

COOK ISLANDS

INCORPORATED SOCIETIES ACT 1994

ANALYSIS

Title

1. Short Title and commencement
 2. Interpretation
 3. Incorporated societies
 4. Pecuniary gain
 5. Rules of incorporated societies
 6. Rules of society may provide for penalties
 7. Societies may make regulations or bylaws
 8. Application for incorporation
 9. Registrar to register society if in order
 10. Certificate of incorporation to be conclusive evidence of registration
 11. Upon issue of certificate members to be a body corporate
 12. Name of society not to be the same as the name of another society or body corporate
 13. Penalty for improper use of word "Incorporated"
 14. Appeal from Registrar to a Judge of the High Court
 15. No liability on members for obligation of society
 16. Members to have no right to property of society
 17. Contracts by society
 18. Service on society
 19. Security for costs where society is plaintiff
 20. Registered office
 21. Restriction of operations of society
 22. Society not to engage in operations involving pecuniary gain
 23. Alteration of Rules
 24. Register of members
 25. Annual financial statement
 26. Voluntary winding up of society
 27. Winding up of society by Court
 28. Petition to Court for winding up
 29. Division of surplus assets on winding up
 30. Dissolution by Registrar
 31. Corporate body may become member of society
 32. Pecuniary gain received by member of corporate body
 33. Corporate body to be equivalent to three members
 34. Registrar
 35. Assistant Registrars of Incorporated Societies
 36. Registrar to keep register of incorporated societies
 37. Inspection of documents
 38. Exemption from stamp duty
 39. Regulations
 40. Consequential amendments
 41. Savings and repeals
- Schedules

1994, No. 11

An Act to make provision for the incorporation of societies which are not established for the purpose of pecuniary gain

(25 August 1994)

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

1. Short Title and commencement - (1) This Act may be cited as the Incorporated Societies Act 1994.

(2) This Act shall come into force on the first day of October 1994.

2. Interpretation - In this Act, except where a contrary intention appears,-

"Prescribed" means prescribed by this Act or by regulations;

"Registrar" means the Registrar of Incorporated Societies under this Act;

"Society" means a society incorporated under this Act.

3. Incorporated societies - (1) Any society consisting of not less than fifteen persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar in accordance with this Act, become incorporated as a society under this Act.

(2) No such application shall be made except with the consent of a majority of the members of the society.

4. Pecuniary gain - Persons shall not be deemed to be associated for pecuniary gain merely by reason of any of the following circumstances, namely:

(a) that the society itself makes a pecuniary gain, unless that gain or some part thereof is divided among or received by the members or some of them;

(b) that the members of the society are entitled to divide between them the property of the society on its dissolution;

(c) that the society is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does not engage or take part in any such trade, business, industry, or calling, or any part or branch thereof;

(d) that any member of the society derives pecuniary gain from the society by way of salary as a servant or officer of the society;

(e) that any member of the society derives from the society any pecuniary gain to which that member would be equally entitled if not a member of the society;

(f) that the members of the society compete with each other for trophies or prizes other than money prizes.

5. Rules of incorporated societies - (1) The rules of a society shall state or provide for the following matters, that is to say:

(a) the name of the society, with the addition "Incorporated" as the last word in that name;

(b) the objects for which the society is established;

(c) the modes in which persons become members of the society;

(d) the modes in which persons cease to be members of the society;

(e) the mode in which the rules of the society may be altered, added to, or rescinded;

(f) the mode of summoning and holding general meetings of the society, and of voting at such meetings;

(g) the appointment of officers of the society;

(h) the control and use of the common seal of the society;

(i) the Control and investment of the funds of the society;

(j) the powers (if any) of the society to borrow money;

(k) the disposition of the property of the society in the event of the winding up of the society;

(l) such other matters as the Registrar may require to be provided for in any particular instance.

(2) The rules of the society may contain any other provisions which are not inconsistent with this Act or with law.

(3) The rules of the society and any amendment of those rules shall be printed or typewritten.

6. Rules of society may provide for penalties - In addition to the matters specified in sections 5 and 7, the rules of any society may make provision for the imposition on any member of reasonable fines and forfeitures, and for the consequences of non-payment of any subscription or fine.

7. Society may make regulations or bylaws - (1) In addition to the matters specified in sections 5 and 6, the rules of any society may make provision from time to time, by resolution in general meeting, to make, amend, or rescind regulations or bylaws, not

inconsistent with the principal Act or with the rules of the society, for such purposes as may be specified in that behalf in the rules.

(2) The making, amendment, or rescission of any regulations or bylaws pursuant to any rules in accordance with this section shall not be deemed to be an alteration of the rules within the meaning of section 23 of this Act.

8. Application for incorporation - Every application for the incorporation of a society shall be made to the Registrar in manner following:

(a) two copies of the rules of the society having written thereon an application for incorporation in the form in the Schedule hereto or to the like effect shall be signed by not less than fifteen persons being members of the society, and each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is not a subscriber. When any body corporate is a subscriber its seal shall be affixed to the application;

(b) the two copies of the said rules so signed or sealed shall be delivered to the Registrar, together with the prescribed fee and together with a statutory declaration made by an officer of the society or by a solicitor to the effect that a majority of the members of the society have consented to the application, and that the rules so signed or sealed are the rules of the society.

9. Registrar to register society if in order - The Registrar, on being satisfied that the requirements of this Act have been observed, shall thereupon do the following things:

(a) enter the name of the said society in the register kept by him under this Act, together with such other particulars with respect to the society as he thinks fit;

(b) issue under his seal a certificate that the society is incorporated under this Act;

(c) register the rules of the society by sealing with his seal the said copies thereof;

(d) return one of those copies to the subscribers and retain the other copy.

10. Certificate of incorporation to be conclusive evidence of registration - Every certificate of incorporation issued under the seal of the Registrar shall be conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental thereto have been complied with, and that the society is authorised to be registered and has been duly registered and incorporated under this Act.

11. Upon issue of certificate members to be a body corporate - Upon the issue of the certificate of incorporation the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society in accordance with the rules thereof, shall as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the said rules, having perpetual succession and a common seal, and capable forthwith, subject to this Act and to the said rules, of exercising all the functions of a body corporate and of holding land.

12. Name of society not to be the same as the name of another society or body corporate - No society shall be registered under a name which is identical with that of other society registered under this Act, or of a company carrying on business in the Cook Islands (whether registered in the Cook Islands or not), or of any other body corporate established or registered in the Cook Islands under any Act, or so nearly resembles that name as to be calculated to deceive, except where that other society or company or body corporate as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the society by the proposed name will not be contrary to the public interest.

13. Penal of improper use of word "Incorporated" - If any society, not society incorporated under this Act, operates under any name or title of which "Incorporated", or any contraction or imitation of that word is the last word, every member of the society shall be liable on conviction to a fine not exceeding \$10 for every day upon which that name or title has been used.

14. Appeal from Registrar to a Judge of the High Court - An appeal shall lie to a Judge of the High Court from any refusal of the Registrar to register a society or any amendment of the rules of a society, and the decision of the Judge on any such application shall be final and without appeal to the Court of Appeal or to Her Majesty in Council.

15. No liability on members for obligation of society - Except when otherwise expressly provided in this Act, membership of a society shall not of itself impose on the members any personal liability in respect of any contract, debt, or other obligation made or incurred by the society.

16. Members to have no right to property of society - Except when otherwise expressly provided by this Act or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

17. Contracts by society - (1) Any contract which, if made between private persons, must be by deed shall, when made by a society, be in writing under the common seal of the society.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith may, when made by a society, be in writing signed by any person acting on behalf of and under the express or implied authority of the society.

(3) Any contract which, if made between private persons, might be made without writing may, when made by a society, be made without writing by any person acting on behalf of and under the express or implied authority of the society.

18. Service on society - Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society's registered office, or by sending it through the post in a registered letter addressed to the society at that office.

19. Security for costs where society is plaintiff - Where a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the society will be insufficient

to pay his costs, a Judge may require sufficient security to be given by the society for those costs, and may stay all proceedings until that security is given.

20. Registered office - (1) Every society shall have a registered office to which all communications may be addressed.

(2) Notice of the situation of that office and of any change therein shall be given to the Registrar and recorded by him.

(3) Until that notice is given, the society shall be deemed not to have complied with the provisions of this section as to having a registered office.

(4) If any society carries on its operations without having a registered office, every officer of the society and every member of the committee or other governing body of the Society shall be liable to a fine not exceeding \$10 for every day during which those operations are carried on.

21. Restriction of operations of society - (1) If any society carries on or proposes to carry on any operation which is beyond the scope of the objects of the society as defined in its rules, the Registrar may give notice in writing to the society not to carry on that operation.

(2) If after the receipt of that notice the society fails or refuses to conform thereto, every officer of the society and every member of the committee or other governing body of the society shall be liable to a fine not exceeding \$10 for every day during which that failure or refusal continues, unless he proves that the failure or refusal has taken place without his authority or consent.

22. Society not to engage in operations involving pecuniary gain - (1) No society shall do any act of such a nature that if the doing thereof were one of the objects for which the society was established, the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 4 and 5 of this Act.

(2) Every society which does any such act shall be liable to a fine not exceeding \$500.

(3) Every member who aids, abets, procures, assists, or takes part in the doing of any such act by a society shall be liable to a fine not exceeding \$100, and all such members shall be jointly and severally liable to any creditor of the society for all debts obligations incurred by the society in or in consequence of the doing of that act.

(4) Every member who derives any pecuniary gain from any act done by the society in breach of this section shall be deemed to have received the same to the use of the society, and the same may be recovered by the society accordingly.

23. Alteration of rules - (1) A society may from time to time alter its rules in manner provided by the said rules, but subject to the provisions of this Act.

(2) Every such alteration shall be in writing, signed or sealed in duplicate by at least three members of the society, and the documents so signed or sealed shall be delivered to the Registrar, accompanied by a statutory declaration made by a solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

(3) The Registrar, upon being satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects with this Act, shall register the alteration in like manner as in the case of the original rules, and the said alteration shall thereupon take effect according to the tenor thereof. Such registration shall be conclusive evidence that all conditions precedent to the making of the alteration, or to the registration thereof, have been duly fulfilled.

(4) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(5) In the case of any alteration of the name of a society the Registrar may, in his discretion, refuse to register the alteration until the making thereof has been publicly advertised in such manner as the Registrar thinks fit.

24. Register of members - (1) Every society shall keep a register of its members.

(2) The register shall contain the names, addresses, and occupations of those members, and the dates at which they became members.

(3) Every society shall from time to time when required by the Registrar so to do, send to him a list of the names, addresses, and occupations of its members, accompanied by a statutory declaration verifying that list and made by some officer of the society.

25. Annual financial statement - (1) Every society shall deliver annually to the Registrar, in such form and at such time as shall be prescribed, a statement containing the following particulars:

(a) the income and expenditure of the society during the society's last financial year;

(b) the assets and liabilities of the society at the close of the said year;

(c) all mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.

(2) The said statement shall be accompanied by a certificate signed by an officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.

(3) If any default is made by a society in the observance of the provisions of this section, every officer of the society shall be liable to a fine not exceeding \$10 for every day during which the default continues.

26. Voluntary winding up of society - (1) A society may be wound up voluntarily if the society at a general meeting of its members passes a resolution requiring the society so to be wound up, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than thirty days after the date on which the resolution so to be confirmed was passed.

(2) Subject to this Act and to any regulations made under the authority thereof, the voluntary winding up of a society shall be governed by the same rules as the voluntary winding up of a company under the Companies Act 1955 of New Zealand as applied in the Cook Islands by the Companies Act 1970-71.

27. Winding up of society by Court - A society may be wound up by the High Court under the following circumstances, that is to say:

- (a) if the society suspends its operations for the space of a whole year; or
- (b) if the members of the society are reduced in number to less than fifteen; or
- (c) if the society is unable to pay its debts; or
- (d) if the society carries on any operation whereby any member thereof makes any pecuniary gain contrary to the provisions of this Act; or
- (e) if the High Court or a Judge thereof is of opinion that it is just and equitable that the society should be wound up.

28. Petition to Court for winding up - (1) Any application to the High Court for the winding up of a society shall be by petition presented either by the society or by a member thereof, or by a creditor thereof, or by the Registrar.

(2) All costs incurred by the Registrar in making application for the winding up of a society shall, unless the High Court or a Judge thereof otherwise orders, be a first charge on the assets of the society.

(3) Subject to this Act and to any regulations made under the authority thereof, every application to the High Court for the winding up of a society, and every winding up of a society by the said Court, shall be governed by the same rules as in the case of the winding up of a company by the said Court under the Companies Act 1955 of New Zealand as applied in the Cook Islands by the Companies Act 1970-71.

29. Division of surplus assets on winding up - (1) On the winding up of a society or on its dissolution by the Registrar all surplus assets after the payment of all costs, debts, and liabilities shall, subject to any trust affecting the same, be disposed of in manner provided by the rules of the society or if such assets cannot be disposed of in accordance with the rules, then as the Registrar directs.

(2) If the said surplus assets are subject to any trust, they shall be disposed of as the High Court or a Judge thereof directs in the case of a winding up by the Court, or as the Registrar directs in the case of a voluntary winding up or in the case of a dissolution by the Registrar, but an appeal shall lie from any such decision of the Registrar to the High Court at the suit of any person interested. The decision of the Registrar under this subsection shall be final, unless notice of appeal therefrom is delivered to the Registrar within 21 days after the decision has been given.

30. Dissolution by Registrar - (1) If at any time the Registrar is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law,

the Registrar may make under his seal a declaration that the society is dissolved as from the date of the declaration, and shall thereupon give public notice of the declaration in such manner as he thinks fit, and make in the register any entry of the dissolution of the society.

(2) On the making of that entry the society shall be dissolved as from the date of the declaration.

(3) At any time thereafter the Registrar, on being satisfied declaration was made in error and ought to be revoked, may revoke the same by giving public notice thereof, and shall thereupon make an entry of the revocation. The register, and the society shall thereupon be revived from the date of the dissolution thereof as if no such dissolution had taken place.

31. Corporate body may become member of society - Any corporate body, whether incorporated under this Act or in any other manner, may be a member of a society incorporated under this Act, unless the purposes for which the society is established are ultra vires of the said corporate body.

32. Pecuniary gain received by member of corporate body - When any corporate body is a member of a society incorporated under this Act, any pecuniary gain received by any member of that corporate body shall be deemed for the purposes of this Act to be pecuniary gain received by a member of the society, and in respect of any such pecuniary gain every member of that corporate body shall be deemed to be a member of the society.

33. Corporate body to be equivalent to three members - In estimating the number of subscribers to the rules of a society under section 4 or section 7 of this Act, or the number of members of a society under section 3 or section 27 of this Act, every corporate body which is a subscriber or member shall be taken as the equivalent of three subscribers or three members, as the case may be.

34. Registrar - (1) The Minister may from time to time appoint a person to be the Registrar of Incorporated Societies, and may make regulations consistent with this Act, prescribing the duties and powers of the Registrar.

(2) The Registrar so appointed may hold office in conjunction with any other office which the Minister deems not incompatible therewith.

35. Assistant Registrars of Incorporated Societies - (1) There may from time to time be appointed such Assistant Registrars of Incorporated Societies as maybe required.

(2) Subject to the direction of the Registrar, or to regulations under this Act prescribing the duties of Assistant Registrars, every Assistant Registrar shall have and may exercise all the powers, duties, and functions of the Registrar. The fact of any assistant Registrar exercising any power, duty, or function as aforesaid shall be conclusive evidence of his authority so to do.

36. Registrar to keep register of incorporated societies - (1) The Registrar shall keep a register in which there shall be recorded all matters required by this Act or by any regulations to be recorded by the Registrar.

(2) The Registrar shall keep a seal for the authentication of any documents required for the purposes of this Act.

(3) There shall be paid to the Registrar such fees as may be prescribe regulations in respect of such matters as may be so prescribed.

(4) All fees so paid to the Registrar shall be paid by him into the Cook Islands Government Account.

(5) All expenses incurred in the administration of this Act shall be paid out of moneys appropriated for the purpose by Parliament.

37. Inspection of documents - (1) Any person may, on payment of the prescribed fee, inspect the register or any documents lodged with the Registrar.

(2) Any person may, on payment of the prescribed fee, require a copy of the certificate of the incorporation of any society, or a copy of or extract from the register or any document lodged with the Registrar, to be certified by the Registrar under his seal.

(3) Any such copy or extract purporting to be under the seal of the Registrar shall be received in evidence in all proceedings, civil or criminal.

38. Exemption from stamp duty - No document required by this Act to be delivered to the Registrar shall be liable to any stamp duty.

39. Regulations - The Queen's Representative may by Order in Executive Council make such regulations as he deems necessary for carrying into full effect the provisions of this Act.

40. Consequential amendments - The Cook Islands Amendment Act 1952 is amended by repealing section 5.

41. Savings and repeals - (1) The Acts of the Parliament of New Zealand referred to in the First Part of the Second Schedule (in this section referred to as the former Acts") are declared o be in force in the Cook Islands.

(2) The New Zealand Regulations referred to in the Second Part of the Second Schedule are declared to be not in force in the Cook Islands.

(3) Notwithstanding subsections (1) and (2) -

(a) every Society, and all rules of a Society and every amendment thereof registered under the former Acts shall be deemed to have been registered under this Act;

(b) every register kept in pursuance of the former Acts shall be deemed to be part of the register to be kept in pursuance of this Act;

(c) every enactment and document referring to a provision in the former Acts shall be con trued as referring to the corresponding provision of this Act;

