

## COOK ISLANDS

### INCORPORATED SOCIETIES AMENDMENT ACT 1998

#### ANALYSIS

##### Title

1. Short title and commencement
2. Interpretation
3. Application for incorporation
4. Name of society not to be the same as the name of another society or body corporate
5. Annual financial statement
6. Registrar
7. Deputy Registrar of Incorporated Societies
8. Inspection of documents
9. Validation

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**1998, No. 9**

An Act to amend the Incorporated Societies Act 1994

(31 August 1998)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled, and by authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Incorporated Societies Amendment Act 1998 and shall be read together with and deemed part of the Incorporated Act 1994 (hereinafter referred to as "the principal Act").

(2) This Act shall come into force on the 1<sup>st</sup> day of October 1998.

2. Interpretation - Section 2 of the principal Act is hereby amended by adding to the definition of the term "Registrar" after the word "Act" the words "and includes the Deputy Registrar" means the Deputy Registrar of Incorporated Societies under this Act."

3. Application for incorporation - Section 8 of the principal Act is hereby amended by inserting a new subsection 2 as follows:

"(2) Except with the consent of the High Court, no society shall be registered by a name which, in the opinion of the Registrar, is undesirable."

4. Name of society not to be the same as the name of another society or body corporate - The principal Act is hereby amended by inserting after section 12 the following new section:

"12A. Change of name - (1) If -

(a) Through inadvertence or otherwise a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 12 of this Act, or of any enactment, other than this Act, relating to restrictions on the use of any name; or

(b) A society is for the time being registered by a name which, in the opinion of the Registrar, is undesirable, -

the society shall, within a period of six weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with section 23 of this Act to a name that is not in contravention as aforesaid and is not, in the opinion of the Registrar, undesirable.

(2) If a society makes default in complying with the requirements of subsection (1) of this section, it commits an offence and shall be liable on conviction to a fine not exceeding \$10 for every day on which the offence has continued.

(3) No fee shall be payable to the Registrar in respect of an alteration of the rules of a society if the alteration only changes the society's name pursuant to the requirements of subsection (1) of this section."

5. Annual financial statement - The principal Act is hereby amended by inserting after section 25 the following new sections:

"25A. Power to compromise with creditors and members - (1) Where a compromise or arrangement is proposed between a society and its creditors or any class of them, or between the society and its members or any class of them, the High Court may, on the application of the society or of any creditor or member of the society, or, in the case of a society being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the society or class of members, as the case may be, to be summoned in such manner as the Court directs. If any question arises under this section as to whether or not any members or creditors of a society constitute a class of members or a class of creditors, as the case may be, it shall be determined by the Court as in the circumstances it thinks proper.

(2) If a majority in number representing not less than three-fourths in value of the creditors or class of creditors or not less than three-fourths of the members or class of members, as the case may be, voting in person or, where proxies are allowed, by proxy at the meeting agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all creditors or class of creditors, or on the members or class of members, as the case may be, and also on the society, or, in the case of a society in the course of being wound up, on the liquidator of the society.

(3) An order made under subsection (2) of this section shall have no effect until a sealed copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the rules of the society issued after such order has been made.

(4) If a society makes default in complying with subsection (3) of this section, the society and every officer of the society who is in default shall be liable on conviction to a fine not exceeding \$2 for each page of each copy in respect of which default is made.

(5) In this section and in section 25B of this Act -

"Creditors" includes every person who has a claim that upon the winding up of the society would be admissible to proof in accordance with section 306 of the Companies Act 1955 (as applied by section 26(2) and 28(3) of this Act):

"Officer of the society who is in default" means any officer of the society who-

(a) Knowingly and wilfully authorises or permits the default, refusal, or contravention mentioned in this section or in section 25B of this Act; or

(b) Knew or ought to have known of the default, refusal, or contravention and did not take reasonable steps to secure compliance with the requirements specified in or imposed by this section or section 25B of this Act.

25B. Information as to compromises with creditors and members - (1) Where a meeting of creditors or any class of creditors or of members or any class of members is summoned under section 25A of this Act there shall -

(a) With every notice summoning the meeting which is sent to a creditor or member also a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the officers of the society, whether as officers or as members or as creditors of the society or otherwise, and the effect thereon compromise or arrangement, in so far as it is different from the effect on the like interests of other persons; and

(b) In every notice summoning the meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of creditors of the society, the said statement shall give the like explanation as respects any trustees appointed on behalf of creditors as it is required to give as respects the society's officers.

(3) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the society free of charge with a copy of the statement.

(4) Where a society makes default in complying with any requirement of this section, the society and every officer of the society who is in default shall be liable on conviction to a fine not exceeding \$1,000, and, for the purpose of this subsection, any liquidator of the society and any trustees appointed on behalf of creditors of the society shall be deemed to be officers of the society:

Provided that a person shall not be liable under this subsection if that person shows that the default was due to the refusal of any other person, being an officer of the society or a trustee appointed on behalf of creditors, to supply the necessary particulars as to his interests.

(5) It shall be the duty of any officer of the society and of any trustee appointed on behalf of creditors of the society to give notice to the society of such matters relating to himself as may be necessary for the purposes of this section, and any person who makes default in complying with this subsection shall be liable on conviction to a fine not exceeding \$100."

6. Registrar - The principal Act is hereby amended by repealing section 34 and substituting the following new section:

"34. Registrar of Incorporated Societies - The Registrar of the High Court at Rarotonga for the time being shall be the Registrar of Incorporated Societies."

7. Assistant Registrar of Incorporated Societies - The principal Act is hereby amended by repealing section 35 and substituting the following new section:

"35. Deputy Registrar of Incorporated Societies - (1) The Deputy Registrar of Companies at Rarotonga for the time being appointed under section 4 of the Companies Act 1955 of New Zealand as applied in the Cook Islands by the Companies Act 1970-71 shall be the Deputy Registrar of Incorporated Societies, who shall, under the control of the Registrar, perform such official duties as he is called upon to perform by the Registrar.

(2) On the occurrence from any cause a vacancy in the office of the Registrar (whether by reason of death, resignation, or otherwise), and in the case of the absence from duty of the Registrar (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Registrar shall have and may exercise all the powers, duties, and functions of the Registrar."

8. Inspection of documents -The principal Act is hereby amended by inserting after section 37 the following new sections:

"37A. Powers of inspection of Registrar - (1) The Registrar or any person authorised by him may, for the purpose of ascertaining whether a society or any officer of a society is complying or, has complied with this Act, or of ascertaining whether the Registrar should exercise any of his rights or powers under this Act, or of detecting offences against this Act -

(a) Require a society or any officer of a society to produce for inspection any registers, records, accounts, books, or papers that are kept by the society; and

(b) In any case where the Registrar or the person authorised by him considers that the aforesaid purpose cannot be achieved by inspecting only the documents specified in paragraph (a) of this subsection, or where such documents are not produced for inspection, require any person (including any officer employed in or in connection with any Government Department) to produce for inspection any registers, records, accounts, books, or papers that contain information relating to any money or other property that is or has been managed, supervised, controlled, or held in trust by or for the society; and

(c) Inspect and make records of any such registers, records, accounts, books, or papers; and

(d) For the purposes of making records thereof, take possession of and remove from the premises where they are kept, for such period of time as is reasonable in the circumstances, any such registers, records, accounts, books or papers.

(2) Nothing in this subsection (1) of this section limits or affects the Income Tax Act 1997 or the Statistic Act 1966.

(3) A person who has made an inspection under subsection (1) of this section shall give, divulge, or communicate any records or information that he has acquired in the course of the inspection to the Registrar or Deputy Registrar.

(4) A person who has made an inspection under subsection (1) of this section shall, upon being directed to do so by a person for the time being holding the office of Registrar, give, divulge, or communicate any records or information that he has acquired in the course of the inspection to such of the following persons as the Registrar specifies, namely:

(a) The Minister of Justice;

(b) The Secretary for Justice;

(c) Any person authorised by the Registrar to receive such records or information.

(5) The Minister of Justice or the Secretary for Justice may, by written notice to that person, require a person for the time being holding the office of Registrar to give a direction under subsection (4) of this section; and that person shall comply with any such requirement.

(6) If any society refuses or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of subsection (1) of this section, any document that the Registrar or authorised person has under that subsection required it to produce, the society commit an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(7) If any officer of a society or other person refused or fails to produce for inspection to the Registrar, or to any person authorised by the Registrar for the purposes of

subsection (1) of this section, any document within the power or control of that officer or person that the Registrar or authorised person has under that subsection required him to produce, that officer or person commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(8) Any person who wilfully obstructs or hinders the Registrar, or any person authorised by the Registrar for the purposes of subsection (1) of this section, while the Registrar or authorised person is making an inspection, or a record, or taking possession of, or removing any documents pursuant to that subsection, commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

(9) Nothing in this section limits or affects legal professional privilege.

37B. Appeals from decisions of Registrar - (1) Any person who is aggrieved by the refusal of the Registrar to register a society, or to register or receive any document submitted to him under this Act or who is aggrieved by any other act or decision of the Registrar under this Act, may appeal to the High Court within 21 days after the date of the refusal or other act or decision, or within such further time as the Court may allow.

(2) On hearing the appeal, the Court may confirm the refusal or other act or decision of the Registrar, or give such directions or make such determination in the matter as the Court thinks fit.

(3) No right of appeal shall lie under this section against any act or decision of the Registrar -

(a) In respect of which there is any express provision in this Act in the nature of an appeal or review; or

(b) That is declared by this Act to be conclusive or final, or that is embodied in any document declared by this Act to be conclusive evidence of any act, decision, matter, or thing.

(4) Notwithstanding any other provision of any Act or any rule of law, where a person appeals or applies to the High Court in respect of an act or decision of the Registrar under section 37A of this Act, until a decision on the appeal or application is given, the Registrar, and any person authorised by him under that section for the purposes, may continue to exercise his powers under that section as if no such appeal or application had been made, and no person shall be excused from fulfilling his obligation under that section by reason of that appeal or application;

Provided that, to the extent that an appeal or application in respect of any such act or decision is allowed or granted, as the case may be,-

(a) The Registrar shall ensure that, forthwith after the decision on the appeal or application is given, all records made by him, or by a person authorised by him for that purpose, under section 37A (1) (c) of this Act in respect of that act or decision are destroyed or expunged; and

(b) No information acquired under paragraph (a) or paragraph (b) of section 27A of this Act in respect of that act or decision shall be admissible in evidence in any proceedings."

9. Validation - Every appointment made and every act performed and everything done before the commencement of this Act had been in force when the appointment was made or when the act or thing was done or performed is hereby validated and declared to be as always validly done.

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This Act is administrated by the Ministry of Justice.