

# **Cooperative Societies Ordinance 1952**

## **SAMOA**

### **CO-OPERATIVE SOCIETIES ORDINANCE 1952**

#### Arrangement of Provisions

#### **PART I** **PRELIMINARY**

1. Short title and commencement
2. Interpretation

#### **PART IA** **REGISTRATION**

3. Appointment of Registrar and Assistant Registrars
4. Societies which may be registered
5. Conditions of registration
6. Application for registration
7. Registration
8. Societies to be bodies corporate
9. Evidence of registration

#### **PART II** **DUTIES AND PRIVILEGES** **OF SOCIETIES**

10. Amendments of the by-laws of a registered society

11. Address of society
12. Copy of Ordinance, by-laws and list of members to be open to inspection
13. Disposal of produce to or through a registered society
14. Creation of charges in favour of registered societies
15. Charge and set off in respect of share or interest of members
16. Share or interest not liable to attachment or sale
17. Transfer of interest on death of member
18. Deposits by or on behalf of minors
19. Register of members
20. Proof of entries in books of society

### **PART III RIGHTS AND LIABILITIES OF MEMBERS**

21. Qualification for membership
22. Members not to exercise rights till due payment made
23. Restriction of membership in society
24. Votes of members
25. Representation by proxy
26. Contracts with society of members who are minors
27. No individual to hold more than one-fifth of share capital of any society
28. Restrictions on transfer of share or interest
29. Liability of past member and estate of deceased member for debts of society

### **PART IV PROPERTY AND FUNDS OF REGISTERED SOCIETIES**

30. Loans made by registered society
31. Deposits and loans received by a registered society
32. Restrictions on other transactions with non-members
33. Investment of funds
34. Disposal of profits

### **PART V AUDIT, INSPECTION AND INQUIRY**

- 35. Audit
- 36. Power to Registrar to inspect societies' books
- 37. Inquiry and inspection

## **PART VI DISSOLUTION**

- 38. Dissolution
- 39. Cancellation of registration of a society due to lack of membership
- 40. Effect of cancellation of registration
- 41. Liquidation after cancellation of registration of society
- 42. Liquidator's powers
- 43. Power of Registrar to control liquidation
- 44. Enforcement of order
- 45. Appeal against order of liquidator or Registrar
- 46. Closure of liquidation

## **PART VII SURCHARGE AND ATTACHMENT**

- 47. Power of Registrar to surcharge officers of a registered society
- 48. Appeal to Head of State

## **PART VIII DISPUTES**

- 49. Settlement of disputes
- 50. Referral by Registrar to Judge

## **PART IX REGULATIONS**

- 51. Regulations

## **PART X MISCELLANEOUS**

- 52. Recovery of sums due to Government
- 53. Power to exempt any society from requirements as to registration
- 54. Power to exempt societies from provisions of Ordinance
- 55. Power to exempt from stamp duty and registration fees
- 56. Prohibition of the use of the word "co-operative"
- 57. Savings
- 58. Penalty for non-compliance with Ordinance
- 59. Penalty for soliciting violation of contract

### **CO-OPERATIVE SOCIETIES ORDINANCE 1952**

**1952 No.9**

**AN ORDINANCE** to provide for the formation of Co-operative Societies and to regulate their operations.

*[Assent date: 19 September 1952]*

## **PART I PRELIMINARY**

**1. Short title and commencement** –This Ordinance may be cited as the [Co-operative Societies Ordinance 1952](#) and comes into force on the day appointed for the commencement thereof by Proclamation of the High Commissioner published in the Samoa Gazette.

**2. Interpretation** –In this Ordinance, unless the context otherwise requires:

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

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

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

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

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

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

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

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

## **PART IA**

### **REGISTRATION**

**3. Appointment of Registrar and Assistant Registrars** –The Public Service Commission may appoint a person to be Registrar of Co-operative Societies and may appoint persons to assist such Registrar, and the Head of State may, by notice in the Samoa Gazette, confer on any such persons all or any of the powers of a Registrar under this Ordinance.

**4. Societies which may be registered** –Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Ordinance with limited liability.

**5. Conditions of registration** –(1)No society, other than a society of which a member is a registered society, shall be registered under this Ordinance, which does not consist of at least 10 persons, each of whom is qualified under section 21 for membership under this Ordinance.

(2) The word “Co-operative” or “Felagolagoma’i” shall form part of the name of every society registered under this Ordinance.

(3) The word “Limited” or ”Fa’atapula’aina” shall be the last word in the name of every society registered under this Ordinance.

(4) When for the purposes of this section any question arises as to age, residence, or the holding of the title of matai or a title holder of land according to Samoan custom constituting the qualification of any person, that question is to be decided by the Registrar whose decision is final.

**6. Application for registration** –(1)For the purposes of registration, an application is to be made to the Registrar.

(2) The application shall be signed:

(a) for a society of which no member is a registered society, by at least 10 persons qualified under section 5(1); and

(b) for a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies, by 10 other members, or when there are less than 10 other members, by all of them.

(3) The application is to be accompanied by copies of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall provide such information in regard to the society as the Registrar may require.

**7. Registration** –(1) If the Registrar is satisfied that a society has complied with this Ordinance and that its proposed by-laws are not contrary to this Ordinance, the Registrar may register the society and its by-laws. An appeal shall lie to the Head

of State against the refusal of the Registrar to register any society within 1 month from the date of such refusal, and the decision of the Head of State on any such appeal is final.

(2) On registration the society shall pay such fee as may be prescribed by the regulations.

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

**9. Evidence of registration** –A certificate of registration signed by the Registrar is conclusive evidence that the society mentioned in the certificate is duly registered, unless it is proved that the registration of the society has been cancelled.

## **PART II**

### **DUTIES AND PRIVILEGES OF SOCIETIES**

**10. Amendment of the by-laws of a registered society** –(1)A registered society may, subject to this Ordinance, amend its by-laws, including the by-law which declares the name of the society.

(2) No amendment of the by-laws of a registered society is valid until that amendment has been registered, for which purpose copies of the amendment is forwarded to the Registrar.

(3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Ordinance the Registrar may, if he or she thinks fit, register the amendment. An appeal shall lie to the Head of State against the refusal of the Registrar to register any amendment of any by-law, and the decision of the Head of State on any such appeal is final.

(4) An amendment which changes the name of a society shall not affect any right or obligation of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) When the Registrar registers an amendment of the by-laws of a registered society, the Registrar shall issue to the society a copy of the amendment certified by the Registrar, which is conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section “amendment” includes the making of a new by-law and the variation or rescission of a by-law.

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

**12. Copy of Ordinance, by-laws and list of members to be open to inspection** – A registered society shall keep a copy of this Ordinance, and the regulations and of its by-laws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

**13. Disposal of produce to or through a registered society** –(1)A registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of its members whether the produce of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise may provide in its by-laws or may otherwise contract with its members:

(a) that every such member who produces any such article shall dispose of the whole or any specified amount, proportion, or description thereof to or through the society; and

(b) that any member who is proved or adjudged, in such manner as may be prescribed by the regulations, to be guilty of a breach of the by-laws or contract shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the aforesaid regulations and such sum shall be a debt due to the society.

(2) No contract entered into under this section is to be contested in any Court on the ground only that it constitutes a contract in restraint of trade.



**14. Creation of charges in favour of registered societies** –Subject to any prior claim of the Government on the property of a debtor and to the lien or claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon:

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

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

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

**15. Charge and set-off in respect of share or interest of members** –A registered society shall have a charge upon the share or interest in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus, or profits payable to a member or past member or to the estate of a deceased member in respect of any debt due to the society from such member or past member or estate and may set-off any sum credited or payable to a member or past member or estate of a deceased member in or towards payment of any such debt.

**16. Share or interest not liable to attachment or sale** –Subject to section 15, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by such member and neither his assignee in bankruptcy nor a receiver duly appointed is entitled to or have any claim on such share or interest: **PROVIDED THAT** where a society is dissolved, the property and the share of any member who has been adjudicated a bankrupt shall be vested in the official assignee in bankruptcy.

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

**PROVIDED THAT** the society may transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the regulations and by-laws for membership of the society, or, on his application within 6 months of the death of the deceased member, to any person specified in the application who is so qualified.

**(2)** A registered society shall pay all other money due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

**(3)** All transfers and payments made by a registered society under this section are valid and effectual against any demand made upon the society by any other person.

**18. Deposits by or on behalf of minors –(1)** A registered society may receive deposits from or on behalf of minors and may pay such minors the interest which may become due on such deposits. Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor; and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian for the use of that minor.

**(2)** The receipt of any minor or guardian for money paid to him or her under this section is sufficient discharge of the liability of the society in respect of that money.

**19. Register of members –**A register or list of members kept by any registered society is prima facie evidence of any of the following particulars entered therein:

(a) the date at which the name of any person was entered in such register or list as a member;

(b) the date at which any such person ceased to be a member.

**20. Proof of entries in books of society** –(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed by the regulations, be received in any legal proceedings in any Court, civil or criminal, as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent, as, the original entry itself is admissible.

(2) No officer of any society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

### **PART III RIGHTS AND LIABILITIES OF MEMBERS**

**21. Qualification for membership** –In order to be qualified for membership of a co-operative society, a person, other than a registered society, must:

(a) have attained the age of 18 years; and

(b) be resident within or a matai within or a title holder by Samoan custom within the society's area of operations as described by the by-laws.

**22. Members not to exercise rights till due payment made** –No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the regulations or by-laws.

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

**24. Votes of members** –No member of any registered society has more than 1 vote in the conduct of the affairs of the society:

**PROVIDED THAT** in the case of an equality of votes the Chairperson has a casting vote:

**PROVIDED FURTHER THAT** in the case of societies of which a registered society is a member that society may have such voting powers as are provided in the regulations.

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

**26. Contracts with society of members who are minors** –(1)The minority of any person duly admitted as a member of any registered society shall not:

(a) debar that person from executing any instrument or giving any acquittance necessary to be executed or given under this Ordinance or any regulations made thereunder; and

(b) be a ground for invalidating or avoiding any contract entered into by any such person with the society.

(2) Any contract entered into under subsection (1) by any such person with the society, whether as principal or as surety, is enforceable at law by or against such person despite his or her minority or non-age.

**27. No individual to hold more than one-fifth of share capital of any society** – No member other than a registered society shall hold more than one-fifth of the share capital of any co-operative society.

**28. Restrictions on transfer of share or interest** –The transfer or charge of the share of interest of a member or past member or deceased member in the capital of

a registered society is to be subject to the provisions of this Ordinance relating to maximum holding.

**29. Liability of past member and estate of deceased member for debts of society**

–(1) The liability of a past member for the debts of a registered society as they existed on the date on which he ceased to be a member shall not continue for a period of more than 2 years reckoned from that date.

(2) The estate of a deceased member is not liable for the debts of the society as they existed on the date of his or her death for a period of more than 2 years reckoned from the date of his or her death.

**PART IV  
PROPERTY AND FUNDS OF REGISTERED SOCIETIES**

**30. Loans made by registered society** –(1) A registered society shall not, except as provided by section 33, make any loan to any person other than a member:

**PROVIDED THAT** with the consent of the Registrar, a registered society may make loans to another registered society.

(2) Except with the permission of the Registrar, a registered society shall not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

(3) The Head of State may, by general or special order published in the Savali, prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

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

**32. Restrictions on other transactions with non-members** –Save as provided in sections 30 and 31, the transactions of a registered society with persons, other than members, is to be subject to such prohibitions and restrictions as may be prescribed by the regulations.

**33. Investment of funds** –A registered society may invest or deposit its funds:

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

**34. Disposal of profits** –(1) Where a registered society is entitled by its constitution to make a profit it shall carry to a reserve fund at least  $\frac{1}{4}$  of the net profits, if any, made during every year as ascertained by the audit prescribed by section 35, such reserve fund to be employed as prescribed by the regulations. The remainder of such profits and any profits of past years available for distribution may be divided among the members by way of dividend or bonus, or allocated to any fund constituted by the society, to such extent as may be prescribed by the regulations or by-laws.

(2) A registered society may, with the sanction of the Registrar, after  $\frac{1}{4}$  of the net profits in any year have been carried to a reserve fund, contribute an amount not exceeding 10% of the remaining net profits to any charitable purpose or to a common-good fund.

(3) No society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been certified by the Registrar and the amount of the dividend, bonus or distribution, as the case may be, has been approved by the Registrar.

## PART V

### AUDIT, INSPECTION AND INQUIRY

**35. Audit** –(1) The Registrar shall audit or cause to be audited by some person authorised by the Registrar by general or special order in writing the accounts of every registered society once at least in every year.

(2) The audit under subsection (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and any other person appointed to audit the accounts of a society have power when necessary:

(a) to summon at the time of the audit any officer, agent, servant, or member of the society who the Registrar has reason to believe can give material information in regard to any transaction of the society or the management of its affairs; or

(b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

**36. Power to Registrar to inspect societies' books** –The Registrar, or any person authorised by general or special order in writing by the Registrar, shall have access to all the books, accounts, papers and securities of a registered society, and is entitled to inspect the cash in hand, and every officer of the society shall provide such information in regard to the transactions and working of the society as the person making such inspection may require.

**37. Inquiry and inspection** –(1) The Registrar may of his or her own motion, and shall on the application of a majority of the Committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some person authorised by the Registrar by order in writing in this behalf to hold an inquiry into the constitution, working, and financial condition of a registered society; and all officers and members of the society shall provide such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by the Registrar may require.

(2) The Registrar may, on the application of a creditor of the registered society, inspect or direct some person authorised by the Registrar in writing in this behalf to inspect the books of the society, if the applicant:

(a) proves that an ascertained sum of money is then due to him or her and that he or she has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inspection to the creditor and to the society into whose affairs inquiry has been made.

(4) Where an inquiry is held under subsection (1) or an inspection is made under subsection (2) the Registrar may by certificate under his or her hand apportion the costs, or such part of the costs as the Registrar may think right, between the registered society, the members demanding the inquiry, the officers or former officers of the society, and the creditor if any, on whose application the inquiry or inspection was made.

(5) A sum awarded by way of costs against any society or person under this section may be recovered, on production of the certificate referred to in subsection (4) to a Judge of the Supreme Court in like manner as a sum awarded by a decree of such Court.

## **PART VI DISSOLUTION**

**38. Dissolution** –(1) If the Registrar, after holding an inquiry or making an inspection under section 37 or on receipt of an application made by  $\frac{3}{4}$  of the members of a registered society, is of opinion that the society ought to be dissolved, the Registrar may make an order for the cancellation of the registration of the society, such order to be advertised by the Registrar in the Samoa Gazette and in the Savali.

(2) A member of a registered society may within 2 months from the date of an order under subsection (1) appeal from such order to the Head of State, and the decision of the Head of State on the appeal is final.

(3) Where no appeal is presented within 2 months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within 2 months, the order shall not take effect until it is confirmed.

(4) Where the Registrar makes an order for the cancellation of the registration of a society under subsection (1), the Registrar may make such further order as the Registrar may think fit for the custody of the books and documents and the protection of the assets of the society until the order cancelling registration takes



effect.

**(5)** No registered society shall be wound up save by an order of the Registrar.

**39. Cancellation of registration of a society due to lack of membership** –The Registrar may, by order in writing, cancel the registration of a registered society, other than a society which includes among its members one or more registered societies, if at any time it is proved to the Registrar’s satisfaction that the number of the members has been reduced to less than 10. The order is effective from the date of the order.

**40. Effect of cancellation of registration** –Where the registration of a society is cancelled by an order under section 38 or 39, the society shall cease to exist as a corporate body from the date in which the order takes effect, hereinafter referred to as the date of dissolution:

**PROVIDED THAT** any privilege conferred on the society by or under sections 14, 15, 16 and 17 is taken to vest in any liquidator appointed for that society by the Registrar.

**41. Liquidation after cancellation of registration of society** –Where the registration of a society is cancelled under section 38 or 39 the Registrar may appoint one or more persons, subject to the Registrar’s direction and control, to be liquidator or liquidators of the society.

**42. Liquidator’s powers** –(1) A liquidator appointed under section 41, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under section 43, has the following powers:

(a) to determine the contribution to be made by members and past members or by the estates of deceased members of the society to its assets;

(b) to appoint a day by notice before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;

- (c) to decide any question of priority which arises between creditors;
  - (d) to refer disputes to arbitration or institute and defend suits and other legal proceedings on behalf of the society by his or her name or office;
  - (e) to decide by what persons and in what proportions the costs of liquidation are to be borne;
  - (f) to give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
  - (g) to compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
  - (h) to call such general meetings of members as may be necessary for the proper conduct of the liquidation;
  - (i) to take possession of the books, documents and assets of the society;
  - (j) to sell the property of the society;
  - (k) to carry on the business of the society as far as may be necessary for winding it up beneficially, provided that nothing herein contained shall entitle the liquidator or a credit society to issue any loan;
  - (l) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.
- (2) Subject to such regulations as may be made in this behalf, any liquidator appointed under this Ordinance may, in so far as such powers are necessary for carrying out the purposes of this section, summon or enforce the attendance of parties and witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of the Supreme Court.

**43. Power of Registrar to control liquidation** –A liquidator shall exercise his or her powers subject to the control and revision of the Registrar, who may:

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for books, documents and assets of the society;

- (d) by order in writing limit the powers of a liquidator under section 42;
- (e) require accounts to be rendered by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
- (g) make an order for the remuneration of the liquidator;
- (h) refer any subject of dispute between a liquidator and any third party to arbitration if that party consents in writing to be bound by the decision of the arbitrator.

**44. Enforcement of order** –(1) The decision of an arbitrator on any matter referred to him under section 43 is binding on all parties, and is enforceable in like manner as an order made by the Registrar under that section.

(2) An order made by a liquidator or by the Registrar under section 42 or 43 may be enforced by the Supreme Court of Samoa in like manner as a decree of that Court.

**45. Appeal against order of liquidator or Registrar** – An appeal from any order made by a liquidator under section 42 or by a Registrar under section 43(1)(a) may, with the written consent of the Attorney-General, be made in the manner and time prescribed to the Supreme Court.

**46. Closure of liquidation**–(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied in the following order of priority:

- (a) to the costs of liquidation; and
- (b) to the discharge of the liabilities of the society; and
- (c) to the payment of the share capital; and
- (d) provided the by-laws of the society permit, to the payment of a dividend at a rate not exceeding 10% a year for any period for which no disposal of profits was made.

(2) When the liquidation of a society has been closed and any creditor of that society has not claimed or received what is due to him or her under the scheme of distribution, notice of the closing of the liquidation shall be published in the Samoa Gazette or Savali; and all claims against the funds of the society liquidated shall be proscribed when 2 years have elapsed from the date of the publication of the notice in the Samoa Gazette or Savali.

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

## **PART VII SURCHARGE AND ATTACHMENT**

**47. Power of Registrar to surcharge officers of a registered society—**(1) Where in the course of the winding up of a registered society it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine the conduct of such person and make an order requiring him or her to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

(2) This section applies even if the act is one for which the offender may be criminally responsible.

**48. Appeal to Head of State—**A person aggrieved by any order of the Registrar made under section 47 may appeal to the Head of State within 21 days from the date of such order and the decision of the Head of State is final.

## **PART VIII DISPUTES**

**49. Settlement of disputes** –(1) If a dispute touching the business of a registered society arises:

(a) among members, past members and persons claiming through members, past members and deceased members; or

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

(c) between the society or its committee and any officer of the society; or

(d) between the society and any other registered society, –  
the dispute shall be referred to the Registrar for decision. A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, is taken to be a dispute touching the business of the society within the meaning of this subsection.

(2) The Registrar may, on receipt of a reference under subsection (1):

(a) decide the dispute; or

(b) refer it for disposal to an arbitrator or arbitrators.

(3) A party aggrieved by an award made under subsection (2) by an arbitrator or arbitrators may appeal therefrom to the Registrar within such period and in such manner as may be prescribed.

(4) A decision of the Registrar under subsection (2) or under subsection (3) is final and shall not be called in question in any civil court and shall be enforced in the same manner as if the decision had been a judgment of a civil court.

(5) The award of the arbitrator or arbitrators under subsection (2) shall, if no appeal is referred to the Registrar under subsection (3) or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil court and shall be enforced in the same manner as if the award had been a judgment of a civil court.

**50. Referral by Registrar to Judge** –Despite section 49, the Registrar at any time, when proceeding to a decision under this Part, may refer any question of law

arising out of such dispute for the opinion of a Judge of the Supreme Court whose opinion given on such question is final.

## **PART IX REGULATIONS**

**51. Regulations** –(1) The Head of State, acting on the advice of Cabinet, may make regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

(2) In particular and without affecting subsection (1), such regulations may:

(a) prescribe the forms to be used, the fees to be paid, and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such applications;

(b) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of members, and the payment to be made and interest to be acquired before exercising rights of membership;

(c) subject to section 27, prescribe the maximum number of shares or portion of the capital of a registered society which may be held by a member;

(d) prescribe the extent to which a registered society may limit the number of its members;

(e) provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled, and for the liabilities of past members;

(f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(g) provide for the appointment, suspension and removal of the members of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers;

(h)prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and rescinding by-laws, and the conditions to be satisfied prior to such making, alteration or rescission;

(i)regulate the manner in which funds may be raised by means of shares of debentures or otherwise;

(j)prescribe the conditions to be observed by a registered society applying for financial assistance from the Government;

(k)prescribe the payments to be made, the conditions to be complied with, and the forms of the bonds, instruments or other documents to be executed by members applying for loans or cash credits, the period for which loans may be made or credits granted, and the maximum amount which may be lent and the maximum credit which may be allowed to individual members with or without the consent of the Registrar;

(l)provide for the mode in which the value of a deceased member's interest isto be ascertained and for the nomination of a person to whom such interest may be paid or transferred;

(m)provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or herself or his or her affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;

(n)provide for the formation and the maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of any registered society;

(o)prescribe the maximum rate of dividend which may be paid by societies;

(p)prescribe the accounts and books to be kept by a registered society, and for the periodical publication of a balance sheet showing the assets and liabilities of a registered society;

(q)provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit, and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and cooperative propaganda and prescribe for the administration of such a fund;

(r)prescribe the returns to be submitted by registered societies to the Registrar and the persons by whom and the form in which the same are to be made;

(s)provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified;

(t)provide for the formation and maintenance of a register of members, and, where the liability of members is limited by shares, of a register of shares;

(u)provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefore and for the issue of copies of such documents or registers;

(v)prescribe the manner in which any question as to the breach of any by-law or contract relating to the disposal of produce to or through a society, may be determined, and the manner in which the liquidated damages for any such breach may be ascertained or assessed;

(w)prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the registrar or such arbitrator or arbitrators;

(x)prescribe the procedure to be followed by a liquidator appointed under section 41;

(y)prescribe the forms to be used, the fees to be paid, the procedure to be observed, and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Ordinance.

## **PART X MISCELLANEOUS**

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

(2) Sums due from a registered society to the Government and recoverable under subsection (1) may be recovered first from the property of the society, and secondly, from the members subject to the limit of their liability.



**53. Power to exempt any society from requirements as to registration –**

Despite anything contained in this Ordinance, the Head of State may, by special order in each case and subject to such conditions as the Head of State may impose, exempt any society from any of the requirements of this Ordinance as to registration.

**54. Power to exempt societies from provisions of Ordinance –**The Head of State may, by general or special order, exempt any registered society or class of societies from any of the provisions of this Ordinance, or may direct that such provisions shall apply to any society or class of societies with effect from such date or with such modifications as may be specified in the order.

**55. Power to exempt from stamp duty and registration fees –**The Head of State may by notice in the Samoa Gazette in the case of any registered society or class of societies remit:

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

(b) any fee payable under the law of registration for the time being in force.

**56. Prohibition of the use of the word “co-operative” –**(1) No person, other than a registered society, shall trade or carry on business under any name or title of which the word “co-operative” is part without the direction of the Head of State: **PROVIDED THAT** nothing in this section applies to the use by any person or his successor in interest of any name or title under which the person traded or carried on business at the commencement of this Ordinance.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit, and in the case of a continuing offence to a further fine not exceeding one-half of a penalty unit for each day during which the offence continues.

**57. Savings –(1)** A registered society is taken not to be a company for the purposes of the Companies Act.

**(2)** The Companies Act does not apply to a registered society.

**(3)** Repealed by section 10(b) of the Reprint of Statutes (Miscellaneous Provisions) Act 1975.

**58. Penalty for non-compliance with Ordinance –(1)** It is an offence under this Ordinance if:

(a) a registered society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Ordinance by the Registrar or any person duly authorised by the Registrar in writing in that behalf; or

(b) a registered society or an officer or member thereof wilfully makes a false return or furnishes false information; or

(c) a person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Ordinance or does not furnish any information lawfully required from him by a person authorised to do so, or which he or she is required to furnish under the provisions of this Ordinance.

**(2)** A society, officer, or member of a society or other person who is convicted of an offence under this section is liable to a fine of 1 penalty unit.

**59. Penalty for soliciting violation of contract** –A person having knowledge or notice of the existence of a contract described in section 13, who solicits or persuades any person to sell or deliver any article in violation of that contract commits an offence, and is liable on conviction to a fine of 1 penalty unit for each offence, and in addition may be ordered to pay to the society concerned such damage as the Court may see fit.

This is the official version of this Ordinance as at 31 December 2014.

This Ordinance has been revised by the Legislative Drafting Division from 2008 to 2014 respectively under the authority of the Attorney General given under the [\*Revision and Publication of Laws Act 2008\*](#).

The following general revisions have been made:

(a) Insertion of the commencement date

(b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

(i) “any” changed to “a” or “each” where appropriate

(ii) Present tense drafting style:

- “shall be” changed to “is” and “shall be deemed” changed to “is taken”
- “shall have” changed to “has”,
- “hereby” and “from time to time” (or “at any time” or “at all times”) removed

(iii) Use of plain language:

- “notwithstanding” changed to “despite”
- “in accordance with the requirements/provisions of” changed to “under”
- “furnish” changed to “provide”
- “despite that” changed to “even if”
- “without prejudice to” changed to “without affecting”
- “shall have power to” changed to “may”

(iv) Offence provisions

- “guilty of an offence on conviction” changed to “convicted of an offence”

(v) Numbers and symbols in words changed to figures(e.g. per cent changed to %)

(vi) Removal of superfluous terms

- “of Samoa” (in relation to Government and Supreme Court)
- “the provisions of”

(vii) [Part I](#) renumbered as [Part IA](#) and the preliminary provisions renumbered as new [Part I](#).

(viii) Section 26 divided into subsection and paragraphs, section 46(1) divided into

paragraphs,

(ix) Arrangement of provisions made consistent with the text.

There were no amendments made to this Ordinance since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Ordinance is administered by*