

Cook Islands Co-operative Societies Regulations 1953

(SR 1953/106)

PURSUANT to the Cook Islands Act 1915, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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Part 1

Preliminary

1 *Title and commencement*

- (1) These regulations may be cited as the Cook Islands Co-operative Societies Regulations 1953.
- (2) These regulations shall come into force in the Cook Islands other than Niue on the day after the date on which they are first publicly notified by the Resident Commissioner of Rarotonga, and shall come into force in the Island of Niue on the day after the date on which they are first publicly notified by the Resident Commissioner of Niue.

2 *Arrangement of regulations*

These regulations are arranged as follows:

3 *Interpretation*

In these regulations, 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 mean the registered by-laws made by a society in the exercise of any power conferred by these regulations, 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

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

Officer includes a chairman, secretary, treasurer, member of committee, or other person empowered under these regulations or under by-laws to give directions in regard to the business of a registered society

Registered society means a co-operative society registered under these regulations

Registrar means the Registrar of Co-operative Societies appointed under regulation 4 of these regulations; and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that regulation

Resident Commissioner means the Resident Commissioner of Rarotonga or the Resident Commissioner of Niue, as the case may be

Rules mean rules made under regulation 52 of these regulations.

Part 2 Registration

Appointment of Registrar and assistant registrars

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- (1) There may be appointed under the provisions of section 19 of the Finance Act 1931 (No 2)—
 - (a) A Registrar of Co-operative Societies for the Cook Islands other than Niue;
 - (b) A Registrar of Co-operative Societies for the Island of Niue;
 - (c) Such other suitable persons to assist those Registrars as may be deemed necessary.
- (2) The Resident Commissioner of Rarotonga or the Resident Commissioner of Niue, as the case may be, may by notice publicly displayed, confer on any persons appointed under paragraph (c) of subclause (1) of this regulation all or any of the powers of the Registrar under these regulations.

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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 these regulations with limited liability.

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Conditions of registration

- (1) No society, other than a society of which at least one member is a registered society, shall be registered under these regulations, unless it consists of at least ten persons, each of whom is qualified for membership under regulation 22 hereof.
- (2) No society of which any member is a registered society shall be registered under these regulations unless it consists of at least two members, each of whom in the case of members other than registered societies is qualified for membership under regulation 22 hereof.

- (3) The word **co-operative** or its vernacular equivalent shall form part of the name of every society registered under these regulations.
- (4) The word “limited” or its vernacular equivalent shall be the last word in the name of every society registered under these regulations.
- (5) When for the purposes of this regulation any question arises as to age, residence, or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar, whose decision shall be final.

7 *Application for registration*

- (1) For the purposes of registration an application shall be made to the Registrar.
- (2) The application shall be signed,—
 - (a) In the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of regulation 6(1) hereof; and
 - (b) In the case of a society of which at least one member is a registered society, by a duly authorized person on behalf of every such registered society and, where all the members of the society are not registered societies, by each of the other members.
- (3) The application shall be accompanied by copies of the proposed, by-laws of the society, and the persons by whom or on whose behalf the application is made shall furnish such information in regard to the society as the Registrar may require.

8 *Registration*

- (1) If the Registrar is satisfied that a society has complied with the provisions of these regulations and that its proposed by-laws are not contrary to these regulations, he may, if he thinks fit, register the society and its by-laws. An appeal against the refusal of the Registrar to register any society shall lie to the Resident Commissioner within one month from the date of that

refusal, and the decision of the Resident Commissioner on any such appeal shall be final.

- (2) On registration the society shall pay such fee as may be prescribed by the rules.
- (3) A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration of the society has been cancelled.

9 *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 a common seal and with power to acquire, hold, and dispose of 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.

**Part 3
Duties and privileges of societies**

10 *By-laws of a registered society*

- (1) Every registered society shall have by-laws which, subject to the provisions of these regulations and the rules, shall provide for the following matters:
 - (a) The name of the society:
 - (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 become members of the society:
 - (e) The mode in which the by-laws may be altered, added to, or rescinded:
 - (f) The mode of summoning and holding general meetings of the society and of voting thereat:
 - (g) The appointment of officers of the society:
 - (h) The control and use of the common seal of the society:
 - (i) Such matters as by these regulations or the rules are required to be prescribed by the by-laws:

- (j) Such other matters as the Registrar may require to be provided for in any particular instance.
- (2) The by-laws of any registered society may contain any other provisions which are not inconsistent with these regulations or the rules or with law.

Amendment of the by-laws of a registered society

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- (1) Any registered society may, subject to these regulations, amend its bylaws, including the bylaw which declares the name of the society.
- (2) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered, for which purpose copies of the amendment shall be forwarded to the Registrar.
- (3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to these regulations, he may, if he thinks fit, register the amendment. An appeal against the refusal of the Registrar to register any amendment of any by-law shall lie to the Resident Commissioner within one month from the date of that refusal, and the decision of the Resident Commissioner on any such appeal shall be 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) Where the Registrar registers an amendment of the by-laws of a registered society he shall issue to the society a copy of the amendment certified by him which shall be conclusive evidence of the fact that the amendment has been duly registered.
- (6) In this regulation the term **amendment** includes the making of a new by-law and the variation or rescission of a by-law.

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Address of society

Every registered society shall have an address within the Cook Islands, registered in accordance with the rules, to which all

notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

13 *Copy of regulations, rules, and by-laws and list of members to be open for inspection*

- (1) Every registered society shall keep a copy of these regulations and the rules and 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.
- (2) For the purposes of subclause (1) of this regulation the copy of the rules and the by-laws of any society shall be deemed to include all amendments thereto, and the society shall cause to be endorsed on the copy of the rules or by-laws so kept a memorandum of every such amendment.

14 *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 any of its members (whether the article is 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 rules, 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 rules, and that sum shall be a debt due to the society by the member.
- (2) No contract entered into under the provisions of this regulation shall be contested in any Court on the ground only that it constitutes a contract in restraint of trade.

Creation of charges in favour of registered societies

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Subject to any prior claim of the Crown on the property of a debtor, and to the claim of the holder of any lien on any property, and to the 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, and subject also to Part 16 of the Cook Islands Act 1915,—

- (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 and raised, purchased, or produced in whole or in part from any loan whether in money or in goods given him by the society:

Provided that nothing in this paragraph shall affect the claim of any *bona fide* purchaser or transferee without notice:

- (b) Any outstanding demands or dues payable to a registered society whose primary object is the provision of housing for its members by any member or past member in respect of rent, shares, loans, or purchase money or any other rights or amounts payable to the society shall be a first charge upon his interest in the immovable property of the society.

Charge and set off in respect of shares or interest of members

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A registered society shall have a charge upon the shares or interests 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 that 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.

17 *Shares or interest not liable to attachment*

Subject to the provisions of regulation 16 hereof, 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 any Court in respect of any debt or liability incurred by the member, and neither his assignee in insolvency or a receiver duly appointed shall be entitled to or have any claim on that share or interest.

18 *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 rules made in that 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 that nominee, heir, or legal representative, as the case may be, a sum representing the value of the member's share or interest, as ascertained in accordance with the rules or, where there are no such rules or in so far as the rules do not provide, by the by-laws:

Provided that the society may transfer the share or interest of the deceased member to that nominee, heir, or legal representative, as the case may be, being qualified in accordance with the rules for membership of the society, or, where there are no such rules or in so far as the rules do not provide, by the by-laws of the society, or on his application within six 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 to that nominee, heir, or legal representative, as the case may be, all other moneys due to the deceased member of the society.
- (3) All transfers and payments made by a registered society in accordance with the provisions of this regulation shall be valid

and effectual against any demand made upon the society by any other person.

19 *Deposits by or on behalf of minors*

- (1) A registered society may receive deposits from or on behalf of minors and it shall be lawful for a registered society to pay to any such minors the interest which may become due on those deposits.
- (2) 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 of that minor for the use of the minor.
- (3) The receipt of any minor or guardian for money paid to him under this regulation shall be a sufficient discharge of the liability of the society in respect of that money.

Subclause (1) was amended, as from 20 March 1957, by regulation 2 Cook Islands Co-operative Societies Regulations 1953, Amendment No 1 (SR 1957/53), by omitting the words "who are members".

20 *Register of members*

Any register or list of members kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein:

- (a) The date at which the name of any person was entered in the register or list as a member;
- (b) The date at which any such person ceased to be a member.

21 *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 rules, be received in any legal proceeding in any Court (civil or criminal) as *prima facie* evidence of the existence of that 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 such 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 subclause (1) of this regulation, or to appear as a witness to prove any matters, transactions, or accounts therein recorded, unless the Court for special reasons so directs.

Part 4 **Rights and liabilities of members**

22 *Qualification for membership*

In order to be qualified for membership of a society a person, other than a registered society, must—

- (a) Have attained the age of eighteen years; and
- (b) Be resident within or a titleholder by Cook Islands custom within the society's area of operations as described by the by-laws.

23 *Members not to exercise rights till due payment made*

No member of a registered society shall exercise the rights of a member unless 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 by-laws of the society.

24 *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.

25 *Votes of members*

No member of any registered society shall have more than one vote in the conduct of the affairs of the society:

Provided that in the case of an equality of votes the Chairman shall have a casting vote:

Provided further that in the case of societies the membership of which includes one or more registered societies, each last-mentioned society may have such voting powers as are provided in the by-laws.

26 *Representation by proxy*

A registered society that 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 that other registered society.

27 *Contracts with society of members who are minors*

The minority of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance necessary to be executed or given under these regulations or any rules made thereunder and shall not be a ground for invalidating or avoiding any contract entered into by any such person with the society; and any such contract entered into by any such person with the society, whether as principal or as surety, shall be enforceable at law or against that person notwithstanding his minority or non-age.

28 *No individual to hold more than one-fifth of share capital of any society*

No member, other than another registered society, shall hold more than one-fifth of the share capital of any registered society.

29 *Restrictions on transfer of share or interest*

The transfer or charge of the share or interest of a member or past member or deceased member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by these regulations or by the rules.

30 *Limitation of liability of members*

- (1) In the event of a registered society being wound up, every present and past member of the society shall be liable to contribute to the assets of the society to an amount sufficient for payment of its debts and liabilities, and the costs, charges, and expenses of the winding up, and for the adjustment of the rights of those members among themselves, subject to the following qualifications:
- (a) A past member shall not be liable to contribute if he has ceased to be a member for two years or upwards before the commencement of the winding up:
 - (b) A past member shall not be liable to contribute in respect of any debt or liability of the society contracted after he ceased to be a member:
 - (c) A past member shall not be liable to contribute unless it appears to the Registrar that the existing members are unable to satisfy the contributions required to be made by them pursuant to these regulations:
 - (d) In the case of a society limited by shares no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:
 - (e) In the case of a society limited by guarantee no contribution shall, subject to the provisions of subclause (2) of this regulation, be required from any present or past member exceeding the amount undertaken to be contributed by him to the assets of the society in the event of its being wound up.
- (2) In the winding up of a society limited by guarantee which has a share capital, every member of the society shall be liable, in addition to the amount undertaken to be contributed by him to

the assets of the society in the event of its being wound up, to contribute to the extent of any sums unpaid on the shares in respect of which he is liable as a past or present member.

- (3) The personal representatives of the estate of a person who was a member of a registered society at the commencement of the winding up of the society or had ceased to be a member of the society within the period of two years preceding the commencement of the winding up shall be liable in a due course of administration to contribute to the assets of the society in discharge of his liability.

Part 5

Property and funds of registered societies

31 *Loans made by a registered society*

- (1) A registered society shall not, except as provided by regulation 34 hereof, 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 authorized to deal.
- (3) The Resident Commissioner may, by general or special order publicly notified, prohibit or restrict the lending of money by any registered society on mortgage of any description of immovable property.

32 *Deposits and loans received by a registered society*

A registered society may receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or, where there are no such rules or in so far as the rules do not provide, by the by-laws of the society.

*Restrictions on other transactions with
non-members*

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Save as provided in regulations 31 and 32 hereof, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the rules.

Investment of funds

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A registered society may invest or deposit its funds—

- (a) In the Post Office Savings Bank or with any bank approved for this purpose by the Registrar; or
- (b) In any securities issued or guaranteed by the Government of any country that is a member of the British Commonwealth of Nations; or
- (c) With any other registered society approved for this purpose by the Registrar; or
- (d) In any other manner approved by the Registrar.

Disposal of profits

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- (1) Where a registered society is entitled by its constitution to make a profit it shall carry to a reserve fund at least one-fourth of the net profits, if any, made during every year as ascertained by the audit prescribed by regulation 36 hereof. The remainder of those 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 rules or, where there are no such rules or in so far as the rules do not provide, by the by-laws of the society.
- (2) Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year have been carried to a reserve fund, contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purpose or to a fund established or maintained for the common good.
- (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 6

Audit, inspection, and inquiry

36

Audit

- (1) The Registrar shall audit, or cause to be audited by some person authorized by him by general or special order in writing, the accounts of every registered society once at least in every year.
- (2) The audit under subclause (1) of this regulation 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 every other person appointed to audit the accounts of a society shall have power when necessary—
 - (a) To summon at the time of his audit any officer, agent, servant, or member of the society who he 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 that book, document, cash, or securities.
- (4) Every officer, agent, servant, or member of the society shall furnish such information in regard to the transactions of the society and the management of its affairs and shall produce such articles as aforesaid as may be required under subclause (3) of this regulation by the Registrar or other person appointed to audit the accounts of the society.

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Power of Registrar to inspect society's books

The Registrar, or any person authorized by general or special order in writing by the Registrar, shall at all times have access to all the books, accounts, papers, and securities of a registered society, and shall be entitled to inspect the cash in hand, and

every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making the inspection may require.

38 *Inquiry and inspection*

- (1) The Registrar may of his 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 authorized by him 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 furnish 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 authorized by him may require.
- (2) The Registrar shall, on the application of a creditor of the registered society, inspect, or direct some person authorized by him 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 and that he 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.

39 *Costs of inquiry and inspection*

- (1) Where an inquiry is held under subclause (1) or an inspection is made under subclause (2) of regulation 38 hereof, the Registrar may by certificate under his hand apportion the costs, or such part of the costs as he thinks fit, between the registered society, the members demanding the inquiry, the officers or former officers of the society, and the creditor, as the case may be, on whose application the inquiry or inspection was made.

- (2) The Registrar of Co-operative Societies may, without any previous process, file in the High Court the certificate referred to in subclause (1) of this regulation, and the Registrar of the Court shall enter final judgment in that Court for the sums mentioned in the certificate to be paid by the persons specified therein, and thereupon execution may be forthwith issued and all other remedies had thereon in the same manner as any other decree of the High Court.

Part 7

Winding up

40 *Winding up after inquiry or by consent*

- (1) If the Registrar, after holding an inquiry or making an inspection under regulation 38 hereof or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be wound up, he may make an order for the winding up of the society.
- (2) Any member of a registered society may, within two months from the date of an order under subclause (1) of this regulation, appeal from the order to the Resident Commissioner, and the decision of the Resident Commissioner on any such appeal shall be final.
- (3) Where no appeal is presented within two months from the making of an order for the winding up of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within two months, the order shall not take effect until it is confirmed.
- (4) Where the Registrar makes an order under subclause (1) of this regulation for the winding up of a society, he may make such further order as he thinks fit for the custody of the books and documents and the protection of the assets of the society until the winding up order takes effect.
- (5) No registered society shall be wound up save by an order of the Registrar.

*Winding up due to lack of membership or failure
to carry on operations, etc.*

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- (1) The Registrar may make an order for the winding up of any registered society if at any time it is proved to his satisfaction that—
- (a) The number of members has been reduced to less than ten or, in the case of a society of which at least one member is a registered society, to less than two; or
 - (b) The society is no longer carrying on its operations; or
 - (c) The society has been registered by reason of a mistake of fact or law.
- (2) Every such order shall take effect from the date thereof.
- (3) At any time thereafter the Registrar, on being satisfied that the winding up order was made in error and ought to be revoked, may revoke the order by notice publicly notified, and shall thereupon make an entry of the revocation in the Register.

Appointment of liquidator

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Where the Registrar makes a winding up order under regulation 40 or regulation 41 hereof, he may appoint one or more persons to be liquidator or liquidators of the society, subject to his direction and control.

Liquidator's powers

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- (1) A liquidator appointed under regulation 42 hereof shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under regulation 44 hereof, have power to—
- (a) Determine from time to time the contribution to be made to its assets by members and past members or by the estates of deceased members of the society.
 - (b) Appoint by notice a day 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) Decide any question of priority which arises between creditors:
 - (d) Refer disputes to arbitration or institute and defend suits and other legal proceedings on behalf of the society by his name or office:
 - (e) Decide by what persons and in what proportions the costs of liquidation are to be borne:
 - (f) 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) Compromise any claim by or against the society provided the sanction of the Registrar has first been obtained:
 - (h) Call such general meetings of members as may be necessary for the proper conduct of the liquidation:
 - (i) Take possession of the books, documents, and assets of the society:
 - (j) Sell the property of the society:
 - (k) Carry on the business of the society as far as may be necessary for winding it up beneficially:
Provided that nothing in this paragraph shall entitle the liquidator of a credit society to issue any loan:
 - (l) 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 rules as may be made in this behalf, any liquidator appointed under these regulations shall, in so far as such powers are necessary for carrying out the purposes of this regulation, have power to 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 High Court of the Cook Islands.

44 *Power of registrar to control liquidation*

A liquidator shall exercise his 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 all books, documents, and assets of the society:
- (d) By order in writing limit the powers of a liquidator under regulation 43 hereof:
- (e) Require accounts to be rendered to him by the liquidator:
- (f) Procure the auditing of the liquidator's accounts and authorize 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.

45

Enforcement of order

- (1) Subject to the provisions of regulation 51 hereof, the decision of an arbitrator on any matter referred to him under regulation 44 hereof shall be binding on all parties, and shall be enforceable in the manner provided in subclause (2) of this regulation.
- (2) An order made by a liquidator or by the Registrar under regulation 43 or regulation 44 hereof may be enforced by the High Court of the Cook Islands in like manner as a decree of that Court.

46

Appeal against order of liquidator or registrar

An appeal against any decision made by a liquidator under regulation 43 hereof, or against any decision made by the Registrar under the provisions of paragraph (a) of regulation 44 hereof, may, with the written consent of the Resident Commissioner, be made to the High Court of the Cook Islands in the manner and time prescribed in that written consent.

47

Completion of liquidation and dissolution of society

- (1) In the liquidation of a society whose registration has been cancelled the funds, including the reserve fund, shall be applied

first to the costs of liquidation, then to the discharge of the liabilities of the society (which shall abate rateably if the funds are insufficient), then to the payment of the share capital, and then, provided the by-laws of the society permit, to the payment of a dividend at a rate not exceeding 10 per cent per annum for any period for which no disposal of profits was made.

- (2) When the liquidation of a society has been completed, notice of the completion of the liquidation shall be publicly notified by the Registrar in such manner as he thinks proper; and as from the date of that notification the society shall be deemed to be dissolved and shall cease to be a body corporate.
- (3) Any surplus remaining after the completion of the liquidation shall be available for use by the Registrar for any co-operative purpose at his discretion.

Part 8

Surcharge of officers

Power of Registrar to surcharge officers of a registered society

48

- (1) Where in the course of the winding up of a registered society it appears that any person who has taken part in the organization or management of the 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 the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine the conduct of the first-mentioned person and, notwithstanding that the act is one for which the offender may be criminally responsible and whether or not he has been charged with an offence in respect of the matter, make an order requiring him 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 the society by way of compensation in regard to the misapplication, retainer, dishonesty, or breach of trust as the Registrar thinks just.
- (2) Subject to the provisions of regulation 49 hereof, every person against whom any order is made under subclause (1) of this

regulation shall forthwith comply with the provisions of that order.

49 *Appeal to Resident Commissioner*

Any person aggrieved by any order of the Registrar made under regulation 48 hereof may appeal to the Resident Commissioner within twenty-one days from the date of the order, and the decision of the Resident Commissioner shall be final and conclusive.

Part 9
Disputes

50 *Settlement of disputes*

- (1) If any 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.
- (2) A claim by a registered society for any debt or demand due to it from a member or past member or the nominee, heir, or legal representative of a deceased member shall be deemed to be a dispute touching the business of the society within the meaning of this regulation.
- (3) The Registrar may, on receipt of a reference under subclause (1) of this regulation,—
 - (a) Decide the dispute himself; or
 - (b) Refer it for disposal to an arbitrator or arbitrators.

51 *Appeal*

- (1) Any party aggrieved by an award made under regulation 45 or regulation 50 hereof by the Registrar or by an arbitrator or arbitrators appointed by him may appeal therefrom in the manner and time prescribed by the rules to the High Court of the Cook Islands.
- (2) On an appeal under the provision of subclause (1) of this regulation the Court may dismiss the appeal or vary the award of the Registrar or arbitrator or arbitrators to make such other order as may appear just and proper, and shall make such order as to the costs of the arbitration and the appeal as it thinks fit, and the decision of the Court shall be final.

Part 10
Rules**52** *Rules*

- (1) Subject to the provisions of these regulations, the Resident Commissioner may make all such rules as he considers necessary for the purpose of carrying out or giving effect to the principles and provisions of these regulations.
- (2) In particular and without prejudice to the generality of the power conferred by subclause (1) of this regulation, the rules may—
 - (a) Prescribe the forms to be used, the fees to be paid, the conditions to be complied with in applying for the registration of a society, and the procedure in the matter of those applications;
 - (b) Prescribe the extent to which a registered society may limit the number of its members;
 - (c) Provide for the appointment, suspension, and removal of the members of the committee, 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.
 - (d) Regulate the manner in which funds may be raised by means of shares or debentures or otherwise:

- (e) Prescribe the conditions to be observed by a registered society applying for financial assistance from the Government:
- (f) 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:
- (g) Provide for the mode in which the value of a deceased member's interest shall be ascertained and for the nomination of a person to whom any such interest may be paid or transferred:
- (h) 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 his affairs shall be ascertained and for the nomination of any person to whom any such interest may be paid or transferred:
- (i) Provide for the formation and the maintenance of reserve funds, and the objects to which those funds may be applied, and for the investment of any funds under the control of any registered society:
- (j) Prescribe the maximum rate of dividend which may be paid by societies:
- (k) 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:
- (l) Provide for the audit of the accounts of registered societies and for the charges, if any, to be made for that 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 co-operative propaganda, and prescribe for the administration of any such fund:

- (m) Prescribe the returns to be submitted by registered societies to the Registrar and the persons by whom and the form in which the returns are to be made:
 - (n) Provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified:
 - (o) 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:
 - (p) Prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or the arbitrator or arbitrators:
 - (q) Prescribe the procedure to be followed by a liquidator appointed under regulation 42 hereof:
 - (r) 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 these regulations.
- (3) The Resident Commissioner shall publicly notify in such manner as he thinks fit rules made by him under this regulation.

Part 11 Miscellaneous

53 *Recovery of sums due to Crown*

- (1) All sums due to the Crown from a registered society or from an officer or member or past member of a registered society as such may be recovered in the manner provided for the recovery of debts due to the Crown under the law for the time being in force.
- (2) Sums due from a registered society to the Crown and recoverable under subclause (1) of this regulation may be recovered first from the property of the society, and secondly on the winding up of the society from the members subject to the limit of their liability.

*Power to exempt from stamp duty and
registration fees*

54

The Minister of Island Territories may, by notice in writing under his hand, 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 the society or any class of those instruments are respectively chargeable; or
- (b) Any fee payable for registration for the time being in force.

55

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 “Cooperative” or its vernacular equivalent is part without the consent of the Resident Commissioner:

Provided that nothing in this regulation shall apply with respect to the continued use by any person or his successor in interest of any name or title under which he traded or carried on business at the commencement of these regulations.

- (2) Any person who commits a breach of this regulation is guilty of an offence, and is liable to a fine not exceeding £5, and in the case of a continuing offence to a further fine not exceeding £1 for each day during which the offence continues.

*Cook Islands Native Companies Regulations
1923 not to apply to registered societies*

56

Nothing in the Cook Islands Native Companies Regulations 1923¹ shall apply with respect to any registered society, and a registered society shall be deemed not to be a company for the purposes of those regulations.

¹ *Gazette*, 13 September 1923, Vol III, Page 2400.

57 *Offences*

Every person is guilty of an offence, and is liable to a fine not exceeding £50, who—

- (a) Being a registered society or an officer or member of a society, wilfully neglects or refuses to do any act or to furnish any information required by or for the purposes of these regulations by the Registrar or by any person authorized by the Registrar in writing in that behalf; or
- (b) Being a registered society or an officer or member of a society, when required to make a return or supply any information for the purposes of these regulations wilfully makes a false return or supplies false information; or
- (c) Wilfully or without reasonable cause disobeys any summons, requisition, or lawful written order issued under the provisions of these regulations.

58 *Penalty for soliciting violation of contract*

Any person who, having knowledge or notice of the existence of a contract described in regulation 14 hereof, solicits or persuades any person to sell or deliver any article in violation of that contract is guilty of an offence and is liable to a fine not exceeding £25, and shall in addition be ordered to pay to the society concerned such damage as to the Court may seem fit.

T J SHERRARD,
Clerk of the Executive Council.

Explanatory Note

[This note is not part of the regulations, but is intended to indicate their general effect.]

These regulations provide for the registration of co-operative societies in the Cook Islands, and define their functions, powers, and procedure.

Part 2 (regulations 4 to 10) provides for the registration of societies having for their objects the promotion of the economic interests of their members in accordance with co-operative principles, or societies established with the object of facilitating the operations of soci-

eties of that nature. Societies so registered will have limited liability. Each society must have at least ten members, unless at least one of its members is another registered society, in which case two members is the minimum. This Part prescribes the method of applying for registration, and regulation 9 provides that each registered society is to be a body corporate.

Part 3 (regulations 11 to 21) prescribes the duties and privileges of registered societies. Regulation 14 provides that a society which includes among its objects the disposal of articles produced or obtained by the work or industry of its members may provide in its by-laws or may otherwise contract with its members that every member who produces any such article must dispose of the whole or any specified amount, proportion, or description thereof to or through the society and shall pay to the society damages in respect of any breach of this requirement. No contract entered into under this regulation is to be invalid on the ground only that it constitutes a contract in restraint of trade. Regulation 15 gives the society a first charge on all crops, & c, for debts due by members to the society, subject to prior claims of the Crown, to the claims of lien holders or the claim of the landlord in respect of rent, and in the case of immovable property, to any prior registered charge. Under regulation 16 a society is entitled to a charge on the interests of its members in respect of debts due to the society from those members. Under regulation 17 the shares or interests of members cannot be attached.

Part 4 (regulations 22 to 30) defines the rights and liabilities of members. Under regulation 22 the only persons qualified for membership of a society must have attained the age of eighteen years and be resident or a title holder by Cook Islands custom within the society's area of operations. This Part contains provisions prohibiting defaulting members from exercising rights, prohibiting a person from being a member of more than one registered society whose primary object is to grant loans to its members, and providing for the method of voting and for proxies and for contracts with the society by members who are minors. Regulation 28 provides that no individual may hold more than one-fifth of the share capital of any society.

Part 5 (regulations 31 to 35) contains provisions with respect to loans by societies, the investment of societies' funds, and the disposal of their profits.

Part 6 (regulations 36 to 39) provides for the audit of societies' accounts, for inspection of their books, accounts, papers, and securities, and for inquiries into their constitution, working, and financial condition.

Part 7 (regulations 40 to 47) specifies the procedure for winding up of registered societies, the appointment and powers of liquidators, and the distribution of their surplus assets.

Part 8 (regulations 48 and 49) enables the Registrar of Co-operative Societies to surcharge officers who have misapplied or retained or become liable for money or property of the society or been guilty of misfeasance or breach of trust in relation to the society. There is a right of appeal under regulation 49 to the Resident Commissioner.

Part 9 (regulations 50 and 51) provides for the settlement of disputes concerning the business of registered societies, and confers rights of appeal to the Resident Commissioner.

Part 10 (regulation 52) authorizes the Resident Commissioner to make rules for the purpose of carrying out the provisions of the regulations. Regulation 52(2) specifies the matters in respect of which rules may be made.

Part 11 (regulations 53 to 58) contains miscellaneous provisions. Regulation 55 prohibits the use of the word "co-operative" in connection with any trade or business not carried on by a registered society. Regulation 58 makes it an offence for any person to solicit or persuade any other person to sell or deliver any article in violation of a contract with a registered society.