.**

An item of business shall not be transacted unless there is present during the transaction of that item a quorum as provided by the rules.

#### **76. GENERAL MEETINGS.**

A general meeting of a society shall be held within three months, or such additional period as the Registrar may permit, after the close of the financial year of the society.

#### **77. VOTING.**

(1) Except as is otherwise provided by this Act or the rules, a question before a meeting shall be decided by a majority of the members present and voting.

(2) Unless a poll is demanded by not less than five members present or such other number as is fixed by the rules, voting shall be by show of hands.

#### **78. CASTING VOTE.**

The Chairman or in his absence a member presiding shall have a deliberative and in the event of equality of votes also a casting vote.

#### **79. DISQUALIFICATION FROM VOTING.**

A member who has borrowed any money from a society shall not, until that loan has been repaid, vote on any matter in relation to which his right to vote is excluded by the rules.

#### **80. VOTING BY POLL.**

Where a poll is demanded in accordance with Section 77, the question shall be deferred and a poll conducted in accordance with the rules.

#### **81. PROXY VOTING.**

Subject to the rules, voting at a poll may be by proxy.

#### **82. SPECIAL RESOLUTION.**

(1) For the purpose of this Act, a special resolution means a special resolution which is passed by not less than two-thirds of the members present and voting, or where the rules allow proxies, present and voting by proxy, at a general meeting of the society of which notice specifying the

intention to propose the resolution has been given in accordance with the rules.

(2) Within one week after the passage of a special resolution referred to in Subsection (1) the details shall be sent to the Registrar.

(3) A special resolution has no force or effect until it has been approved by the Registrar.

### **83. MINUTES.**

Minutes of all meetings of a society shall be kept and confirmed as prescribed or as provided for in the rules.

### ***Division 4.***

Duties of a Society.

### ***Subdivision A. – General.***

### **84. AFFIXING OF NAME.**

A society shall–

- (a) at the place shown in its certificate of registration as its registered office;
- and
- (b) at all other premises occupied by it in the course of its business,

exhibit and keep exhibited a sign in a form approved by the Registrar showing its registered name in legible characters.

### **85. DOCUMENTS AVAILABLE FOR INSPECTION.**

(1) A society shall have at its registered office the following documents:–

- (a) a copy of this Act as amended from time to time;
- (b) a copy of its rules as amended from time to time;
- (c) a copy of the last balance-sheet and profit and loss account together with the auditor's report (if any) on them;
- (d) a copy of its certificate of registration;
- (e) a copy of every instrument creating a charge requiring registration under Division III. 3;
- (f) such registers as the society is required to keep under Section 89.

(2) A society shall not refuse or fail to permit any member or creditor of the society to inspect and take copies of a document, certificate or register referred to in Subsection (1).

### **86. RETURNS GENERALLY.**

A society shall make such returns to the Registrar as are prescribed or as the Registrar, in writing, may require in relation to a society or class of societies.

### **87. CHANGES OF DIRECTORS.**

Where there is a change in the Directors of a society, the society shall, within 14 days of that change, forward to the Registrar the full name, address and description of the incoming Director and the full name, address and description of the outgoing Director.

### **88. ANNUAL RETURNS.**



Within three months of the close of the financial year of a society, the society shall forward to the Registrar in the prescribed form—

- (a) a list of members at the close of the financial year or when a list of members for a previous financial year has been forwarded, a list of any changes to that last-mentioned list; and
- (b) a statement of assets and liabilities of the society as at the end of the financial year; and
- (c) a copy of the report (if any) of the auditor on those accounts; and
- (d) such other returns as are prescribed.

***Subdivision B.*** – Registers.

**89. REGISTERS AND ACCOUNTS.**

A society shall keep such registers and accounts as are prescribed.

**90. CONTENTS OF REGISTERS.**

(1) A society shall keep such of the following registers as are appropriate to its operations:—

- (a) a register of Directors, and a register of members showing, amongst other things, the holdings of shares by those persons;
- (b) a register of loans raised, securities given, bonds issued and deposits received by the society;
- (c) a register of loans made or guaranteed by the society and of any securities taken by the society.

(2) A register required to be kept under Subsection (1) shall be in such form and kept in such manner as is prescribed.

**91. NOTICE OF TRUSTS.**

Notice of a trust whether expressed, implied or constructive shall not be entered in a register or received by the Registrar.

***Subdivision C.*** – Statutory Reserve Fund.

**92. STATUTORY RESERVE FUND.**

(1) Subject to Subsection (2) at the end of each financial year of a society an amount equal to 20% of the net surplus (if any) arising from the operations of the society in the year shall be transferred to a fund, in this Subdivision called the Statutory Reserve Fund.

(2) A transfer shall not be required to be made to the Statutory Reserve Fund so long as the Fund stands at an amount equal to not less than 50% of the sum of the aggregate amount of—

- (a) the capital for the time being paid up; and
- (b) moneys raised on loan or received on deposit and for the time being unpaid.

**93. DISTRIBUTION FROM STATUTORY RESERVE FUND.**

The cash equivalent of the Statutory Reserve Fund shall not be available for distribution to members except on the winding up of a society.

**94. APPLICATION OF STATUTORY RESERVE FUND.**

The cash equivalent of the amount standing to the credit of a society in the Statutory Reserve Fund shall be invested in a manner approved by the Registrar.

**Subdivision D.** – Dividends, etc.

**95. DISTRIBUTION OF DIVIDENDS, SHARES, ETC.**

(1) Subject to this Act and to authorization by the rules, the accumulated net surplus of a society, after payment of any amount required to be paid under Section 92, may be distributed—

- (a) by way of dividend on any share of a society but in any case so that the total annual dividend does not exceed 6% or such other amount as may be prescribed; or
- (b) by way of bonus or rebate in cash or shares to a member in proportion to the amount of business done by him with the society; or
- (c) in any other manner approved by the Registrar.

(2) A distribution of any kind under this section shall not be made without the written permission of the Registrar.

**96. BONUS TO EMPLOYEES.**

Section 95 shall not be deemed to prohibit a society paying a bonus to an employee where—

- (a) provision for the bonus is made in the terms of the employee's employment; and
- (b) those terms have been approved by the Registrar.

**Division 5.**

Co-operative Education Trust Levies.

**97**<sup>[11](#)</sup>. [REPEALED.]

**Division 6.**

Accounts and Audit.

**98. ANNUAL AUDIT.**

The accounts of a society shall be audited annually at the close of the financial year and at such other times (if any) as the rules provide.

**99. AUDITOR.**

(1) The auditor shall be—

- (a) the Registrar; or
- (b) a person appointed in writing by the Registrar,

but in any case shall not be an officer or member of the society.

(2) Notwithstanding Subsection (1), where the gross turnover of a society exceeds the prescribed amount, the Registrar shall not act as auditor nor appoint an officer of the Registry of Co-operatives to act as an auditor.

**100. POWERS OF AUDITOR.**

(1) An auditor may, for the purposes of and in relation to an audit of a society under this Division—

- (a) inspect and take copies of a book, account, voucher, or document relating to the affairs of the society whether in the possession of the society or not; or
- (b) interview and take statements from any member, officer or employee of a society; or
- (c) examine or count any cash and securities in the possession of the society.

(2) A person who obstructs or hinders, or makes a statement which is, to his knowledge, false in a material particular, to an auditor in the execution of his powers and functions under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K80.00.

#### **101. AUDITOR'S REPORT.**

At the conclusion of an audit, the auditor shall state in writing—

- (a) whether he has obtained all the information and explanations he required; and
- (b) whether in his opinion the financial statements of the society are properly drawn up so as to exhibit a true and correct view of the financial position of the society according to the information at his disposal and the explanations given him and as shown by the books of the society; and
- (c) whether from the information available to him the provisions of this Act and of the rules in relation to the keeping of the accounts of the society are being observed.

#### **102. PUBLICATION OF AUDITOR'S REPORT.**

(1) A copy of the auditor's report and the balance sheet and financial statements of the society to which it relates shall immediately be forwarded by the auditor to the Registrar and subject to Subsection (2) shall be forwarded to each member of the society.

(2) Where, in the opinion of the Registrar, it is impracticable to forward a copy of the documents referred to in Subsection (1), the exhibition of those documents in a prominent position in the registered office of the society accessible to the members shall be deemed to be compliance with the provisions of that subsection in relation to members of the society.

### **PART V. – AMALGAMATIONS, ASSOCIATIONS, FEDERATIONS AND COMPOSITE SOCIETIES.**

#### ***Division 1.***

Amalgamations.

#### **103. AMALGAMATIONS.**

(1) Two or more societies may, subject to this Act, apply to the Registrar to be registered as an amalgamated society.

(2) An application for registration under Subsection (1) may be made with or without the winding-up of any of the constituent societies or any division of the funds of any of them.

(3) An application for registration as an amalgamated society shall be accompanied by—

- (a) two copies of the rules of the proposed amalgamated society; and
- (b) such other particulars as may be prescribed or as the Registrar may from time to time require.

#### **104. APPLICATION OF [PART III](#). TO REGISTRATION OF AMALGAMATION.**

Subject to this Part, Divisions III. 1 and 2 shall, with the necessary modifications, apply to the registration of an amalgamated society as if the amalgamated society was a society desiring to be registered under those Divisions.

#### **105. PROPERTY TO VEST ON AMALGAMATION.**

(1) On the date on which the amalgamated society is registered, all the estate, right, title and interest both legal and equitable, in and to any property of an amalgamating society shall, by virtue of this Act and without the necessity for any formal deed of assurance, be divested from the amalgamating society and vested in the amalgamated society.

(2) Property which by this section is vested in or transferred to an amalgamated society shall be vested or transferred, as the case may be, subject to any debt, liability or obligation specially charged or affecting the property.

(3) All debts and liabilities, whether certain or contingent and whether then existing or capable of arising at a future time, to or with which an amalgamating society, or any trustee or person for and on account of that society, become at the date referred to in Subsection (1), a debt or liability, as the case may be, of the amalgamated society.

#### ***Division 2.***

Associations, Federations and Composite Societies.

#### **106. POWER TO REGISTER.**

On application in a form approved by the Registrar, the Registrar may—

- (a) register three or more societies as an association of societies; or
- (b) register three or more associations as a federation of associations; or
- (c) register three or more organizations registered under this Act as a composite society.

#### **107. APPLICATION OF DIVISIONS III. 1 AND 2 TO REGISTRATION OF ASSOCIATIONS, ETC.**

Subject to this Part, Divisions III. 1 and 2 shall, with the necessary modifications, apply to the registration of an association, federation or composite society as if that association, federation or composite society, as the case may be, was a society desiring to be registered under those Divisions.

#### **[PART VI](#). – OFFICIAL MANAGEMENT.**

#### **108. MEETINGS OF CREDITORS TO APPOINT OFFICIAL MANAGER.**

(1) Where it is resolved by the majority of the Directors of a society, present at a meeting of the Directors specially called for the purpose, that the society is unable to pay its debts as and when they become due and payable, the society—

- (a) may; and
- (b) where it is so requested in writing by a creditor of the society who has a judgement against the society unsatisfied to the extent of not less than K500.00—shall,

by giving notice in the prescribed form—

- (c) within 42 days of the passing of the resolution of the Directors or the receipt by the society of the request by the judgement creditor; or
- (d) where in the opinion of the Registrar the society would not be able properly to comply with the requirements of this section—within such further period as the Registrar allows,

call a meeting of its creditors, for the purpose of—

- (e) placing the society under official management; and
- (f) appointing an official manager of the society.

(2) The society shall prepare a statement of its affairs in the prescribed form made up to a date not earlier than the date of the passing of the resolution of the Directors or the receipt by the society of the request by the judgement creditor under Subsection (1), as the case may be.

(3) Subject to Subsection (6), a society shall be deemed not to have prepared a statement of its affairs in accordance with Subsection (2) unless each Director of the society has furnished to the society a certificate under his hand certifying whether the statement does or does not, to the best of his knowledge, information and belief, give a true and fair view of the state of affairs of the society as at the date to which it is made up.

(4) Where a Director certifies that the statement does not give a true and fair view of the state of affairs of the society, he shall also state in the certificate the grounds on which he formed the opinion.

(5) A Director of a society shall not furnish a certificate concerning a statement of the affairs of a society for the purpose of Subsection (3) unless he has made such inquiries as are reasonably necessary to determine whether the statement does or does not give a true and fair view of the state of affairs of the society as at the date to which it is made up.

(6) Where the Registrar is satisfied that it is impracticable for a society to obtain the certificate of a Director of the society, the Registrar may dispense with the obtaining of the certificate from that Director.

(7) A society that, and every Director who, fails to comply or to take all reasonable steps to secure compliance, with any provision of Subsection (1), (2), (4) or (5) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

(8) A notice of a meeting under this section shall be as prescribed and shall provide the prescribed particulars.

(9) A meeting called under this section or any adjournment of a meeting shall be called, adjourned and conducted as prescribed.

#### **109. STATEMENT OF AFFAIRS OF SOCIETY TO BE SUBMITTED TO MEETING.**

(1) At the meeting of creditors of a society called under Section 108, the Directors of the society shall submit to the meeting the statement of affairs of the society required to be prepared by the society under Section 108(2).

(2) The Directors of the society shall appoint one of their number to attend the meeting.

(3) The Director appointed under Subsection (2) shall attend the meeting and disclose to the meeting

the society's affairs and the circumstances leading up to the proposed official management.

(4) If default is made in complying with any provision of this section, the society and every Director who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

# **110. CREDITORS MAY PLACE SOCIETY UNDER OFFICIAL MANAGEMENT.**

(1) Where at a meeting of creditors of a society called under Section 108 the creditors have passed a resolution to the effect that in their opinion the society is unable to pay its debts as and when they become due and payable but that if the society were placed under official management there would, in their opinion, be a reasonable probability that it would be able to pay its debts, the creditors may at the meeting, by special resolution—

(a) determine that the society shall be placed under official management for such period, commencing on the date of the passing of the special resolution and not exceeding two years from that date, as is specified in the resolution; and

(b) appoint a person named in the special resolution who—

(i) has consented in writing to act as official manager of the society; and

(ii) is not the auditor of the society; and

(iii) has furnished to the society a certificate under his own hand that he is neither an undischarged bankrupt nor a person who has made any arrangement or composition with his creditors generally,

to be the official manager of the society during the period of the official management; and

(c) determine the amount of the salary or remuneration of the official manager, or delegate the fixing of the amount to a committee of management appointed under this Part.

(2) An official manager who, under Subsection (1)(b)(iii), furnishes a certificate which is false, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(3) Within seven days of the passing of the special resolution referred to in Subsection (1) the society must—

(a) cause a notice in the prescribed form of the passing of the resolution to be lodged with the Registrar; and

(b) cause notice—

(i) that the society has been placed under official management; and

(ii) of the full name of the official manager,

to be published in a newspaper published in and circulating throughout the country, not less frequently than once a week; and

(c) send by post to each of the creditors and members of the society a notice in the prescribed form of—

- (i) the special resolution; and
- (ii) the right to apply to the Court under Section 122.

(4) If default is made in complying with Subsection (3), the society and every officer of the society who is in default is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K25.00.

(5) Any creditor to whom the society owes, or any representative of a group of creditors to whom the society owes collectively, more than 10% of the total unsecured debts of the society, may, within 14 days of the appointment of a person as official manager of the society under Subsection (1) or Section 115(3) apply to the Court for the termination of that appointment, and if, in the opinion of the Court, the person so appointed is not suitable for the position the Court may make an order terminating his appointment and appointing, as official manager, an auditor approved by the Court (other than the auditor of the society) who has consented in writing to act as official manager.

(6) Where under Subsection (5) the Court has made an order appointing a person to be the official manager of a society, this Part applies to that person as if he had been appointed official manager of the society at a meeting of creditors under Subsection (1) as at the date of the order of the Court.

(7) Where the Court makes an order under Subsection (5) the person obtaining the order must—

- (a) within seven days after the making of the order—lodge with the Registrar notice in the prescribed form of the making of the order and its date; and
- (b) within seven days of the passing and filing of the order—lodge with the Registrar an office copy of the order.

(8) A person who fails to comply with Subsection (7) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K25.00.

## **111. REGISTRAR MAY APPOINT OFFICIAL MANAGER.**

Subject to Section 110(5), where the Registrar is satisfied that a society is not being managed in the best interests of its members or creditors or both, he may, in his discretion, appoint an official manager and such an appointment automatically terminates the appointment of an official manager or a deputy official manager under this Part.

## **112. DUTIES, ETC., OF OFFICIAL MANAGER.**

(1) Where a society has been placed under official management under this Part—

- (a) the Board shall cease to hold office but may, with the approval of the Registrar, appoint from their number an advisory committee of not less than two nor more than five members to act in an advisory capacity; and
- (b) the person appointed official manager of the society shall—
  - (i) assume and be responsible for the management of the society; and
  - (ii) perform all of the duties and may perform any of the functions and exercise any of the powers of the Directors of the society; and
  - (iii) assume such other responsibilities, functions and duties as

are prescribed.

(2) Where an advisory committee is appointed under Subsection (1)(a), the official manager may consult the advisory committee and the advisory committee may advise the official manager, but the official manager has the sole management and administration of the society and is not bound to follow the advice of the advisory committee.

### **113. STAY OF PROCEEDINGS.**

(1) Where a society is under official management, no action or proceedings in any court shall, except with the leave of the Court and in accordance with such terms and conditions as the Court may impose, be commenced or proceeded with against the society.

(2) At any time—

- (a) after a society has, in accordance with Section 109, called a meeting of its creditors for the purpose of placing the society under official management; and
- (b) before the passing of a special resolution by the creditors under Section 110(1) determining that the society be placed under official management,

the society or any creditor of the society may, if any action or proceeding against the society is pending, apply to the Court to stay or restrain further proceedings in the action or proceedings, and the Court may stay or restrain the proceedings.

### **114. EXTENSION OF PERIOD OF OFFICIAL MANAGEMENT.**

(1) Whenever the period of official management of a society is due to expire, a meeting of creditors of the society shall be called for a date not earlier than three months and not later than one month before the date on which the period is due to expire to consider and, if thought fit, pass a special resolution extending the official management for such further period, not exceeding 12 months, as is specified in the resolution.

(2) Where a special resolution extending the period of official management of a society is passed at a meeting called in accordance with this section, the society shall continue under official management during the period specified in the resolution unless the official management is earlier terminated under this Part.

(3) A meeting under Subsection (1) shall be called by the official manager as prescribed.

(4) The official manager shall, within seven days after the passing of a special resolution under Subsection (1), lodge with the Registrar a copy of that resolution.

### **115. TERMINATION OF APPOINTMENT OF OFFICIAL MANAGER.**

(1) The appointment under Section 110 of a person as official manager of a society may be determined—

(a) by his resignation in writing signed by him and tendered to—

- (i) the Registrar; or
- (ii) a meeting of creditors of the society; or

(b) by special resolution of the creditors passed at a meeting of creditors of which special notice stating the purpose of the meeting has been given; or

(c) by an order of the Court.



(2) The appointment under Section 110 of a person as official manager of a society shall be determined by the Registrar if—

- (a) the official manager is bankrupt or has made any arrangement or composition with his creditors generally; or
- (b) the official manager is of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.

(3) Where a vacancy occurs in the office of official manager of a society—

- (a) the Registrar; or
- (b) a meeting of creditors of the society called for that purpose by any two of their number, by special resolution,

may appoint a person who is qualified for appointment as official manager under Section 110(1)(b) to be the official manager.

(4) Section 113 applies to a person appointed official manager under Subsection (3).

(5) The appointment by the Registrar of an official manager under Section 111 shall be determined—

- (a) by the resignation of the official manager in writing signed by him and tendered to the Registrar; or
- (b) by the Registrar; or
- (c) by an order of the Court.

#### **116. OFFICIAL MANAGER AND DUTIES OF AUDITOR, ETC.**

(1) Notwithstanding the appointment of an official manager of a society and for so long as the society is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply to and in relation to the society.

(2) In the application of the provisions referred to in Subsection (1) to and in relation to the society any reference to the Directors of a society shall be read as a reference to the official manager of the society.

#### **117. DUTIES OF OFFICIAL MANAGER.**

(1) Subject to this Act, the official manager of a society shall—

- (a) as soon as may be after his appointment as the official manager take into his custody or under his control all the property and things in action to which the society is or appears to be entitled; and
- (b) conduct the business and management of the society in such manner as he thinks most economical and most beneficial to the interest of the members and creditors of the society, subject—

- (i) in the case of an official manager appointed under Section 110—to any direction given by the creditors of the society; or
- (ii) in the case of an official manager appointed by the Registrar—to any directions given by the Registrar; and

(c) comply with all requirements of this Act applicable to the society or the Directors of the society relating to the keeping of accounts and the lodging of annual returns and perform all other duties that are so applicable and are

imposed on a society or on the Directors of a society by or under this Act;  
and

(d) if so directed by a creditor or creditors of the society to whom the society owes not less than 20% in value of the total unsecured debts of the society—by notice posted to each of the creditors, call a meeting of creditors of the society; and

(e) if a meeting of creditors held under Section 114(1) does not resolve to extend the period of the official management—within seven days of the failure to extend the period, by notice posted to each of the members of the society, call a meeting of the members to be held on a date not later than 21 days after the meeting of creditors under that subsection for the purpose of—

- (i) reporting to the members accordingly; and
- (ii) enabling the members if they think fit to elect Directors of the society to take office on the termination of the period of official management.

(2) A meeting called under Subsection (1)(e) shall be deemed to have been properly called and empowered under this Act and the rules of the society to appoint or elect Directors, and Directors so appointed or elected shall take office on the termination of the period of official management of the society.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the society will not enable the society to pay its debts, he must call a meeting of the members of the society for the purpose of considering and, if thought fit, passing a special resolution that the society be wound up voluntarily.

(4) Where the official manager has called a meeting of the members under Subsection (3) he must—

(a) cause a meeting of the creditors of the society to be called for the day, or the day next following the day, on which the meeting of members is to be held; and

(b) cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the members; and

(c) call the meeting of creditors at a time and place convenient to the majority in value of the creditors and give the creditors at least seven clear days' notice by post of the meeting; and

(d) cause notice of the meeting of the creditors to be advertized at least seven days before the date of the meeting in the National Gazette and in a newspaper published in and circulating throughout the country not less frequently than once a week; and

(e) cause—

(i) a full statement of the society's affairs showing, in respect of assets, the method and manner in which the valuation of the assets was arrived at; and

(ii) a list of the creditors and the estimated amount of their claims,

to be laid before the meeting of creditors.

(5) On the appointment of a liquidator the society shall cease to be under official management.

(6) The person who, immediately prior to the appointment of the liquidator, was the official manager, must, within seven days after the holding of the meetings referred to in Subsections (3) and (4), lodge

with the Registrar a notice in the prescribed form of the holding of, and the dates of, the meetings, with a copy of the statement referred to in Subsection (4)(e) attached to it.

(7) A person who fails to comply with any of the provisions of Subsections (3), (4) and (6) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K100.00.

## **118. UNDUE PREFERENCES.**

(1) For the purposes of this section, the date which corresponds with the date of presentation of the bankruptcy petition in the case of an individual shall be the date of the commencement of the official management of the society.

(2) Any transfer, mortgage, delivery of goods, payment, execution or other act relating to property made or done by or against a society which had it been made or done by or against an individual, would in his bankruptcy be void or voidable shall, in the event of the society being placed under official management, be void or voidable in like manner.

## **119. APPLICATION AND DISPOSAL OF ASSETS.**

(1) The official manager may sell or otherwise dispose of any assets of a society if the sale or disposition is in the ordinary course of the business of the society.

(2) The official manager may sell or otherwise dispose of any assets of a society otherwise than in the ordinary course of the business of the society if—

- (a) the value of the assets in question; and
- (b) the sale price of any other assets previously sold or disposed of otherwise than in the ordinary course of business of the society during the period of official management,

does not exceed in the aggregate K400.00.

(3) The official manager may, with the leave of the Registrar, sell or otherwise dispose of any assets of a society.

(4) The moneys of a society that become available to the official manager during the official management shall be applied by him in the following order:—

- (a) firstly, in payment of the costs of the official management including his remuneration, the remuneration of the deputy official manager (if any) and that of an auditor (if any) appointed in accordance with this Act; and
- (b) secondly, in payment of the liabilities of the society incurred in the course of the official management; and
- (c) thirdly, in payment of any other liabilities of the society.

(5) Subject to Subsection (4) the claims of the creditors of a society referred to in Subsection (4)(c) shall be paid in accordance with [Part VII](#) as if those claims were claims against a society being wound up and the provisions of that Part, with the necessary modifications, shall apply to and in relation to those claims accordingly.

## **120. OFFICIAL MANAGER MAY APPLY TO COURT FOR DIRECTIONS.**

The official manager may apply to the Court for directions in relation to any particular matter

arising out of the exercise of his powers or functions as official manager.

## **121. COURT MAY TERMINATE OFFICIAL MANAGEMENT, ETC.**

(1) If at any time, on the application of the official manager or of any creditor or member of a society, it appears to the Court that—

- (a) the purpose for which the society was placed under official management has been fulfilled; or
- (b) for any reason it is undesirable that the society should continue to be under official management,

the Court may by order terminate the official management on the date specified in the order, and on that date the official manager shall cease to be the official manager of the society.

(2) On making an order under Subsection (1) the Court may also give such directions as it thinks fit for the resumption of the management and control of the society by its officers, including directions for the calling of a general meeting of members of the society to elect Directors to take office on the termination of the official management.

(3) The costs of any proceeding before the Court under this section shall, if the Court so directs, be part of the costs of the official management of the society.

## **122. APPEAL ON RESOLUTION TO PLACE SOCIETY UNDER OFFICIAL MANAGEMENT.**

(1) Notwithstanding that a resolution has been passed under Section 110(1) determining that a society shall be placed under official management—

- (a) any creditor to whom the society owes, or representative of a group of creditors to whom collectively the society owes, more than 10% of the total unsecured debts of the society; or
- (b) any member holding, or representative of a group of members holding collectively, not less than 10% of the paid up capital of the society,

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that—

- (c) there is no reasonable prospect of the society being rehabilitated; or
- (d) the resolution is not in the interests of the creditors and the members of the society,

vary or cancel the resolution.

(2) Where the Court makes an order cancelling the resolution under Subsection (1) the Court may give such directions as it considers necessary for the resumption of the management and control of the society by the persons who were officers of the society immediately prior to its being placed under official management.

(3) On cancellation of the resolution by the Court under Subsection (1)—

- (a) the society shall cease to be under official management; and
- (b) the person appointed official manager of the society shall cease to be the official manager,

and on any variation of the resolution by the Court under this section the resolution shall have effect as so varied, but notwithstanding that the resolution may be so varied or cancelled by the Court, the

acts of an official manager prior to any such variation or cancellation shall be valid and binding on the society and on its members and creditors.

### **123. OFFICE COPY OF COURT ORDER.**

(1) Where the Court makes an order under Section 121 or 122 the person obtaining the order must, within seven days after the order is made, lodge with the Registrar notice, in the prescribed form, of the making and the date of the order.

(2) The person who obtained the order must lodge with the Registrar an office copy of the order within seven days of the filing of the order.

(3) Where the Court makes an order under Section 121 or 122 terminating the official management of a society, the person obtaining the order must within seven days after the filing of the order publish a copy of the order at least once in a newspaper published in and circulating throughout the country not less frequently than once a week.

(4) A person who fails to comply with any of the provisions of this section is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

### **124. RELEASE OF OFFICIAL MANAGER.**

(1) Where a person appointed under Section 110 ceases to be official manager of a society he shall—

- (a) notwithstanding that cessation, within 14 days prepare a report showing how the official management was conducted by him and for this purpose shall have a right of access to the records and books of the society; and
- (b) within 28 days after he ceases to be the official manager, call a meeting of the creditors of the society.

(2) Notice of the meeting under Subsection (1) shall be as prescribed.

(3) At the meeting of the creditors called under Subsection (1), the person who was the official manager shall present his report to the meeting and shall give such explanations as may be reasonably requested by any creditor.

(4) Within seven days after the holding of the meeting, the person who was the official manager must lodge with the Registrar a notice of the holding of the meeting and of its date with a copy of the report prepared by him under Subsection (1).

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(5) The meeting referred to in Subsection (1) shall be called and held at the expense of the society.

(6) Subject to Subsection (7), where a person appointed under Section 110 ceases to be the official manager of a society the adoption by the meeting of creditors of the society of the report prepared by him under Subsection (1) and of his explanations discharges him from all liability in respect of any act or omission by him in the management of the society or otherwise in relation to his conduct as official manager.

(7) The adoption of the report referred to in Subsection (1) with the explanations does not discharge

the person who was the official manager—

- (a) if the adoption was obtained by fraud or by suppression or concealment of any material fact; or
- (b) from any liability that by virtue of any enactment or rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society.

(8) Within seven days of the passing of a resolution adopting the report referred to in Subsection (1) the person who was the official manager must cause a notice of the resolution, in the prescribed form, to be lodged with the Registrar.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

(9) If the report referred to in Subsection (1) together with the explanations are not, within two months after being presented to the meeting of creditors of the society, adopted by a meeting of creditors, the person who was the official manager may apply to the Court for an order of release.

(10) The Court may—

- (a) grant or refuse the application under Subsection (9); and
- (b) direct that all the expenses and Court costs incurred by the person who was the official manager in connection with his application for release and in relation to the calling of meetings following the determination of his appointment shall be part of the costs of the official management,

but, if granted, the order shall have the same effect as if the report and explanations had been adopted by a meeting of creditors of the society.

(11) Where the Court makes an order under Subsection (10), the person who was the official manager must lodge with the Registrar an office copy of the order within seven days of the filing of the order.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K25.00.

## **125. DOCUMENTS OF SOCIETY TO STATE IF UNDER OFFICIAL MANAGEMENT.**

(1) Where a society is under official management, every invoice, order for goods or business letter issued by or on behalf of the society or the official management of the society, being a document on or in which the name of the society appears, shall have the words “Under Official Management” immediately following the name of the society where it first appears.

(2) If default is made in complying with Subsection (1), the society and every officer of the society who knowingly and wilfully authorizes or permits the default is guilty of an offence.

Penalty: A fine not exceeding K100.00.

## **126. ACCIDENTAL OMISSION TO GIVE NOTICE.**

The accidental omission to give notice of a meeting held for the purposes of this Part to, or the non-receipt of a notice of the meeting by, any person shall not invalidate the meeting or the proceedings at the meeting unless the Court, on the application of a creditor or member of the society or the official manager of the society concerned, otherwise declares.

## **PART VII. – WINDING-UP.**

### ***Division 1.***

Preliminary.

#### **127. VOLUNTARY WINDING-UP.**

A society may be wound up voluntarily if it so resolves by special resolution.

#### **128. COMPULSORY WINDING-UP BY REGISTRAR.**

(1) Subject to this section the Registrar may by written notice to a society direct that the society shall be wound up.

(2) A direction under Subsection (1) may be made on any of the following grounds:–

- (a) that the number of members of the society has been reduced to less than seven;
- (b) that the society has not commenced business within 12 months, or such further period as the Registrar may in his discretion have allowed from the date of its registration;
- (c) that the society has not carried on any business for a continuous period of more than six months;
- (d) that an event or contingency has occurred and the rules provide that on the occurrence of that event or contingency the society shall be wound up;
- (e) that the registration of the society was obtained by fraud or mistake;
- (f) that the society exists for an illegal purpose;
- (g) that the society has, after notice of a breach of this Act or its rules, refused or failed to take such steps as the Registrar has directed in relation to that breach.

#### **129. COMPULSORY WINDING-UP BY COURT.**

(1) A person, on giving such security for costs as the Court may direct, may apply to the Court on grounds to be stated in the application for an order directing that a society be wound up.

(2) On an application under Subsection (1) the Court may, subject to this Part, make such orders as to it seem necessary or desirable.

#### **130. COMMENCEMENT OF WINDING-UP.**

Subject to this Part, winding up a society shall be deemed to have commenced–

- (a) in the case of a winding-up under Section 127–on the date on which the special resolution is approved under Section 82; and
- (b) in the case of a winding-up under Section 128–on the date of the direction given under that section; and
- (c) in the case of winding-up under Section 129–
  - (i) on the date on which the application under that section was filed with the proper officer of the Court; or
  - (ii) on such other date as the Court, having regard to the justice of the matter, directs.

#### **131. NOTIFICATION OF COMMENCEMENT OF WINDING-UP.**

The Registrar shall cause a copy of—

- (a) the special resolution referred to in Section 127; or
- (b) his direction under Section 128; or
- (c) an order under Section 129,

as the case may be, to be published—

- (d) in the National Gazette; and
- (e) in such other manner as, in his opinion, would bring it to the attention of persons likely to be affected.

### **132. STAY OF PROCEEDINGS.**

(1) A person may apply in the case of a winding-up under—

- (a) Section 127 or 128—to the Registrar; or
- (b) Section 129—to the Court,

for an order that the winding-up proceedings be stayed.

(2) The grounds of an application under Subsection (1) shall be stated in the application.

(3) The Registrar or the Court may on an application under this section make such order as to him or it seems just, and in the case of the Court, such further or other order as to costs.

### ***Division 2.***

Liquidators.

### **133. APPOINTMENT OF LIQUIDATOR: VOLUNTARY WINDING-UP.**

In the case of a winding-up under Section 127, the Registrar shall, when he approves the special resolution under Section 82, appoint a person to be liquidator of the society.

### **134. APPOINTMENT OF LIQUIDATOR: BY REGISTRAR.**

In the case of a winding-up under Section 128 the Registrar shall, in the direction under that section, appoint a person to be liquidator of the society.

### **135. APPOINTMENT OF LIQUIDATOR: BY COURT.**

In the case of a winding-up under Section 129, the Court shall, by order, appoint a person to be the liquidator of that society.

### **136. REPLACEMENT OF LIQUIDATOR.**

(1) Where a liquidator appointed under Section 133, 134 or 135—

- (a) dies; or
- (b) is for any reason unable to continue in office; or
- (c) desires to be relieved of his office,

the Registrar or the Court, as the case may be, may appoint a person to act as liquidator in his place, and for the purposes of this Part that person shall, from the date of his appointment, be deemed to be a liquidator duly appointed under this Division.

(2) Subsection (1) shall not be deemed to relieve a liquidator who has been replaced under that



subsection of any liability for an act, default or omission made in his capacity as a liquidator.

### **137. REMUNERATION OF LIQUIDATOR.**

(1) A liquidator, other than a liquidator who is an officer of the Public Service shall be entitled to recover from the society fees in such amount as—

- (a) the Registrar, in the case of a liquidation under Section 127 or 128; and
- (b) the Court in the case of a liquidation under Section 129,

determines.

(2) A fee determined under Subsection (1) shall be a first charge on the assets of a society.

### ***Division 3.***

Powers and Functions of Liquidator.

### **138. CALL FOR NOTICES OF LIABILITIES.**

(1) As soon as practicable after his appointment a liquidator shall by a notice in the National Gazette call on all persons—

- (a) to whom the society is liable; and
- (b) who are liable to the society,

to give notice to him of the amount, description and details of that liability within a period specified in the notice.

(2) In addition to the notice referred to in Subsection (1), the liquidator shall take such steps as to him seem reasonably necessary to bring the notice to the attention of persons likely to be affected by it.

### **139. NOTICE OF LIABILITY NOT RECEIVED.**

A liquidator, unless otherwise directed by the Registrar, shall not take into account in the liquidation of a society a liability of that society of which he has not received notice.

### **140. PRELIMINARY STATEMENT OF ASSETS AND LIABILITIES.**

As soon as practicable after the expiration of the period referred to in Section 138(1) the liquidator shall prepare a preliminary statement showing—

- (a) the assets of the society; and
- (b) the liabilities of the society,

and shall lodge the statement in the case of a winding-up under—

- (c) Section 127 or 128—with the Registrar; or
- (d) Section 129—with the appropriate officer.

### **141. PRELIMINARY STATEMENT TO BE MADE AVAILABLE.**

The liquidator shall, at the request of an interested person, make available without cost to that person, a copy of the preliminary statement of assets and liabilities referred to in Section 140.

### **142. LIQUIDATION.**

Not earlier than one month after the lodging of a preliminary statement under Section 140, the

liquidator shall proceed with the liquidation of the society and for the purpose of his powers and functions under this Part he shall be deemed to possess all the powers and functions of the Board of the society.

#### **143. APPLICATION FOR DIRECTIONS.**

(1) In the exercise of his powers and functions under Section 141 the liquidator may apply, in the case of a winding-up under—

- (a) Section 127 or 128—to the Registrar; or
- (b) Section 129—to the Court,

for a direction as to the mode of carrying out his duties under this Part, and in particular without limiting the generality of the direction, the preference (if any) to be adopted in the discharge of liabilities of the society.

(2) On the consideration of an application under Subsection (1) the Registrar or the Court, as the case may be, may, so far as is possible and practicable in the circumstances, apply the provisions of the [Companies Act 1997](#) relating to the winding-up of companies as if the society being wound up were a company within the meaning of that Act.

(3) A creditor of a society to whom the society is indebted for an amount exceeding K1,000.00 may, at any time before the commencement of liquidation under Section 142, request that the liquidator make an application for directions under this section.

(4) A liquidator shall not refuse or fail to comply with a request or direction under this section.

#### **144. CARRYING ON BUSINESS.**

Notwithstanding this Division, the liquidator may, subject to any directions from the Registrar or the Court, as the case may be, if he considers that it is in the interest of the creditors of the society to do so, carry on the business of the society for a period of not more than six months for the purposes of liquidation.

#### **145. FINAL STATEMENT.**

As soon as practicable after the conclusion of the liquidation the liquidator shall forward, in the case of a winding-up under—

- (a) Section 127 or 128—to the Registrar; or
- (b) Section 129—to the Registrar and the appropriate officer of the Court,

a final report, showing the disposition of the assets of the society.

#### **146. DISCHARGE OF LIQUIDATOR.**

Three months after the approval of the final report referred to in Section 145 by the Registrar or the Court, as the case may be—

- (a) the liquidator shall be deemed to be discharged from his office; and
- (b) the society shall be deemed to be wound up.

#### ***Division 4.***

Dissolution of Society.

#### **147. DISSOLUTION OF SOCIETY.**

Three months after the date of approval of the final report referred to in Section 145, the society shall be dissolved and the Registrar shall—

- (a) cause notice of that fact to be published in the National Gazette; and
- (b) endorse the particulars of the approval on the certificate of registration of that society held by him.

#### **148. REGISTRAR MAY STRIKE DEFUNCT SOCIETY OFF REGISTER.**

(1) Where the Registrar has reasonable cause to believe that a society is not carrying on business or is not in operation, he may send to the society by post a letter to that effect stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the National Gazette of the Registrar's intention to cancel the registration of the society.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the society is carrying on business or is in operation, he may publish in the National Gazette and send to the society by registered post a notice that, at the expiration of three months from the date of the notice, unless cause is shown to the contrary, the registration of the society will be cancelled.

(3) If in any case where a society is being wound up the Registrar has reasonable cause to believe that—

- (a) no liquidator is acting; or
- (b) the affairs of the society are fully wound up and, for a period of six months, the liquidator has been in default in lodging a final report under Section 145,

he may publish in the National Gazette and send to the society or the liquidator (if any) a notice to the same effect as that referred to in Subsection (2).

(4) At the expiration of the time specified in a notice given by the Registrar under Subsection (2) or (3), the Registrar, unless cause to the contrary is previously shown, may—

- (a) cancel the registration of the society; and
- (b) publish notice of the cancellation in the National Gazette,

and on the publication of the notice referred to in Paragraph (b) the dissolution of the society takes effect, but the liability (if any) of every officer and member of the society continues and may be enforced as if the society had not been dissolved.

(5) On application made within 15 years after the name of the society has been struck off the register by a person aggrieved by the striking-off, the Court, on being satisfied that the society was, at the time of the striking-off, carrying on business or in operation or that it is just that the registration of the society be restored to the register, may order that the name of the society be restored to the register.

(6) On an office copy of an order under Subsection (5) being lodged with the Registrar, the society shall be deemed to have continued in existence as if its registration had not been cancelled, and the Court may, by order, give such directions and make such provisions as seem just for placing the society and all other persons in the same position as nearly as may be as if the registration of the society had not been cancelled.

(7) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last-known place of business, and a letter or notice to be sent under this section to a society may be—

- (a) addressed to the society at its registered office or, if no office has been

registered, to the address of some officer of the society; or  
(b) if there is no officer of the society whose name and address are known to the Registrar—sent to each member of the society who subscribed the application for registration, addressed to him at the address shown in the application.

#### **149. APPLICATION OF [COMPANIES ACT](#).**

Notwithstanding this Part but subject to this Division, the Registrar may—

- (a) on his own motion; or
- (b) on the application of a person to whom a society is indebted or liable in an amount exceeding K2,000.00,

direct that the provisions of the [Companies Act 1997](#) relating to the winding-up of companies apply, with such modifications as are contained in that direction, to the liquidation of the society as if the society were a company within the meaning of that Act.

#### **150. REFERENCES IN [COMPANIES ACT](#).**

In the application of a provision of the [Companies Act 1997](#) to the winding-up of a society—

- (a) a reference to the Registrar of Companies under that Act shall be read as a reference to the Registrar of Co-operative Societies; and
- (b) a reference to a special resolution or an extra-ordinary resolution shall be read as a reference to a special resolution; and
- (c) in the case of a winding-up by a direction under Section 128—a reference to a Court shall be read as a reference to the Registrar.

### **[PART VIII.](#) – OFFENCES.**

#### **151. GENERAL PENALTY.**

A society which refuses or fails to comply with a requirement, restriction or provision of this Act is guilty of an offence and, where no other penalty is provided, is liable to a fine not exceeding K200.00.

#### **152. LIABILITY OF DIRECTORS AND OFFICERS.**

A Director or officer of a society who knowingly authorizes or negligently permits a society to refuse or fail to comply with a requirement, restriction or provision of this Act is guilty of an offence.

Penalty: A fine not exceeding K200.00.

#### **153. BUSINESS WITH LESS THAN SEVEN MEMBERS.**

A society not being an association of societies, federation of associations or composite society which carries on business, other than business in connection with the liquidation of that society, for a continuous period of more than one month when its membership is less than seven, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K40.00.

#### **154. USING ANOTHER NAME.**

A society which uses any name other than the name under which it is from time to time registered is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K40.00

#### **155. NAME OF THE SOCIETY.**

(1) For the purposes of this section the name of a society shall be deemed to be the name under which the society was registered at the time the document was issued.

(2) A Director, officer or person acting on behalf of a society who knowingly or negligently permits any document to be made or given by or on behalf of that society on which the name of that society does not appear in legible characters is guilty of an offence.

Penalty: A fine not exceeding K40.00.

#### **156. CONSIDERATION ON ALLOTMENT OF SHARES, ETC.**

A person who, without written permission of the Registrar, accepts or agrees to accept any money or moneys worth in consideration of the allotment of shares or other interest in a proposed society until that society is registered under this Act, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

#### **157. REPRESENTATION AS TO RULES.**

(1) For the purposes of this section, where an amendment to an approved rule has been approved under this Act the rule as amended shall be deemed to be a rule approved under this Act.

(2) A person who directly or by implication, represents that a rule of a society is binding on a member of that society unless that rule has been approved by the Registrar under this Act, is guilty of an offence.

Penalty: A fine not exceeding K80.00.

#### **158. USE OF THE WORD “CO-OPERATIVE”.**

(1) For the purposes of this section “an organization” includes a person, firm, company, association or other body of persons whether corporate or unincorporate.

(2) Subject to this section, an organization, other than a society, that—

- (a) trades or carries on business under a name or title in which the word “co-operative” or any other word of similar meaning is part; or
- (b) in any manner holds out that the trade or business is co-operative,

is guilty of an offence.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K40.00.

(3) Where an organization contravenes a provision of Subsection (2) every Director, partner, manager or officer of that organization who knowingly authorizes or negligently permits that organization to carry on business is guilty of an offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K20.00.

## **159. JURISDICTION.**

A penalty or fine imposed by this Act may be sued for or recovered in a District Court or Local Court.

## **160. PROSECUTION.**

A prosecution for a breach of this Act may be commenced by—

- (a) a person aggrieved; or
- (b) a person authorized in writing over the seal of the Registrar whether generally or in respect of a particular prosecution.

## **PART IX. – MISCELLANEOUS.**

### **161. PROOF OF DOCUMENTS, ETC.**

(1) Every certificate of registration or other document relating to a society signed by or bearing the seal of the Registrar shall be received in evidence without further proof.

(2) A certificate of registration of a society over the seal of the Registrar purporting to be a copy of the original certificate of registration shall be received in evidence as if it were the original certificate.

(3) Judicial notice shall be taken of the signature and seal of a person who holds or has held the office of Registrar or delegate of the Registrar if the signature or seal purports to be attached to a certificate or other document issued by the Registrar or the delegate, as the case may be.

(4) This section extends to and in relation to the rules approved and certified by the Registrar to be the approved rules.

### **162. PROOF OF RULES.**

A copy of the rules of the society bearing a certification by that society that those rules are the rules of that society shall in the absence of proof to the contrary be received as evidence of those rules.

### **163. PROOF OF REGISTERS AND DOCUMENTS.**

A copy of any register or document required to be kept by or under this Act shall, if certified by the Registrar to be a true copy of the register or document, be received in evidence as evidence of the contents of that register or document.

### **164. ENTRY IN MINUTES.**

(1) An entry in the minutes purporting to be a minute of the business transacted at a meeting of a society or its Board and signed by the Chairman of a subsequent meeting at the subsequent meeting, is evidence that the business recorded in the minutes was transacted at that meeting and that the meeting was duly convened and held.

(2) An entry in the minutes of a meeting of a society to the effect that a resolution was—

- (a) carried; or
- (b) carried unanimously; or

- (c) lost; or
- (d) in the case of a special resolution, the number of votes for and the number of votes against that resolution,

is evidence of the fact without proof of the number of votes recorded for or against the resolution.

#### **165. ENTRIES IN BOOKS.**

A copy of an entry made in the books of a society regularly kept in the course of its business shall, if certified by a Director or officer of that society, be received in evidence, where and to the same extent as the original entry is admissible.

#### **166. QUESTIONS AS TO AGE, ETC.**

Where in connection with a society a question arises as to the—

- (a) age of a person; or
- (b) occupation of a person; or
- (c) qualifications for membership of a person,

the opinion of the Registrar on that matter shall be final and binding.

#### **167. EXEMPTION FROM STAMP DUTY OR FEES.**

The Minister may, by notice in the National Gazette, in relation to all societies, a society or to a class of societies, waive—

- (a) stamp duty payable by societies, a society or a class of societies, as the case may be, on an instrument or class of instruments on which stamp duty would, but for that notice, be payable by that society, those societies or that class of societies, as the case may be; or
- (b) a fee payable by those societies, that society or the class of societies, as the case may be, in respect of the registration of a document or class of documents.

#### **168. REGULATIONS.**

The Head of State acting on advice may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K100.00 for offences against the regulations.

### **PART X. – TRANSITIONAL PROVISIONS.**

#### **169. INTERPRETATION OF PART X.**

For the purposes of this Part, the expression “former society” means a company incorporated under the [Companies Act 1997](#) as a co-operative company.

#### **170. FORMER SOCIETIES.**

Subject to this Part, on the commencement date—

- (a) a former society shall be deemed to be registered under this Act and this Act extends and applies to that former society accordingly; and
- (b) a reference in this Act expressed or implied to the date of registration as a society shall, in relation to a former society, be read as a reference to the date

on which the former society was registered or incorporated, as the case may be.

#### **171. REQUIREMENTS OF REGISTRAR.**

(1) The Registrar may by writing under his hand, require a society deemed to be registered under this Act to take such steps as may be specified in that requirement, within such time as is specified, to comply with the provisions of this Act.

(2) A society shall not without just cause (proof of which is on it) refuse or fail to comply, within the time specified, with a requirement made under Subsection (1).

#### **172. IMMUNITY FROM PROSECUTION.**

For a period of 12 months from the commencement date, a society deemed to be registered under this Act or a Director or officer shall not be liable for prosecution for an offence against this Act solely for the reason that it or he has not conformed with a provision of or under this Act if it or he—

- (a) has conformed and is conforming with the corresponding or analogous provision of the law under which it was first registered; and
- (b) is taking all reasonable steps to comply with any requirement made under Section 171.

Office of Legislative Counsel, PNG

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<sup>1]</sup> Section 97 repealed by No. 10 of 1985.

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