

[Hon A Member]

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Incorporated Societies Amendment Bill 2019

Contents

1	Title	1
2	Commencement	2
3	Principal Act amended	2
Part 1		
Amendments to Incorporated Societies Act 1994		
4	Interpretation	2
5	Rules of incorporated societies	3
6	New sections 8 to 8B	3
7	Registrar to register society if in order	4
8	New section 17	4
9	New sections 20 and 20A	5
10	Alteration of rules	5
11	Register of members	6
12	New section 25	6
13	Power to compromise with creditors and members	7
14	New sections 26 to 28	7
15	New sections 30 to 30D	8
16	Deputy Registrar of Incorporated Societies	9
17	New sections 36 to 37	10
18	New section 39	12
19	Schedule 1 repealed	13
Part 2		
Transitional provisions		
20	Regulations providing for transitional matters, etc	13
21	Compromise or liquidation incomplete on commencement of this Act	13

An Act to update the Incorporated Societies Act 1994 to make provision for a digital register of incorporated societies and for the online filing of documents for registration on the register.

The Parliament of the Cook Islands enacts as follows—

- 1 Title**
This Act is the Incorporated Societies Amendment Act 2019.

2 Commencement

This Act comes into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

3 Principal Act amended

This Act amends the Incorporated Societies Act 1994.

Part 1
Amendments to Incorporated Societies Act 1994

4 Interpretation

Section 2 is repealed and the following section is substituted:

“2 Interpretation

In this Act, unless the context otherwise requires,—

“Court means the High Court

“digital format—

“(a) means a format in which information, a document, or a register may be stored, accessed, and displayed by a computer or similar device; and

“(b) includes a format specified as a digital format by regulations made under this Act; and

“(c) includes any format (other than a photocopy document) produced by making a digital copy, image, or reproduction of a document that is in hard copy format

“Deputy Registrar means the Deputy Registrar of Incorporated Societies under this Act

“document means a document in any form; and includes—

“(a) any writing on any material; and

“(b) information recorded or stored by means of a tape recorder, computer, or other device; and

“(c) a book, graph, or drawing; and

“(d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

“digital register means a register in digital format

“electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

“file means to file, give, submit, deposit, apply, or otherwise make available

“hard copy format has the same meaning as in section 3 of the Digital Registers Act 2011

“information includes information (whether or not in its original form) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech

“photocopy document has the same meaning as in section 3 of the Digital Registers Act 2011

“prescribed means prescribed by this Act or by regulations

“**prescribed form** means a form or format prescribed by regulations or, if no form is prescribed by regulations, a form or format approved by the Registrar

“**register** means the register kept by the Registrar under section 36(1)

“**Registrar** means the Registrar of Incorporated Societies under this Act

“**signature** means—

“(a) the name of a person affixed with his or her own hand on a document; or

“(b) in the case of a document filed with the Registrar by electronic means, the name of a person affixed to the document that the Registrar considers acceptable

“**society** means a society incorporated under this Act

“**working day** means a day of the week that is not—

“(a) Saturday and Sunday; or

“(b) a day that is defined as, or declared to be, a public holiday under any Act

“**writing** includes representing or reproducing words, figures, or symbols—

“(a) in a visible and tangible form by any means and in any medium:

“(b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read.”

5 Rules of incorporated societies

(1) Section 5(1) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) the name of the society, with the addition of the word “Incorporated” or its abbreviation “Inc” as the last word in that name;”.

(2) Section 5(1) is amended by repealing paragraph (h) and substituting the following paragraph:

“(h) if the society has a common seal, the control and use of that seal;”.

6 New sections 8 to 8B

Section 8 is repealed and the following sections substituted:

“8 Application for incorporation

“(1) An application for the incorporation of a society must be—

“(a) in the prescribed form; and

“(b) subscribed by not less than 15 members of the society in accordance with section 8A; and

“(c) filed with the Registrar.

“(2) The application must specify—

“(a) the name of the society; and

“(b) the full name, residential and postal addresses, and contact details (including email address) of the person filing the application; and

“(c) the full name of each person who is a subscriber to the application; and

“(d) in the case of each subscriber who is an individual, his or her residential and postal addresses; and

- “(e) in the case of each subscriber who is a body corporate, its corporate registration number (if any), and the address of its registered office and its postal address; and
 - “(f) the address of the society’s registered office and its postal address; and
 - “(g) any other information that may be prescribed by regulations.
- “(3) The application must be accompanied by—
- “(a) a copy of the rules of the society; and
 - “(b) a statement by the person filing the application that—
 - “(i) the copy of the rules accompanying the application is the same as the copy of the rules signed by the subscribers in accordance with section 8A; and
 - “(ii) each of the subscribers has subscribed the application in accordance with section 8A; and
 - “(iii) a majority of the members of the society have consented to the application; and
 - “(c) the prescribed fee.
- “(4) A person who files an application under this section knowing that it or any document accompanying it is false or misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 1 year, or to both.

“8A How member subscribes application for incorporation

- “(1) An application for the incorporation of a society is subscribed by a member who is an individual if—
- “(a) the member signs a copy of the rules of the society; and
 - “(b) the member identifies his or her signature by writing his or her full name and residential address next to it; and
 - “(c) the signature is attested by a witness who is not a subscriber.
- “(2) An application for the incorporation of a society is subscribed by a member who is a body corporate if—
- “(a) a director or other officer who is duly authorised to subscribe the application signs a copy of the rules of the society; and
 - “(b) the director or officer identifies his or her signature by writing his or her full name and residential address next to it; and
 - “(c) the signature is attested by a witness who is not a subscriber.

“8B Name of society must not be undesirable

Unless the High Court directs otherwise, the Registrar must not register a society with a name that, in the Registrar’s opinion, is undesirable.”

7 Registrar to register society if in order

Section 9 is amended by repealing paragraphs (c) and (d) and substituting the following paragraph:

- “(c) register the rules of the society on the register.”

8 New section 17

Section 17 is repealed and the following section is substituted:

“17 Requirements for society obligation

- “(1) For a society to enter into an obligation that, if it were a natural person obligation, must by law be in a deed, the obligation must be—
- “(a) in writing; and
 - “(b) signed in writing under the name of the society by 2 or more officers of the society.
- “(2) For a society to enter into an obligation that, if it were a natural person obligation, must by law be in writing, the obligation must be—
- “(a) in writing; and
 - “(b) entered into on the society’s behalf by a person acting under the company’s express or implied authority.
- “(3) For a society to enter into an obligation that, if it were a natural person obligation, is not required by law to be in writing, the obligation must be entered into on the society’s behalf by a person acting under the society’s express or implied authority.
- “(4) A society may affix its common seal, if it has one, to an obligation in writing, but, even though the rules of the society may require it, the absence of the seal does not affect the enforceability of the obligation.
- “(5) This section applies to a contract or other obligation whether or not—
- “(a) that contract or obligation was entered into in the Cook Islands; and
 - “(b) the law governing the contract or obligation is the law of the Cook Islands.”

9 New sections 20 and 20A

Section 20 is repealed and the following sections are substituted:

“20 Registered office and postal address

- “(1) A society must always have a registered office and postal address in the Cook Islands.
- “(2) Subject to section 20A,—
- “(a) the registered office of a society at a particular time is the place entered as its registered office on the register at that time; and
 - “(b) the postal address of a society at a particular time is the address entered as its postal address on the register at that time.

“20A Change of registered office or postal address

- “(1) Subject to the society’s rules and subsection (3), a society may change its registered office or postal address at any time.
- “(2) The society must file a notice of the change in the prescribed form with the Registrar for registration.
- “(3) A change in the registered office or postal address takes effect on a date stated in the notice which must not be earlier than 5 working days after the notice is registered.”

10 Alteration of rules

Section 23 is amended by repealing subsections (2) and (3) and substituting the following subsections:

- “(2) An alteration to the rules must be—
- “(a) in writing; and
 - “(b) made in accordance with the rules of the society; and

- “(c) signed by at least 3 members of the society; and
- “(d) notified to the Registrar in accordance with subsection (3).
- “(3) A notice of an alteration to the rules must—
 - “(a) be in the prescribed form; and
 - “(b) be filed with the Registrar for registration; and
 - “(c) specify the full name, residential or business address, postal address, and contact details (including email address) of the person filing the notice; and
 - “(d) be accompanied by—
 - “(i) the text of the alteration; and
 - “(ii) a statement by the person filing the notice that the alteration has been made in compliance with subsection (2); and
 - “(iii) the prescribed fee (if any).
- “(3A) A person who files a notice under this section knowing that it or any document that accompanies it is false or misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 1 year, or to both.
- “(3B) The Registrar, if satisfied that the alteration to the rules has been made in compliance with subsection (2), must without delay register the alteration which takes effect on registration.”

11 Register of members

Section 24 is amended by repealing subsection (3) and substituting the following subsections:

- “(3) On being required by the Registrar to do so, a society must file a notice of details of its current members.
- “(4) The notice must—
 - “(a) be in the prescribed form; and
 - “(b) be filed with the Registrar for registration; and
 - “(c) specify the full name, residential address, and nationality of each its members; and
 - “(d) specify the full name, residential and postal addresses, and contact details (including email address) of the person filing the notice; and
 - “(e) contain a statement by the person filing the notice that the information contained in the notice is correct; and
 - “(f) be accompanied by the prescribed fee (if any).
- “(5) A person who files a notice under this section knowing that it is false or misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 1 year, or to both.”

12 New section 25

(1) Section 25 is repealed and the following section is substituted:

“25 Annual notice of financial position

- “(1) A society must file a notice of financial position for each financial year.
- “(2) The notice must—
 - “(a) be filed with the Registrar for registration; and

- “(b) be filed within 3 months after the close of the financial year to which it relates (the **financial year**); and
 - “(c) be in the prescribed form; and
 - “(d) specify the full name, residential or business address, postal address, and contact details (including email address) of the person filing the notice.
- “(3) The notice must be accompanied by—
- “(a) a statement containing the following information in relation to the financial year:
 - “(i) the society’s income and expenditure for the financial year; and
 - “(ii) the society’s assets and liabilities at the close of the financial year; and
 - “(iii) all mortgages, charges, and other securities affecting any of the society’s property at the close of the financial year; and
 - “(b) a statement by the person filing the notice that the information contained in or accompanying the notice is correct; and
 - “(c) the prescribed fee (if any).
- “(4) A person who files a notice under this section or section 30B(2)(c)(i) knowing that it or any document that accompanies it is false or misleading in a material respect commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 1 year, or to both.”

13 Power to compromise with creditors and members

Section 25A(5) is amended by omitting the definition of “Creditors” and substituting the following definition:

“**creditors** includes every person who has a claim in the liquidation of a society that would be admitted as a claim in accordance with Part 14 (Liquidations) of the Companies Act 2017”.

14 New sections 26 to 28

Sections 26 to 28 are repealed and the following sections are substituted:

“26 Members may resolve to put society into liquidation

- “(1) A society may be put into liquidation if—
 - “(a) the society, at a general meeting of its members, passes a resolution appointing a liquidator; and
 - “(b) the resolution is confirmed at a subsequent general meeting called for that purpose and held not earlier than 20 working days after the date on which the resolution to be confirmed was passed.
- “(2) Subject to this Act and to any regulations made under it, the provisions of Part 14 (Liquidations) of the Companies Act 2017 apply to the liquidation of the society, with any necessary modifications, as if the society was a company that had been put into liquidation by the appointment of a liquidator under section 204(1)(b) of that Act.

“27 High Court may put society into liquidation

A society may be put into liquidation by the appointment by the High Court of a named person as liquidator if any of the following applies:

- “(a) the society suspends its operations for a period of 1 year or more;
or
- “(b) the number of the members of the society is less than 15; or
- “(c) the society is unable to pay its debts; or
- “(d) the society carries on any operation from which a member makes a pecuniary gain contrary to the provisions of this Act; or
- “(e) the Court considers that it is just and equitable that the society should be put into liquidation.

“28 Application to High Court for appointment of liquidator

“(1) An application to the High Court for the appointment of a liquidator of a society may be made by any of the following:

- “(a) the society; or
- “(b) a member or creditor of the society; or
- “(c) the Registrar.

“(2) All costs incurred by the Registrar in making the application are, unless the Court orders otherwise, a first charge on the assets of the society.

“(3) Subject to this Act and to any regulations made under it, Parts 14 (Liquidations) and 16 (Removal from Cook Islands register) of the Companies Act 2017 apply, with any necessary modifications, to the application for the appointment of a liquidator and to the appointment of a liquidator as if the application and appointment were made under section 204(1)(c) of that Act.”

15 New sections 30 to 30D

Section 30 is repealed and the following sections are substituted:

“30 Dissolution of society by Registrar

“(1) The Registrar—

“(a) may dissolve a society if the Registrar is satisfied that the society—

- “(i) is no longer carrying on its operations; or
- “(ii) has been registered in error:

“(b) must dissolve a society if the society fails to file an annual notice of financial position within the period of 6 months after the deadline for filing.

“(2) The society is dissolved when the Registrar registers a notice on the register stating that the society is dissolved.

“(3) On registering a notice under subsection (2), the Registrar must—

- “(a) remove the society from the register; and
- “(b) give public notice that the society has been dissolved.

“30A Registrar may revoke dissolution of society

“(1) The Registrar—

“(a) may revoke the dissolution of a society if the Registrar is satisfied that the society was dissolved in error and the dissolution ought to be revoked:

“(b) must revoke the dissolution if section 30B applies:

- “(c) may revoke the dissolution of a society under section 30C.
- “(2) The dissolution of a society is revoked when the Registrar registers a notice on the register stating that the dissolution is revoked.
- “(3) On registering a notice under subsection (2), the Registrar must—
 - “(a) restore the society to the register; and
 - “(b) give public notice that the dissolution of the society has been revoked.

“30B Revocation of dissolution for failure to file annual notice of financial position

- “(1) Subject to subsection (2), the Registrar must, on the application of a member, revoke the dissolution of a society that has been dissolved under section 30(1)(b) for failure to file an annual notice of financial position.
- “(2) The application must be—
 - “(a) filed with the Registrar within 2 years after the dissolution; and
 - “(b) in the prescribed form (if any); and
 - “(c) accompanied by—
 - “(i) all outstanding annual notices of financial position and associated filing fees; and
 - “(ii) a late filing fee for each outstanding annual notice of financial position.

“30C Revocation of dissolution on other grounds

- “(1) Subject to subsection (2), the Registrar may, on the application of a person listed in subsection (3), revoke the dissolution of a society on 1 or more of the following grounds:
 - “(a) the society is a party to a legal proceeding;
 - “(b) the society is in receivership or liquidation;
 - “(c) the applicant has an undischarged claim against the society;
 - “(d) for any other reason, the dissolution is not just and equitable.
- “(2) The application must be—
 - “(a) filed with the Registrar within 2 years after the dissolution; and
 - “(b) in the prescribed form (if any); and
 - “(c) accompanied by the prescribed fee (if any).
- “(3) A person may apply if the person was any of the following at the time the society was dissolved:
 - “(a) a member or creditor of the society;
 - “(b) a party to any legal proceedings against the society;
 - “(c) a person with an undischarged claim against the society;
 - “(d) the liquidator;
 - “(e) a receiver of property of the society.”

“30D Effect of revocation of dissolution

On the revocation of the dissolution of a society, the society continues in existence as if no dissolution had taken place.”

16 Deputy Registrar of Incorporated Societies

Section 35 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) A Deputy Registrar of Companies appointed under section 369 of the Companies Act 2017 must be appointed the Deputy Registrar of Incorporated Societies and must, under the control of the Registrar, perform such official duties as he or she is called upon to perform by the Registrar.”

17 New sections 36 to 37

Sections 36 and 37 are repealed and the following sections are substituted:

“36 Register of incorporated societies

- “(1) The Registrar must ensure that a register of incorporated societies (the **register**) is kept and maintained.

- “(2) The register may be kept in the manner that the Registrar thinks fit including, either wholly or in part, by means of a digital register.

“36A Registration of documents

On receiving a document for registration under this Act, the Registrar must without delay—

- “(a) register the document in the register (unless the Registrar rejects the document under section 36C); and
- “(b) in the case of a document that is not an annual notice of financial position, in writing notify the registration to the person who filed the document.

“36B When document registered

For the purposes of this Act, a document is registered when—

- “(a) the document itself becomes part of the register; or
- “(b) the document or details of the document including the time and date of registration are recorded or stored in the digital register.

“36C When Registrar may reject document for registration

- “(1) The Registrar may refuse to register a document that—

- “(a) is not in the prescribed form (if any); or
- “(b) does not comply with this Act or regulations made under this Act; or
- “(c) is not printed or typewritten; or
- “(d) if the register is a digital register, is in a format that does not enable it be registered; or
- “(e) has not been fully and properly completed; or
- “(f) contains material that is not clearly legible; or
- “(g) is not accompanied by the prescribed fee.

- “(2) If subsection (1) applies, the Registrar may require that—

- “(a) the document is submitted for registration again, appropriately amended or completed, or accompanied by the prescribed fee; or
- “(b) a fresh document is submitted in its place.

“36D No presumption of validity or invalidity

The registration or refusal of registration of a document by the Registrar does not affect, or create a presumption as to,—

- “(a) the validity or invalidity of the document; or

“(b) the correctness or otherwise of the information contained in the document.

“36E Inspection of register

“(1) Any person may, on payment of the prescribed fee (if any), inspect—

“(a) a document that is part of the register; or

“(b) a document or details of a document that have been recorded or stored in the digital register.

“(2) An inspection made at the office of the Registrar must be made during the hours when the office is open to the public for business on a working day.

“36F Copies and certified copies of documents

Any person may, on payment of the prescribed fee (if any), require the Registrar to give or certify—

“(a) a certificate of incorporation of a society; or

“(b) a copy of, or extract from, a registered document; or

“(c) details of a registered document that have been recorded or stored in the digital register; or

“(d) a copy of, or extract from, a registered document that has been recorded or stored in the digital register.

“36G Rectification or correction of register

“(1) The Registrar may—

“(a) rectify the register if the Registrar is satisfied that any information has been wrongly entered in, or omitted from, the register; or

“(b) correct any particulars that appear to the Registrar to have been incorrectly entered in the register.

“(2) Unless the rectification or correction relates solely to the person who provided it, the Registrar must not rectify or correct the register without first—

“(a) giving notice of the rectification or correction to the society and to persons whom the Registrar considers will be materially affected by it; and

“(b) allowing a person to whom notice is given a reasonable opportunity to object.

“(3) This section does not limit the Registrar’s power of amendment under section 36I.

“36H Registrar may require information from society

“(1) The Registrar may give notice to a society requiring it to provide—

“(a) corrected or updated details on any matter entered in the register for that society; and

“(b) a certified copy of any document that has been or ought to have been filed with the Registrar for registration under this Act.

“(2) The society must provide the information or certified copy within the time specified by the Registrar’s notice, and that time must not be less than 10 working days after the date on which the Registrar sends the notice.

“(3) A society that fails to comply with a notice under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$4,000.

“36I Registrar may amend register

If information provided to the Registrar under section 36H differs from the information shown in the register for the society, the Registrar may amend the register accordingly.

“37 Notice to individuals

“(1) Notice that under this Act the Registrar must give to an individual must be given—

“(a) in writing; and

“(b) in a manner that the Registrar considers appropriate in the circumstances.

“(2) Without limiting subsection (1), the Registrar may give a notice to an individual by—

“(a) having it delivered to that person; or

“(b) posting it to that person at his or her last known postal address; or

“(c) sending it by email to an electronic address provided by that person to the Registrar; or

“(d) having it published in a newspaper or other publication in circulation where that person lives or is believed to live.”

18 New section 39

(1) Section 39 is repealed and following section is substituted:

“39 Regulations

“(1) The Queen’s Representative may, by Order in Council, make regulations to give effect to the provisions of this Act and in particular for all or any of the following purposes:

“(a) prescribing forms; and those regulations may require—

“(i) the inclusion in, or attachment to, forms of specified information or documents; and

“(ii) forms to be signed by specified persons:

“(b) prescribing the information that must be provided for the proper completion of a prescribed form:

“(c) prescribing requirements with which documents delivered for registration must comply:

“(d) specifying a format as a digital format:

“(e) prescribing when a fee, penalty, or other sum is payable under this Act:

“(f) prescribing the amount of any fee, penalty, or other sum payable under this Act:

“(g) prescribing the circumstances in which the Registrar may waive, or exempt a person or class of persons from liability to pay, a fee, penalty, or other sum payable under this Act, whether in whole or in part:

“(h) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

“(2) Without limiting subsection (1)(b), a provision of this Act requiring or contemplating prescribed information for the purposes of completing a prescribed form is satisfied if the information necessary for the proper completion of the form appears from the face of the form or from the content of the form.”

19 Schedule 1 repealed
Schedule 1 is repealed.

Part 2
Transitional provisions

- 20 Regulations providing for transitional matters, etc**
The Queen’s Representative may, by Order in Council, make regulations—
- (a) providing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional and savings provisions in this Act;
 - (b) to facilitate the bringing into force of any regulations under this Act;
 - (c) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of, or amendments made by, this Act do not apply.
- 21 Compromise or liquidation incomplete on commencement of this Act**
- (1) This section applies to a compromise by a society or the liquidation of a society (the **proceeding**) that is incomplete on the commencement of this Act.
 - (2) The balance of the proceeding must be conducted in accordance with the law in force immediately after the commencement of this Act with all necessary modifications.
 - (3) If necessary, the High Court on the application of the society, a creditor, or a liquidator may give directions as the Court thinks fit for the conduct of the proceeding.

This Act is administered by the Ministry of Justice.
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