

**CO-OPERATIVE ACT, 1996**

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FIRST SCHEDULE (MODEL BY-LAW)

SECOND SCHEDULE (APPLICATION FOR REGISTRATION)

**FIJI**

**ACT NO. 16 OF 1996**

I assent.

[L.S.]

K.K.T. MARA  
President

[21 October 1996]

**AN ACT**

TO PROVIDE FOR THE REGISTRATION AND REGULATION OF CO-  
OPERATIVES, THE REPEAL OF THE CO-OPERATIVE SOCIETIES ACT  
(CHAPTER 250) AND RELATED MATTERS

ENACTED by the Parliament of Fiji –

## PART I – PRELIMINARY

## Short title

1. — (1) This Act may be cited as the Co-operatives Act, 1996.
- (2) This Act shall come into operation on a date appointed by the Minister and published in the Fiji Republic Gazette.

## Interpretation

2. In this Act, unless the context indicates otherwise.

“allowance”: (1) in relation to a service co-operative, means the remuneration to the chairperson, secretary, treasurer or any other member of a co-operative in consideration of their voluntary services rendered to the co-operative on a regular basis;

(2) in relation to a workers’ co-operative, means any payment made to a member of the co-operative according to its by-laws or internal regulations for work done for the co-operative;

“annual general meeting” means the general meeting convened once in every financial year where the members exercise the functions stipulated in Section 54 of this Act;

“apex organisation” means a registered co-operative under this Act, established facilitate the operations of all co-operatives of a particular type and shall be deemed to be so if it represents at least seventy five percent of the total number of co-operatives of that type in the country;

“appointment” includes any appointment or reappointment to an office by way of election or as provided for in the by-laws;

“association” means a body of persons registered or incorporated under any written law (other than the Companies Act) and includes a combination of two or more such bodies;

“Board” means the Board of directors or the governing body of a co-operative by whatever name called, to which the management of the affairs of the co-operative is entrusted;

“bonus” means a share of the surplus of a registered co-operative divided among its members in proportion to the volume of business done with the co-operative by them from which the surplus was derived;

“by-laws” means the registered by-laws of a co-operative made according to the provisions of this Act and includes a registered amendment of the by-laws;

“co-operative” means an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate, which is provisionally or fully registered under this Act as a primary or secondary co-operative, apex organisation or the National Co-operative Federation registered according to the provisions of this Act:

Provided that—

- (1) in the case of service co-operatives, at least fifty-one percent of a co-operative trade is done with its members; and
- (2) in the case of workers’ co-operatives, at least eighty percent of the permanent full-time employees, as defined in the Employment Act, shall be members of co-operative and all members shall be employees in the co-operative.

“co-operative officer” means all persons who are employed by the government to work under the Registrar and to assist him or her in carrying out his or her functions;

“Co-operative principles” means the co-operative principles specified in **Section 5** of this Act;

“Co-operative Tribunal” means the Tribunal constituted under **Section 116** of this Act;

“delegate” means a representative of a co-operative which is itself a member of another co-operative, the meetings of which such representative has been elected or appointed to attend, and at which he or she is entitled to vote under the by-laws of that other co-operative;

“dividend” means a portion of the net surplus of a co-operative distributed among the members in proportion to the paid-up share capital held by them in the co-operative;

“employee” means all persons employed by a co-operative and receiving a salary for work done in the co-operative;

“first degree of sanguinity” means family relations of the first degree namely father, mother, son, daughter, brother or sister;

“formation committee” means a group of individuals constituted for the purpose of establishing a co-operative;

“honorarium” means a portion of the net surplus of a co-operative divided among some or all of the members of the Board of a

co-operative in consideration of their services which would not otherwise be remunerated;

- “liability” means unlimited liability or liability limited by shares or guarantee as prescribed in the by-laws of a co-operative;
- “member” means an individual person, registered co-operative or association joining in the application for the registration of a co-operative, and a person, registered co-operative or association admitted to membership of a co-operative after registration in accordance with the provisions of this Act and the by-laws of the co-operative;
- “Minister” means the Minister responsible for Co-operatives or any other Minister to whom the administration of this Act may from time to time be assigned;
- “National Co-operative Federation” means the co-operative established under **Section 47** of this Act to represent all co-operatives at the national level;
- “net surplus” means the pre-tax surplus after provisions have been made for the statutory reserve fund as stipulated in **Section 100** of this Act;
- “officer” of a co-operative includes a Chairperson, Vice-Chairperson, Secretary, Treasurer, Manager or any other elected or appointed members of a Board or Committee empowered by this Act, the by-laws, or the rules to give directives in regard to the business of the co-operative or to supervise such business;
- “ordinary general meeting” means any General Meeting, if any, held periodically, according to the provisions of this Act and the by-laws and is in addition to the Annual General Meeting;
- “past member” includes a member who has withdrawn or been expelled from membership and a deceased member;
- “primary co-operative” means a registered co-operative consisting of individual persons or associations as members;
- “Registrar” means the Registrar of Co-operatives appointed under **Section 6** of this Act and includes any persons exercising such powers of the Registrar as may have been conferred upon him or her under the provisions of that Section;
- “Regulations” means the Regulations made under this Act;
- “secondary co-operative” means a registered co-operative, whatever name it may be called, consisting of primary co-operatives and, subject to the approval of the Registrar, individual persons as members;

“service co-operative” means any co-operative having at least fifty-one percent of its transactions with its members;

“workers co-operative” means a co-operative where every member is a worker in the co-operative and where at least eighty percent of the permanent full-time employees in the co-operative are members of the co-operative.

Application

3. This Act binds the State.

PART II – OBJECTIVES OF A CO-OPERATIVE AND  
CO-OPERATIVE PRINCIPLES

Objectives of a co-operative

4. —(1) A co-operative aims at promoting the economic and social interests of its members by providing effective services which the members need and can make use of.
- (2) the main purpose of a co-operative is not maximisation of profits but service to members and a co-operative shall operate according to sound business principles.
5. A co-operative shall in its operations observe the principles that –
- (a) membership is voluntary and open to every person who meets the requirements for membership as laid down in this Act and the co-operative’s by-laws: Provided that the co-operative has the economic capacity to accept new members;
  - (b) in primary co-operatives, every member has one vote irrespective of the number of shares held by him or her and in co-operatives other than primary co-operatives voting rights shall be as stipulated in their by-laws;
  - (c) dividend on share capital is limited;
  - (d) the surplus or the economic results arising out of the operations of a co-operative belong to the members of that co-operative and should be distributed in such a manner as would avoid one member gaining at the expense of others;
  - (e) education and training facilities are offered in co-operatives with a view to increasing and improving skills and to inform members of their rights and responsibilities within the co-operatives; and
  - (f) co-operatives work together with other co-operatives.



PART III – APPOINTMENT OF REGISTRAR, FORMATION AND  
REGISTRATION OF CO-OPERATIVES

Appointment of Registrar

6. —(1) The Public Service Commission shall appoint a Registrar of Co-operatives, a Deputy Registrar and such Co-operative Officers as may be necessary to assist the Registrar in carrying out his or her functions as stipulated in this Act and in implementing the provisions of the regulations.
- (2) The Registrar may delegate to the Deputy Registrar or to Co-operative Officers any part of his or her powers or duties under this Act or the regulations, particularly if the Registrar is unable to exercise his or her powers or perform these duties due to illness or absence.
- (3) The Registrar's functions shall be--
- (a) to provisionally and fully register co-operatives in Fiji;
  - (b) to receive Annual Returns from each co-operative, which include the audited accounts;
  - (c) to assist in the settling of disputes within and between co-operatives if such disputes are not being settled by the Co-operative Tribunal according to the provisions of **Section 116** of this Act;
  - (d) to handle liquidations and deregistrations of co-operatives; and
  - (e) to administer any other provisions, perform any other duties and exercise any other powers in accordance with this Act and the regulations which are conducive to the development of co-operatives in Fiji.

Co-operatives which may be registered

7. Subject to the provisions of this Act—
- (a) at least ten persons or associations or both persons and association in the case of a primary co-operative;
  - (b) at least two primary co-operatives in the case of a secondary co-operative;
  - (c) at least two primary or secondary co-operatives in the case of an apex organisation;
  - (d) all apex organisations in the case of the National Co-operative Federation, having as its objective the promotion of the economic and social interests of its members and operating according to the

co-operative principles stipulated in Section 5 of this Act, may apply to be registered as a co-operative under this Act.

Formation committee

8. —(1) Persons desiring to form a co-operative shall meet for the purpose of forming a Formation Committee and at their request an employee of any apex organisation or any secondary co-operative or a co-operative officer or the Registrar or any other person may assist them in the formation of the proposed co-operative.
- (2) The Formation Committee shall consist of at least seven persons and shall elect a Chairperson, a Treasurer, and a Secretary who shall maintain a record of its proceedings.

Functions of formation committee

9. The functions of the Formation Committee shall be:
- (a) to organise educational meetings and to discuss the objects and operations of the proposed co-operative with its prospective members;
  - (b) to assess the probable membership and expected volume of business in the first year of activities;
  - (c) to undertake together with an employee of an apex organisation or a co-operative officer or with any other person a feasibility study about the economic potential for operations of the proposed co-operative and to draw up a budget plan and cash flow forecast for its first year of operation;
  - (d) to compile a list of prospective members and a record of probable contributions to share or subscription capital;
  - (e) to prepare, in consultation with an apex organization or a co-operative officer or any other persons, the by-laws for the proposed co-operative according to the provisions contained in the First Schedule of this Act and to discuss the by-laws with the persons intending to become founder members of the co-operative;
  - (f) to undertake all such activities as may be necessary for the purpose of making the application for the full or provisional registration of the proposed co-operative:

Provided that for persons seeking provisional registration, only subsections (a), (e), and (f) of this Section shall apply.

Founders' meeting

10. A Founders' Meeting of all prospective members shall be convened by the Formation Committee and at this meeting:
- (a) the prospective members shall formally decide to form a co-operative and sign a written declaration to this effect;
  - (b) a register of members shall be opened;
  - (c) the by-laws stating the common objectives shall be approved;
  - (d) the first officers of the group shall be elected or appointed, as the case may be.

Application for registration of a co-operative

11. —(1) Within two months following the date of the Founders' Meeting, the Chairman of the group shall submit an application for registration in the form specified in the Second Schedule together with the documents mentioned in subsection (2) of this Section. The application shall be signed:
- (a) in the case of a proposed primary co-operative by at least ten persons all of whom qualify for membership according to the provisions of **Section 37** of this Act and in the case of associations by a duly authorised person on behalf of each association proposing to be a member of that co-operative and qualifying for membership;
  - (b) in the case of a secondary co-operative or an apex organisation or the National Co-operative Federation, by a duly authorised person on behalf of each registered co-operative proposing to be a member of that co-operative and qualifying for membership according to the provisions of **Section 37** of this Act.
- (2) The required documents mentioned in subsection (1) of this Section shall comprise:
- (a) the minutes of the Founders' Meeting which shall include resolutions relating to:
    - (i) approval of the by-laws by all the founder members;
    - (ii) election or appointment of officers at the Founders' Meeting and definition of their functions;
    - (iii) election of members of a Supervisory Committee where applicable, at the Founders' Meeting;
    - (iv) methods of subscription and payment of share capital;

- (b) a list of the officers, their names, qualifications and relevant experience, addresses and other useful information;
- (c) the proposed by-laws of the co-operative signed by the applicants;
- (d) in the case of persons seeking full registration a copy of the feasibility report, the budget plan and cash-flow forecast referred to in paragraph (c) of **Section 9** of this Act.

Registration of co-operatives

12. —(1) If the Registrar is satisfied that a co-operative has complied with the provisions of this Act, that its proposed by-laws are not contrary to this Act and that the proposed undertaking of the co-operative is likely to be viable, he or she shall register the co-operative and its by-laws.
- (2) Should the application be found to be incomplete or should the Registrar refuse to register a co-operative, he or she shall notify the applicants of his or her refusal to register in writing within two months from the date of submission of the application giving reasons for the refusal.
- (3) An appeal against the refusal of the Registrar to register a proposed co-operative may be made to the Co-operative Tribunal and shall follow the same procedures specified in **Sections 115** and **116** of this Act.
- (4) (a) A group shall be deemed to be registered if, after having duly applied and having proof that the Registrar did receive the application, it does not, within three months from the date of receipt of its application by the Registrar, receive written notification of the latter's decision. In such a case the Registrar shall register the co-operative within two months after the above-mentioned period has lapsed.
- (b) If the Co-operative Tribunal fails to act on an appeal made by a proposed co-operative under subsection (3) of this Section within three months from its filing the application for registration the application shall be deemed approved.

Provisional registration

13. —(1) If the Registrar is not satisfied that a proposed co-operative ought to be fully registered at the time of the application for registration, but is of the opinion that steps can and are likely to be taken with diligence by the persons by whom or on whose behalf the application is made to comply with all the conditions for registration, he or she may provisionally register the co-operative:

Provided that it shall be competent for the applicants for registration of a proposed co-operative to apply only for provisional registration according to the provisions of **Section 11** of this Act.

- (2) A provisional registration shall be granted for a period of one (1) year at a time but may be extended for additional periods of one year:

Provided that: -

- (a) the co-operative applies for an extension of provisional registration;
  - (b) the co-operative has not violated any provisions of the Act, its own by-laws and rules;
  - (c) the co-operative shows reasonable cause why it has been unable to fulfil the conditions for full registration;
  - (d) the co-operative demonstrates diligence in its task to fulfil all the conditions for full registration in the near future;
  - (e) the total period of provisional registration does not exceed four (4) years.
- (3) A co-operative which has been provisionally registered shall, subject to the conditions of this Section, have all the status and powers of a co-operative registered under this Act and be entitled to operate as a co-operative.
- (4) The fact that a co-operative is provisionally registered shall be legibly stated by the words “provisionally registered” on all documents issued by the provisionally registered co-operative and on every other place where the co-operative’s name is displayed to the public.
- (5) The Registrar may make an order to wind-up a provisionally registered co-operative before its expiry date after due warning and stating the reasons for the order, if:
- (a) in his or her opinion the co-operative is violating aspects of this Act and its own by-laws or in his or her opinion the provisionally registered co-operative is not taking the necessary steps to become a fully registered co-operative;
  - (b) it consistently fails to reply to letters from the Registrar;
- by a notice in writing addressed to the co-operative and the Registrar shall institute liquidation proceedings according to the provisions of this Act at the end of which the provisionally registered co-operative shall cease to exist.

- (6) Where a provisionally registered co-operative has failed to apply for renewal the Registrar shall allow the co-operative an additional two months, in which to do so.
- (7) A provisionally registered co-operative may:
- (a) dissolve itself in terms of the procedures specified in **Section 108** of this Act:  
  

Provided that if the Registrar is of the opinion that it is not necessary to appoint a liquidator he or she may ask one of his or her officers to wind-up the co-operative without instituting liquidation proceedings;
  - (b) convert to another legal form in terms of the procedures specified in **Section 107** of this Act.
- (8) If at any time during the period of provisional registration the Registrar is satisfied that a provisionally registered co-operative complies with the conditions for full registration as provided for in this Act and ought to be fully registered he or she may fully register the co-operative under **Section 12** of this Act and in such a case, the co-operative shall be deemed to have been registered on the date of its provisional registration, and this Section shall cease to apply to it.

#### Effect of registration

14. The registration of a co-operative 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 hold movable and immovable property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its by-laws.

#### Evidence of registration

15. —(1) A certificate of registration containing a registration number signed and sealed by the Registrar shall be conclusive evidence that the co-operative therein mentioned is duly registered unless it is proved that the registration of the co-operative has been cancelled.
- (2) The certificate of registration, or a certified copy of it, shall be visibly displayed at the registered office of the co-operative.
  - (3) The registration number of a co-operative shall be reproduced on all documents addressed to third parties.
  - (4) On registration, the Registrar shall supply, at cost price, a copy of this Act and the rules to the co-operative.

16. —(1) Any persons executing contracts on behalf of the proposed co-operative before registration shall be wholly, jointly and severally liable for such act.
- (2) The co-operative shall rectify any contract executed in accordance with subsection (1) of this Section unless such contracts are not for a genuine or legitimate purpose of a co-operative.

Power to make by-laws

17. —(1) A co-operative may, consistent with this Act, make any by-laws that are necessary or desirable for the purposes for which a co-operative is established.
- (2) The by-laws of every co-operative shall include provisions in respect of matters mentioned in the First Schedule of this Act.

By-laws to bind members

18. —(1) The by-laws of a co-operative shall, when registered, bind the co-operative and its members to the same extent as if they were signed by each member and contained covenants on the part of each member for himself or herself for his or her successor to observe all the provisions of the by-laws.
- (2) A dispute arising out of the interpretation of a by-law shall be referred to the Registrar for his or her decision. Such dispute shall be considered to be a dispute touching the co-operative and shall be settled either by the Registrar or he or she may refer the case to the Co-operative Tribunal which shall make a ruling according to the provisions of **Section 115** and **116** of this Act.

Amendment and registration of by-laws

19. —(1) A co-operative may amend its by-laws, including a change of name, by a special resolution of the members passed at a general meeting convened for that purpose by at least two-thirds of the members present and voting according to the procedure laid down in the co-operative's by-laws.
- (2) Within 30 days from the passing of an amendment of the by-laws, two certified copies of the amendment shall be sent to the Registrar who shall, subject to the provisions of subsection (3) of this Section, register the amendment which shall have no effect until it is so registered.
- (3) The Registrar shall refuse to register any amendment if it appears to him or her to be contrary to the provisions of this Act or the regulation:

Provided that an amendment of a by-law concerning the maximum liability a co-operative may incur shall require the prior approval of the Registrar in consultation with the National Co-operative Federation.

- (4) If the Registrar registers the amendment, he or she shall issue a certified copy of the amendment to the co-operative which shall be conclusive evidence of registration.
- (5) If the Registrar refuses to register an amendment, he or she shall record the reasons and notify them to the co-operative along with his or her decision:

Provided that an appeal against the Registrar's decision may be made to the co-operative Tribunal within one month from the date of the decision, and the Tribunal shall make a decision within 30 days of having received the appeal.

- (6) An amendment which changes the name of a co-operative shall not affect any right or obligations of the co-operative or its members or past members, and any legal proceedings pending may be commenced or continued by or against the co-operative under its new name.
- (7) A change in the registered address of a co-operative where this forms part of the by-law shall not be considered to be an amendment of the by-laws.

#### PART IV – RIGHTS AND DUTIES OF CO-OPERATIVES

##### Registered address and name of co-operative

20. —(1) A co-operative shall have an address registered in accordance with this Act to which all notices and communications shall be sent and shall inform the Registrar of any change in address within 30 days of the change who shall register it.
- (2) The address of the co-operative has to include its exact physical address where the records of the co-operative are kept as well as its postal address.
- (3) A co-operative shall display its name in legible letters on the outside of every place or office in which its business is carried on.
- (4) A co-operative shall include its name in all business letters, notices, other official documents and publications of the co-operative and on its common seal, if any.
- (5) No co-operative shall be registered by a name, which in the opinion of the Registrar may be undesirable.
- (6) Every co-operative shall have--
  - (a) the word "co-operative" as part of its name;



- (b) the word “limited” at the end of its name, if it is a co-operative having limited liability of members.

Register of members and shares

21. — (1) Every co-operative shall maintain a register of members, and where a co-operative issues shares to its members, a register of shares held by each member.
- (2) The register of members and shares shall be prima facie evidence of any of the following particulars entered in it: --
- (a) the date on which the name of any person was entered in register as a member;
  - (b) the date on which any member ceased to be a member;
  - (c) the number of shares held by a member; and
  - (d) the value of each share.

Co-operative to keep documents for inspection by members

22. Every co-operative shall keep a copy of this Act, the rules made under this Act, the by-laws of the co-operative and a list of its members open for inspection to its members or to the Registrar and his or her officers or to the auditor free of charge at all reasonable times at the registered address of the co-operative.

Registration of officers of co-operatives

23. The names, occupations and addresses of all officers of every co-operative and any changes thereof shall be notified to the Registrar who shall keep and maintain a register of officers of co-operatives. Notice of any changes shall be given to the Registrar within 30 days.

Co-operative's actions not to be invalidated

24. No act of a co-operative or any member of the Board or any officer of the co-operative shall be deemed to be invalid by reason only of the existence of any defect in the by-laws of the co-operative or of the Board or in the appointment or election of an officer or on the ground that an officer was disqualified for his or her appointment.

Disposal of produce to or through a co-operative

25. — (1) A co-operative which has as one of its objects the disposal of any article produced or obtained by the work of its members, whether the produce of agriculture, animal husbandry, fisheries, forestry, handicrafts, the

manufacture of goods or otherwise, may either provide in its by-laws or otherwise contract with its members that—

- (a) every member who produces or obtains any of the articles shall dispose of the whole or any specified amount, proportion or description to or through the co-operative; and
  - (b) any member who is proved or adjudged to be in breach of the by-law or contract shall pay as liquidated damages a sum related to the loss incurred by the co-operative assessed in the manner as may be prescribed by the by-laws.
- (2) Where failure to deliver produce to the co-operative was due to the fact that before becoming a member of the co-operative or signing the contract with the co-operative he or she had contracted to deliver the produce to another and the prior contract was disclosed to the co-operative when applying for membership or signing the contract, that failure shall not be taken as a breach within subsection (1) of this Section.
- (3) No by-law or contract entered into under the provisions of subsection (1) of this Section shall be contested in any court or other proceedings on the grounds only that it constitutes a contract in restraint of trade.

#### Imposition of fines on members

- 26.—(1) The by-laws of a co-operative may provide for the imposition of fines on its members for any infringement of its by-laws, but no fine shall be imposed upon any member until a written notice of the intention to impose the fine and the reason has been served on him or her and he or she has had an opportunity of being heard or otherwise showing cause why the fine should not be imposed.
- (2) Any fine shall be recoverable by the co-operative as a debt due to the co-operative.

#### Creation of charge in favour of co-operatives

- 27.—(1) Subject to any other written law as to priority of debts, where a co-operative has —
- (a) supplied to a member or past member industrial implements or machinery or materials for manufacture or building, or seeds, fertilizer, animals, feeding stuffs or agricultural implements; or
  - (b) rendered services to a member or past member; or

- (c) lent money to a member or past member to enable the member to buy things or to obtain services as specified in paragraph (a) of this subsection;

the co-operative shall have a first charge upon those things or, as the case may be, upon industrial or agricultural produce, animals or articles produced therewith or therefrom or with the aid of such money, except that nothing in this paragraph shall affect the claim of a bonafide purchaser or transferee without notice.

- (2) Outstanding demands or dues payable to a housing co-operative by a member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such co-operative shall be a first charge upon that member's interest in the immovable property of the co-operative.
- (3) Any outstanding demands or dues not exceeding in the aggregate two hundred dollars per annum payable to a registered co-operative for the purchase of shares in that co-operative 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, livestock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackles and nets, raw materials, stock in trade and generally all produce of labour of such member or past member:

Provided that any outstanding demand or due for the purchase of such shares shall be deemed to constitute a share of the member under the provisions of **Section 28** of this Act.

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

28. A co-operative shall have a charge upon the share or interest in the capital and on the deposits of a member or past member or deceased member and upon a dividend or bonus payable to a member or past member or to the estate of a deceased member in respect of a debt due to the co-operative from that member or past member or estate, and may set off a sum payable to a member or past member or estate of a deceased member for the payment of any such debt.

Shares or interest not liable to attachment or sale

29. Subject to the provisions of **Section 28**, the share or interest of a member in the capital of a co-operative shall not be liable to attachment or sale under any order of a court in respect of a debt or liability incurred by that member, and neither the member's assignee in insolvency nor a receiver duly appointed shall be entitled to, or have a claim on, that share or interest.

Transfer of interest on death of a member

30. — (1) On the death of a member a co-operative may transfer the share or interest of that member to the person nominated in accordance with **Section 31** of this Act or if there is no person so nominated, to the person as may appear to the Board to be the heir or personal representative of the deceased member, or pay to such nominee, heir or personal representative, as the case may be, a sum representing the value of the member's share or other interest in the capital of the co-operative as determined in accordance with the regulations or the by-laws of the co-operative.
- (2) A co-operative shall pay all moneys due to the deceased member from the co-operative to the heir, legal representative or nominee, as the case may be.
- (3) All transfers and payments made by a co-operative in accordance with the provisions of this Section shall be valid against any demand made upon the co-operative by any other person.
- (4) Where the member of a co-operative is or becomes of unsound mind the provisions of subsections (1), (2) and (3) of this Section shall apply.
- (5) Every registered co-operative shall furnish to the Commissioner of Estate and Gift Duties, in the prescribed form, a return of all transfers and payments made by it under the provisions of this Section, without the production of probate or the letter of administration within two months of such transfers and payments having been made.

Appointment of nominee

- 31.—(1) Every appointment of a nominee by any member of a registered co-operative for the purposes of **Section 30** of this Act shall be made in writing signed by the member in the presence of two attesting witnesses.
- (2) No member of a registered co-operative with the share capital shall be entitled to appoint more than one nominee, unless that member holds more than one share.
- (3) In any case where more than one nominee is appointed by any member, the number of shares to be transferred or the exact proportion of the amount available that is to be transferred to each of these nominees shall be specified at the time of the appointment.
- (4) Every appointment of a nominee shall be recorded in the register of members.
- (5) For the purpose of a transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for the share or interest by the member holding it, unless the by-laws of the registered co-operative otherwise provide.

- (6) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his or her guardian shall be sufficient discharge to the registered co-operative.

Deposits by or on behalf of minors

32. —(1) A co-operative may receive deposits from or for the benefit of minors and it shall be lawful for a co-operative to pay such minors the interest, which may become due on such deposits. A deposit made by a minor may, together with interest accrued thereon, be paid to that minor; and a 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.
- (2) The receipt of a minor or guardian for money paid to him or her under this Section shall be a sufficient discharge of the liability of the co-operative in respect of that money.

Contracts with co-operatives of members who are minors

33. The minority of a person duly admitted as a member of any co-operative shall not preclude that person from executing any instrument or giving a discharge necessary to be given under this Act or the Regulations, and shall not be a ground for invalidating or avoiding a contract entered into by any such person, with the co-operative, whether as principal or as surety, shall be enforceable at law or against such person notwithstanding his or her minority.

Proof of entries in the books of a co-operative

34. —(1) A copy of an entry in a book of a co-operative, regularly kept in the course of business, shall be prima facie evidence in any legal proceedings, civil or criminal, of the existence of the entry and of the matters, transaction and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.
- (2) A copy of an entry in the book of a co-operative shall be certified by a written certificate at the foot of that copy, declaring that it is a true copy of that entry and that the book containing the entry is still in the custody of the co-operative, such certificate being dated and signed by the Chairperson and the secretary of the co-operative.
- (3) No officer of any co-operative shall, in any legal proceedings to which the co-operative or the liquidator of the co-operative is not a party, be compelled to produce any of the co-operative's books, the contents of which can be proved under subsection (1) of this Section or to appear as witness to prove matters, transactions or account therein recorded, unless the court for special reasons so directs.

Bonding of accountable officers

35. Every member of the Board, Officer and employee handling funds, securities or property on behalf of any co-operative shall execute and deliver adequate bonds for the faithful performance of his or her duties and obligations and the Board shall determine the adequacy of such bonds.

Tax treatment of co-operatives

36. The Income Tax Act in so far as it provides for the taxation of co-operatives, apply to co-operatives registered under this Act.

PART V – RIGHTS AND DUTIES OF MEMBERS

Membership in co-operatives

- 37.—(1) A person other than a co-operative or association shall qualify for membership in a primary co-operative if:--
- (a) he or she is at least eighteen (18) years of age: Provided that in the case of a school co-operative the minimum age shall be reduced to fourteen (14);
  - (b) is a citizen or resident of Fiji; and
  - (c) he or she satisfies such other requirements with regard to residence, employment, profession or any other matter as may be prescribed in the by-laws of the co-operative.
- (2) In the case of secondary co-operatives, any apex organisation and the National Co-operative Federation any co-operative seeking membership thereof shall have to satisfy all requirements as may be prescribed in the by-laws of such co-operative.
- (3) In the case of an association seeking membership of a primary co-operative it will have to satisfy all requirements as may be prescribe in the by-laws of such co-operative.
- (4) To become a member, a person or a co-operative has to:
- (a) submit an application for admission to membership to the Board and agree to be bound by the co-operative's by-laws;
  - (b) be admitted following the procedure provided for by the by-laws of the co-operative;
  - (c) pay the minimum share capital necessary to be paid on admission according to the by-laws.
- (5) The founder members present at the Founders' Meeting shall be exempted from the application and admission procedures set out in

subsection (4) of this Section provided that their names appear in the application for registration of the proposed co-operative and they have signed the minutes of the Founders' Meeting and the proposed by-laws of the co-operative and have made the necessary payments to the capital of the co-operative as agreed upon by them.

#### Rights of members

38. Every member of a co-operative shall have the right to—
- (a) Participate in the general meetings, in decisions taken at such meetings and in voting;
  - (b) use the services and facilities of the co-operative in accordance with its by-laws;
  - (c) be elected to the organs of the co-operative namely the Board, the Supervisory Committee and any sub-committees subject to the provisions of this Act and the by-laws of the co-operative;
  - (d) be informed by the members of the Board during general meetings or other meetings about the functioning of the co-operative;
  - (e) consult, at the registered office, the co-operative's by-laws, rules, registers, minutes of general meetings, annual reports and balance sheets, audit reports and the inventory;
  - (f) call for a Special General Meeting according to the provisions of **Section 56** of the Act;
  - (g) call for an inquiry to be held into the constitution, organisation, working and financial situation of the co-operative, according to the provisions of **Section 85** of this Act;
  - (h) participate, under the conditions and according to the modalities set out in the by-laws, in the distribution of surplus, if any, at the end of the financial year;
  - (i) withdraw from the co-operative in accordance with the provisions laid down in this Act and the by-laws of the co-operative;
  - (j) claim refund of his or her share or shares upon termination of membership; and
  - (k) any other rights provided for in the by-laws of the co-operative.

#### Duties of members

39. It shall be the duty of every member joining a co-operative to—

- (a) abide by the provisions of the Act, the regulations and the by-laws of the co-operative, and with the decisions taken in due form by the General Meeting and by the Board of the co-operative;
- (b) use the services and facilities of the co-operative for all or part of the transactions that may be carried out through it, if specified in the admission form at the time of his or her joining the co-operative, or in a contract made in accordance with **Section 25** of this Act;
- (c) pay the fines imposed upon him or her under the by-laws for infringement of the by-laws or of his or her contracts for carrying out transactions with the co-operative;
- (d) subscribe and pay-up shares or make any other payments provided for in the by-laws;
- (e) abstain from any act detrimental to the interests of the co-operative;
- (f) fulfil his or her financial obligations towards the co-operative in the event of bankruptcy under the conditions and within the limits provided for by this Act and in the by-laws.

Members not to exercise rights until due payment made

40. No member of a co-operative shall exercise any of the rights of a member unless he or she has made payment to the co-operative in respect of membership, or has acquired shares or interest in the co-operative, as may be prescribed under this Act or by the by-laws of the co-operative.

Restriction of membership in more than one co-operative

41. No person can be a member in more than one co-operative having the same or similar objects except with the consent of the Registrar.

Withdrawal from a co-operative

42. A member may withdraw from a co-operative subject to such conditions and by giving to the co-operative such notice as the by-laws may prescribe, except that in the case of a primary co-operative the notice shall not exceed one year and in the case of a secondary or tertiary co-operative or an apex organisation the notice shall not exceed two years.

Expulsion of member

43. —(1) The expulsion of a member may be ordered by the Board or by the General Meeting if a member carried out or attempted to carry out an act seriously detrimental to the co-operative or if he or she failed to respect any or all the duties stipulated in **Section 39** of this Act.



- (2) The procedure for expulsion of a member shall be set out in the by-laws and shall include:
- (a) a period of notice of at least two months;
  - (b) a written notification thereof stating the reasons for the expulsion; and
  - (c) the member's right to defend himself or herself before the Board or the General Meeting prior to the decision.
- (3) If the expulsion was decided by the Board, the expelled member may appeal to the next General Meeting whose decision shall be final: Provided that such appeal shall not suspend the effects of the decision.

#### PART VI – SECONDARY CO-OPERATIVES, APEX ORGANISATIONS AND THE NATIONAL CO-OPERATIVE FEDERATION

##### Power to federate

44. Co-operatives may form secondary co-operatives and apex organisations, which may be registered to facilitate the operations of their members or to provide such other services as may be necessary for their members as laid down in their by-laws.

##### Formation of secondary co-operatives and apex organisations

45. —(1) Two or more primary co-operatives may form a secondary co-operative.
- (2) Two or more primary or secondary co-operatives may form an apex organisation:
- Provided that any co-operative having at least seventy-five percent of all co-operatives of that type as its members shall be deemed to be an apex organisation.
- (3) The decision to form a secondary co-operative or an apex organisation or to join an already existing one shall be made by a General Meeting convened exclusively for that purpose and in accordance with the by-laws of each of the co-operatives concerned.

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- (4) The formation procedures, the required documents and the registration formalities shall be the same as outlined in **Sections 8, 9, 10, 11 and 12** of this Act.
- (5) The general meetings of secondary co-operatives and apex organisations shall be composed of delegates of their member

co-operatives. The number of delegates and their voting powers shall be laid down in the by-laws.

Functions of secondary and tertiary co-operatives and apex organisations

46. —(1) Secondary co-operatives and apex organisations have the objective of facilitating the operations of their member co-operatives.
- (2) Secondary co-operatives and apex organisations shall :--
- (a) provide, organise and supervise central services such as joint supply of inputs, raw materials or implements, access to technical services and loans, joint marketing of produce and joint utilisation of any other services and installations that may be necessary to help the officers and members of their member co-operatives in achieving their objectives;
  - (b) provide information, education, training and advisory services on co-operative principles and practices and on the management of co-operative enterprises;
  - (c) assist formation committees and co-operatives in determining the feasibility of their projects and to facilitate the registration of new co-operatives;
  - (d) conduct audit of member co-operatives according to the provisions of this Act; and
  - (e) provide any other services which may be necessary to promote the objectives of their members.

National Co-operative Federation and its functions

47. —(1) There is established the National Co-operative Federation which shall represent the interest and welfare of all types of co-operatives at all levels and shall be the sole institution of this kind.
- (2) The National Co-operative Federation shall--
- (a) represent the interests of its member organisations in different forums;
  - (b) acquire, analyse, and disseminate economic, statistical, and other information relating to its members;
  - (c) sponsor studies in the economic, legal, financial, social and other fields concerned with co-operatives, and publish the results thereof;

- (d) promote the knowledge of co-operative principles and practices as well as co-operative management and vocational skills;

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- (e) develop the co-operative movement in their respective sectors;
- (f) advise the appropriate authorities on all questions relating to co-operatives and to participate actively in planning and policy-making of co-operative development programmes;
- (g) conduct audit of member co-operatives according to the provisions of this Act;
- (h) undertake economic activities aimed at strengthening its capital base;
- (i) raise funds for co-operative development through membership fees, dues and contributions, donations, and subsidies from local and foreign sources whether private or government; and
- (j) do and perform such other activities as may be necessary to attain the foregoing objectives.

### PART VII – CO-OPERATIVE ADVISORY BOARD

#### Establishment of Co-operative Advisory Board

48. There is established a Board to be known as the Co-operative Advisory Board.

#### Functions of Co-operative Advisory Board

49. —(1) The functions of the Board shall be to advise the Minister generally or in respect of a particular matter, and make recommendations to him or her, in relation to—
- (a) the policy which may be followed in relation to co-operative development in Fiji, and the manner in which such policy is or may be implemented;
  - (b) the amendment or application of provisions of this Act or any other law relating to co-operative matters;
  - (c) any matter referred to the Board by the Minister under subsection (2) of this Section.

- (2) Where the Minister is required to exercise or perform any power, duty or function or to take any decision under or for the purposes of this Act, the Minister may, before doing so, request the Board to advise him or her in relation to the exercise or performance of such power, duty or function and the taking of such decision.

Composition of the Co-operative Advisory Board

50. The Board shall consist of five persons to be appointed by the Minister on the recommendation of the Registrar.

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Terms of office and conditions of service of members of Co-operative Advisory Board

51. —(1) A member of the Board shall hold office for a period not exceeding three years, but may be re-appointed at the expiration of that period.
- (2) The conditions of service of the members of the Board and all other procedures concerning the meetings of the Board shall be prescribed in the regulations.

PART VIII – ORGANISATION AND MANAGEMENT OF CO-OPERATIVES

Different types of general meetings

52. —(1) The General Meeting shall represent all the members and shall be the supreme organ of deliberation and decision making of the co-operative and its decisions shall be binding on all members, even on those absent or dissenting.
- (2) There shall be four types of general meetings:
- (a) the First General Meeting;
  - (b) the Annual General Meeting;
  - (c) the Ordinary General Meeting, if any;
  - (d) the Extraordinary General Meeting convened for special reasons.

The First General Meeting

53. —(1) The First General Meeting shall be held as soon as possible after registration.
- (2) The functions of the First General Meeting shall be:
- (a) to reconfirm or elect the members of the Board and the officers of the Co-operative in relation to the Founders' Meeting;

- (b) to appoint the auditors for the coming financial year;
- (c) give directives to the Board and confer upon it and the manager, if any, powers required for the smooth running of the co-operative;
- (d) determine the maximum amount the co-operative may borrow from banks or public or private credit institutions subject to the approval of the Registrar in consultation with the National Co-operative Federation;
- (e) determine the maximum amount of investments and deposits and their conditions;
- (f) in the case of fully registered co-operatives examine and adopt the work programme, the budget and the cash-flow forecast for the next financial year;

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- (g) decide on the volume of business to be carried out by the co-operative with non-members, where appropriate;
- (h) decide on all other matters that are duly submitted to it or that are provided for in the by-laws.

#### The Annual General Meeting

54. —(1) The Board shall convene the Annual General Meeting of a co-operative once in every year within six months from the end of the financial year which shall be the 30<sup>th</sup> of June in each year: Provided that with the special approval of the Registrar a co-operative may have another date as the end of its financial year.
- (2) In the absence of an Annual General Meeting convened by the Board, the Supervisory Committee, if any, or the members themselves shall have the power to convene the Annual General Meeting.
  - (3) After approval of minutes of the preceding Annual General Meeting and the examination of reports of the Board, the Supervisory Committee, if any and the auditor, the Annual General Meeting shall, as appropriate:
    - (a) approve the accounts, or if the accounts are not approved, cause the secretary to notify the Registrar who shall consider the matter and make his or her decision thereon, and such decision as to the correctness of the accounts shall be final and conclusive;
    - (b) discharge or refuse to discharge board members of their responsibility for the preceding financial year;

- (c) amend the by-laws;
- (d) elect and dismiss members of the Board and members of the Supervisory Committee; determine their functions within the limits of the provisions of this Act, the by-laws and appoint the auditors;
- (e) give directives to the Board and confer upon it and the manager, if any, powers required for the smooth running of the co-operative;
- (f) determine the maximum amount the co-operative may borrow from banks or public or private credit institutions with the approval of the Registrar in consultation with the National Co-operative Federation;
- (g) determine the maximum amount of investments and deposits and their conditions;
- (h) examine and adopt the work programme, the budget and the cash flow forecast for the next financial year;

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- (i) decide on the volume of business to be carried out by the co-operative with non-member users, where appropriate;
  - (j) determine the manner in which the net surplus of the financial year shall be distributed and fix the interest rates to be paid on shares and savings deposits;
  - (k) decide on the refusal of admission and the recommendation for expulsion of members as proposed by the Board;
  - (l) order an inquiry in accordance with the provisions of **Section 85** of this Act; and
  - (m) decide on all other matters that are duly submitted to it or that are provided for in the by-laws.
- (4) The deliberations of the Annual General Meeting called upon to examine and approve the annual accounts shall be void if they are not preceded by the presentation of the report of the Supervisory Committee and of the audit report as prescribed in **Section 82** of this Act.
55. —(1) The by-laws of the co-operative may provide for regular Ordinary General Meetings in addition to the mandatory Annual General Meeting.
- (2) These meetings may, as appropriate:

- (a) review general progress and policies of the co-operative;
- (b) decide on the refusal of admission and the recommendation for expulsion of members as proposed by the Board;
- (c) examine and adapt the work programme, the budget and the cash flow forecast for the current financial year;
- (d) order an inquiry in accordance with the provisions of **Section 85** of this Act;
- (e) decide on all other matters that are duly submitted to it or that are provided for in the by-laws.

Special General Meeting

56. —(1) A Special General Meeting may be convened whenever the Board or the Supervisory Committee, if any, deems it necessary for the smooth running of the co-operative, and it shall also be convened when,
- (a) in the case of a registered co-operative having forty members or less at least one half of its members or ten members whichever is the less; and
  - (b) in the case of a registered co-operative having more than forty members at least one-fourth or one hundred members whichever is the less, so request in writing.
- (2) The Special General Meeting may decide on the following matters:
- (a) dissolution of the co-operative;
  - (b) amalgamation with another co-operative;
  - (c) division or transfer of the co-operative;
  - (d) amendment of by-laws;
  - (e) conversion of the co-operative to any other legal form;
  - (f) election of new Board members in case of vacancies in the Board, if the number of Board members fall below a critical number to be set in the by-laws;
  - (g) discussion of any other matter duly submitted by the Board, the Supervisory Committee or members, where the Special General Meeting is convened upon members' request.

## Procedures at all General Meetings

57. —(1) A General Meeting shall be convened by the Board and it shall be announced at least twenty-one days before the date set for the meeting, by public notice at the co-operative's registered office, by personal invitation or by any other methods that guarantee that all members have been duly notified.
- (2) The invitation shall state the date, time and place as well as the agenda of the meeting.
- (3) The agenda of the General Meeting shall :--
- (a) be determined by the Board except when convened by the Supervisory Committee or at the request of members;
- (b) also include all matters submitted to the Board at least seven days before the General Meeting in writing, signed by at least ten members.
- (4) Only matters on the agenda may be considered during General Meetings and the deliberations and voting on matters other than those on the agenda shall require the prior approval of a two-thirds majority of those present, when the final agenda is adopted.
- (5) The Chairperson of the General Meeting shall organise and conduct discussions in accordance with the by-laws of the co-operative.
- (6) The Chairperson, may, upon the decision of the General Meeting, adjourn the session and on resumption, deliberations shall relate only to matters that were left unsettled.
- (7) Deliberations shall be declared void if an attendance sheet with the full names of members present is not drawn up and countersigned by the Chairperson of the General Meeting.
- (8) The Secretary of the meeting shall keep the minutes of the meeting which shall be signed by the Chairperson of the General Meeting in the minute-book kept at the registered office of the co-operative and they shall be read and adopted at the opening of the next General Meeting.

## Quorum at General Meetings

58. —(1) The General Meeting may only take valid decisions when:
- (a) in the case of a primary co-operative having forty members or less the number of members present is at least equal to one-half of all members or ten members whichever is the less;



- (b) in the case of a primary co-operative having more than forty members the number of members present is at least equal to one-fourth of all members or one hundred members whichever is the less;
  - (c) in the case of secondary co-operatives or apex organisations having forty members or less at least half the total number of voting rights is represented at the meeting or ten whichever is the less and in those having more than forty members at least one-fourth of the total voting rights or one hundred whichever is the less is represented at the meeting;
  - (d) in the case of the National Co-operative Federation at least thirty delegates are present.
- (2) If the quorum is not reached, a second General Meeting shall be convened at the same place with the same agenda within the next fifteen days and at this meeting valid decisions may be taken irrespective of the number of members present or represented.

Voting rights at the General Meeting

59. —(1) Each individual member of a primary co-operative shall have only one vote in the affairs of the co-operative, irrespective of the number of shares he or she holds and such vote shall be exercised in person and not by proxy:

Provided that the delegates at a general meeting of a secondary co-operative, an apex organisation or the National Co-operative Federation may not vote for other delegates by proxy except with the special approval of the Registrar.

- (2) In a secondary co-operative, apex organisation or the National Co-operative Federation each member shall have as many votes as may be provided for in the by-laws of that co-operative.

Voting procedure at General Meeting

60. —(1) Decisions at the General Meeting shall be taken by the majority of votes cast, except for decisions specified in this Act for which a higher minimum percentage is prescribed and in case of equality of votes, the Chairperson of the meeting shall have a casting vote.

- (2) Voting shall be by show of hands or in any other form as prescribed in the by-laws:

Provided that all voting in election for candidates for the Board, the Supervisory Committee, the Chairperson, and the Vice-Chairperson shall be by secret ballot.

- (3) The Chairperson of the Board shall preside at the General Meeting and, in the absence of the Chairperson, the Vice-Chairperson and should both of them be unable to attend, the General Meeting shall elect a Chairperson for the session. The General Meeting shall appoint a Secretary.

Branch meetings

61. —(1) The setting up of branch meetings may be provided for in the by-laws. The number of branches and the area which each of them cover shall also be determined by the by-laws of the co-operative.
- (2) Branch meetings shall be convened under the same conditions as the General Meeting and shall take place at least ten days before the General Meeting and shall be attended by at least one member of the Board.
- (3) Each branch group shall be headed by a committee elected by the branch meeting and it shall comprise at least a Chairperson, a Vice-Chairperson and a Secretary.
- (4) Branch Meetings shall have the following functions:
  - (a) electing from among its members, delegates who shall represent them at the General Meeting of the co-operative which shall become a meeting of delegates as provided for in **Section 62** of this Act;
  - (b) discussing matters on the agenda of the meeting of delegates after listening to reports on these matters;
  - (c) discussing and deciding on any matter which directly concerns the members of the branch group;
  - (d) making recommendations to the meeting of delegates;
  - (e) informing members on the activities of the co-operative.
- (5) The number of delegates from each branch group shall be determined in the by-laws.
- (6) The rules of procedure for branch meetings shall be the same, as those for the Ordinary General Meeting except those Branch Meetings shall take valid decisions irrespective of the number of members present.
- (7) The Branch Meeting may decide to convene itself in particular to hear the report of the meeting of delegates.

## Meeting of delegates

62. —(1) The General Meeting of a co-operative subdivided into branch meetings shall be composed of delegates elected at the branch meetings.
- (2) Each delegate of a branch group shall have one vote at the meeting of delegates and it shall be specified in the by-laws whether a delegate will be compelled to vote according to the decisions taken at a branch meeting or not.
- (3) Delegates shall inform the members of their branch group especially of activities and deliberations during the meetings of delegates.

## Board

63. —(1) The Board shall be the administrative and management organ of the co-operative and it shall—
- (a) exercise such powers as shall be delegated to it in accordance with this Act and by the General Meeting;
- (b) prepare and convene General Meetings, appoint a manager if necessary and may dismiss such manager.
- (2) The Board shall:
- (a) comply with the provisions of this Act, as well as with the by-laws of the co-operative and shall ensure that they are applied;
- (b) convene the General Meetings as requested by this Act and by the by-laws;
- (c) keep, or cause to be kept, precise and accurate accounts and a correct record of the assets and liabilities of the co-operative;
- (d) hear reports on settlement of accounts and the progress reports of office-bearers assigned with special responsibilities in particular the Chairperson, the Manager and the Treasurer;
- (e) present to the Annual General meeting a management report as well as duly certified accounts in accordance with the provisions of this Act;
- (f) present to the Annual General Meeting a programme of activities and the budget for the next financial year;
- (g) give all necessary assistance to persons appointed to audit the accounts of the co-operative;

- (h) take all necessary measures to safeguard the funds, assets, stocks and property of the co-operative;
- (i) ensure that sums borrowed do not exceed the ceiling fixed by the General Meeting;
- (j) appoint sub-committees, where these could not have been foreseen at the Annual General Meeting;
- (k) implement all decisions taken by the General Meeting;
- (l) keep members periodically informed of the affairs of the co-operative;
- (m) comply with the laws in force in Fiji.

Composition of Board and term of office

64. —(1) The Board shall consist of at least three members elected by the General Meeting from among the members and number of Board members shall be determined by the by-laws and shall be three or a multiple of three.
- (2) The first Board members shall be elected at the First General Meeting held under **Section 53** of this Act.
  - (3) The term of office of Board members shall be three years. At the end of each term, one-third of the Board members shall step down from office in a manner to be prescribed in the by-laws. A Board member shall be eligible for re-election for a maximum of two terms after which a Board member has to vacate office for at least one term.
  - (4) Any vacancy on the Board as a result of death, resignation, expulsion or withdrawal or for any other reason, shall be filled at the next Annual General Meeting.
  - (5) Any co-operative with branch meetings or any secondary co-operative, apex organisation or the National Co-operative Federation shall determine in their by-laws the conditions of representation of such branch groups or member co-operatives on the Board taking into account their numerical and economic importance.

Eligibility for membership of Board

65. No person shall be eligible for membership in the Board of a co-operative or remain a member of such if he or she :—
- (a) is under eighteen years of age, except in the case of a school co-operatives where the minimum age shall be fourteen;

- (b) is an undischarged bankrupt;
- (c) has been convicted of an offence involving dishonesty or moral turpitude and has been sentenced to imprisonment;
- (d) has been convicted of an offence under this Act;
- (e) has been dismissed as an employee of a co-operative;
- (f) has been found to have previously misused or mismanaged the funds of a co-operative
- (g) takes part directly or indirectly, permanently or occasionally in any activity competitive with that of the co-operative.

Honorary services of Board members

66. —(1) The services of Board members shall be honorary, provided that reasonable expenses incurred by a Board member in the performance of his or her duties authorised or ratified by the Board within the limits of the budget adopted by the General meeting, may be reimbursed.
- (2) A member of a Board may receive an honorarium or, if he or she is an honorary secretary or treasurer, an allowance from the co-operative: Provided that the payment of an honorarium or allowance has to be authorized by a resolution to that effect passed by a General Meeting of the co-operative.
- (3) An officer who is in receipt of an allowance shall not be entitled to receive an honorarium as a member of the Board.

Office-bearers of Board

67. —(1) The Chairperson of the Board and the Vice-Chairperson shall be elected by secret ballot be it by the General Meeting or by the Board as specified in the by-laws.
- (2) The Board may appoint, on such terms and conditions as it thinks fit, a manager or managers who may or may not be a member of the co-operative to administer and manage the affairs of the co-operative and may employ such other persons as the Board considers necessary to assist the manager in the discharge of his or her duties:

Provided that a manager, who is a member of the co-operative, shall not be eligible to be a member of the Board.

Disqualification from Board

68. —(1) A Board member shall cease to hold office if :—

- (a) he or she falls outside the eligibility criteria prescribed in **Section 65** of this Act or the by-laws;
  - (b) he or she resigns by notice in writing;
  - (c) except in a workers co-operative he or she accepts any salary or payment from the co-operative other than an honorarium or allowance authorised by **Section 66** of this Act;
  - (d) such member has absented himself or herself from two consecutive meetings without the leave of the Chairperson;
- (2) A co-operative may remove any Board member before the expiration of his or her term of office by a resolution of its members passed at a General Meeting for which due notice was given of the intention to propose the resolution.

#### Meetings of the Board

- 69.—(1) The Board shall meet when convened by its Chairperson and, in his or her absence, by the Vice-Chairperson as often as the interests of the co-operative shall require and at least once every three months. It shall be convened on the request of one third of its members or on request of the Supervisory Committee.
- (2) It shall validly conduct its business when at least one half or at least three whichever is the higher, of its members are present.
  - (3) Decisions of the Board shall be taken by a majority of votes cast and in case of equality of votes, the Chairperson shall have a casting vote.
  - (4) Minutes of Board meetings shall be entered into a special register signed by the Chairperson and the secretary of the meeting.
  - (5) Minutes shall be read and approved at the next meeting and comments arising therefrom shall be recorded in the minutes of that meeting.

#### Liability of members of the Board

70. In the conduct of the affairs of a co-operative the members of the Board shall exercise the prudence and diligence of ordinary persons of business and shall be jointly and severally liable for any losses sustained through any of their actions which are contrary to this Act, the by-laws or the directives of the General Meeting:

Provided that if in any proceedings to recover from a person mentioned in this Section any amount for which he or she is liable it appears that he or she

has acted honestly and reasonably and ought fairly to be excused in whole or in part he or she may be relieved wholly or partly from personal liability.

#### Sub-Committees

71.—(1) The by-laws may provide for the setting up of sub-committees charged with advising and assisting the Board. The composition, terms of reference and functioning of such committees shall be defined in the by-laws:

Provided that each sub-committee shall have at least one member who is not a member of the Board on it.

(2) Sub-Committee members shall be appointed by the Board or elected at the Annual General meeting according to the by-laws.

#### Powers of the Manager

72.—(1) The Manager or managers shall be appointed by the Board.

(2) The manager shall perform his or her duties under the authority and control of the Board and he or she shall represent the co-operative in dealings with third parties within the limits of the powers conferred upon him or her.

(3) He or she shall be responsible, in particular, for:

(a) implementing the business policy defined by the Board;

(b) drafting the programme of activities and the budget of the co-operative and submitting the same to the Board for approval;

(c) ensuring the judicious handling of funds, the correct use of property and maintenance of equipment, the internal organisation of services, the keeping of proper and accurate accounts;

(d) drawing up periodical management reports;

(e) preparing the accounts of the financial year or of any other period as required and defined by the Board.

(4) The Board shall delegate to the Manager in writing, such powers as shall be necessary for the proper discharge of his or her duties.

(5) Apart from exceptional cases, the Manager shall attend meetings of the Board in an advisory capacity.

- (6) The Manager shall be responsible for staff management, within the limits of the budget approved by the Board and all members of staff shall be placed under his or her authority.

Duties of Chairperson

73. The Chairperson shall preside at all General Meetings and all meetings of the Board and shall perform the other duties conferred upon him or her by the by-laws.

Duties of Secretary

74. The Secretary shall be appointed by the General Meeting and shall serve the co-operative on a regular basis and shall carry out the duties conferred upon him or her by the by-laws which shall include the duty to:
- (a) maintain, or cause to be maintained, correctly and up-to-date the co-operative's registers, books and papers other than the financial accounts of the co-operative;
  - (b) summon and attend the General Meetings and meetings of the Board and to record the proceedings in the minute book; and
  - (c) conduct and sign its correspondence on behalf of the Board.

Duties of Treasurer

75. The Treasurer shall be appointed by the General Meeting and shall serve the co-operative on a regular basis and shall carry out the duties conferred upon him or her in the by-laws which shall include the duty to--
- (a) maintain, or cause to be maintained, correctly and up-to-date the co-operative's accounts and accounting records;
  - (b) take charge of all financial transactions of the co-operative and to secure the safe-keeping of the co-operative's funds;
  - (c) prepare, or cause to be prepared, all necessary receipts, vouchers and accounts required by this Act, the regulations and the by-laws

Supervisory Committee

76. There shall be a Supervisory Committee for every co-operative with more than fifty (50) members as an internal control organ of the co-operatives but where a co-operative has less than fifty (50) members it shall not be compulsory to have such a committee.



## Composition of the Supervisory Committee

77. —(1) The Supervisory Committee shall consist of three members.
- (2) Members of the Supervisory Committee shall be elected by the General Meeting and directly responsible to it under the same procedures and conditions as the Board.
  - (3) Board members or employees of a co-operative cannot be elected to serve on the Supervisory Committee of that co-operative.

## Functions and powers of the Supervisory Committee

78. —(1) The Supervisory Committee shall be responsible for ensuring that the affairs of the co-operative are conducted in accordance with the by-laws and the resolutions adopted at the general meetings.
- (2) In the exercise of its functions in terms of subsection (1) of this Section, the Supervisory Committee shall--
    - (a) supervise the operations of the Board and employees of the co-operative;
    - (b) ascertain the authority and validity of all expenditures and approve expenditures above a certain amount to be prescribed in the by-laws of the co-operative;
    - (c) examine the accounts of the co-operative at regular intervals of not less than once every two months;
    - (d) ensure that all transactions of the co-operative are properly entered into the respective books, accounts or documents;
    - (e) reveal to the Board and to the members of the co-operative or to the Registrar any discrepancies that may occur in the management of the co-operative;
    - (f) ensure the validity of the balance sheet and any other financial statements and returns;
    - (g) present at the Annual General Meeting a special report on the management and financial situation of the co-operative, including any violations of the by-laws; and
    - (h) approve any loans made to the members of the Board by the co-operative.
  - (3) The members of the Supervisory Committee may be present at meetings of the Board.

- (4) The Supervisory Committee shall have full access to all the books, accounts and documents, financial or otherwise, of the co-operative and shall have the power to summon any person to produce any information or such books, accounts or documents as may be necessary.
- (5) The Supervisory Committee may, in the performance of its duties, make use of the services of an expert or a specialised institution for a limited period of time or for a specific task subject to financial resources being available for this purpose.
- (6) The rules of procedure for meetings of the Supervisory Committee shall be laid down in the by-laws.
- (7) Should a serious event threaten the existence of the co-operative, the supervisory committee shall be empowered to convene a Special General Meeting or to order an inquiry in accordance with **Section 86** of this Act.

#### Meetings of the Supervisory Committee

79. —(1) The Supervisory Committee shall meet at least four times in a year.
- (2) In fulfilling its duties members of the Supervisory Committee shall have the right to the same allowances and reimbursements of expenses as is approved for Board members.
  - (3) The Supervisory Committee shall elect amongst itself appropriate office-bearers and shall keep proper minutes of meetings which minutes shall be available to members of the Board.

#### PART IX – AUDIT AND INQUIRY

##### Keeping of accounts, books and records

80. A Co-operative shall:
- (a) keep its accounts in commercial form and in accordance with the policies and standards of the Fiji Institute of Accountants;
  - (b) keep separate accounts for business with members and business with non-members, where applicable;
  - (c) ensure that all accounts are drawn up and audited after the end of the financial year in accordance with the provisions of this Act and by-laws;
  - (d) keep proper accounts and records of its transactions and affairs and shall do all things necessary to ensure that all payments out of

its moneys are correctly made and properly authorised and that adequate control is maintained over its expenditure and assets; and

- (e) keep all accounts and records in such manner that members and the auditor can have access to them and such accounts and records shall truly reflect the financial situation of a co-operative.

Audit of co-operatives

- 81.—(1) All co-operatives shall cause their accounts to be audited at least once every year which shall be carried out by an Auditor approved by the Registrar.
- (2) Persons duly authorised as Auditors under subsection (1) of this Section shall have free access to all books, accounts, stocks, securities, minutes and documents of the co-operative and may question any member of the Board, director, manager, employee or member of the co-operative whom they consider capable of supplying information on the activities and functioning of the co-operative and such persons shall be bound to furnish all information requested of them to the duly authorised auditors.
  - (3) Any person having family links of the first degree of consanguinity with any member of the board or persons having business relations with the co-operative or any member or employee of the co-operative may not be appointed to audit the accounts of the co-operative.

Duties of Auditor

- 82.—(1) The Auditor shall audit the accounts and other relevant records of the co-operative and shall draw the attention of the Registrar and the co-operative of any irregularities disclosed by the audit that is, in the opinion of the auditor, of sufficient importance to justify his or her so doing.
- (2) The financial statements prepared by the co-operative after the close of the financial year shall be audited and reported on by the Auditor.
  - (3) The Auditor's report shall include--
    - (a) the result of the audit of the accounts;
    - (b) a statement whether in the opinion of the auditor proper accounting and other records have been kept and whether the receipts, expenditure and investment of moneys and the acquisition and disposal of assets by the co-operative during the year have been in accordance with the provisions of this Act and the by-laws and minutes of the co-operative;

- (c) a statement of any transactions and special agreements between the co-operative and its members not specified in the by-laws and any special agreements between the co-operative and a third party likely to cause damage to the co-operative;
- (d) an appraisal of the management of the co-operative and the functioning of its organs.

Power of Auditor on audit matters

83. The Auditor may consult the Supervisory Committee any time during the audit and shall inform the Chairperson of the Board and the Supervisory Committee of the findings of his or her work after completion of the audit.

Submission of annual and Auditor's report

- 84.—(1) A co-operative shall, as soon as practicable, but not later than six months after the end of the financial year, submit to the Registrar an annual report on its activities during the year, together with two certified copies of the audited financial statements of the co-operative and the auditor's report for that year after they have been approved by the Annual General Meeting.
- (2) Where the accounts of a co-operative have not been audited and submitted to the Registrar within the time limits prescribed in subsection (1) of this Section the Registrar shall notify the Chairperson of the co-operative of its failure to comply with the law:

Provided that if a co-operative fails to hand in its audited accounts to the Registrar within the period specified in subsection (1) of this Section for a continuous period of three years, the Registrar may, after due warnings and after ascertaining that the delays were not caused by unforeseen circumstances but due to negligence or lack of interest on behalf of the co-operative, cancel the registration of the co-operative.

Inquiry

- 85.—(1) Should there be reason to believe that mistakes are made in the management of a co-operative showing incompetence of the members of the Board, an infringement of provisions of this Act or any other law or the by-laws of a co-operative or serious disrespect of the interests of the co-operative, an inquiry shall be carried out upon a written request of at least ten percent of the registered members or delegates of the co-operative, or upon such a resolution at a General Meeting or on the initiative of the Supervisory Committee.
- (2) The Supervisory Committee shall start the inquiry within a period of not more than two months from the date of receipt of the request or ask the Registrar to conduct an inquiry according to the provisions of Section 86 of this Act.

- (3) Where the Supervisory Committee is conducting the inquiry itself it may, for this purpose, appoint a Commission of Inquiry of not less than two competent and authorised persons who may be non-members, at least one of whom shall be designated by those making the request, and negotiate the cost of the inquiry, which shall be borne by the co-operative:

Provided that in case of an inquiry upon request of a group of members in accordance with subsection (1) of this Section, the Supervisory Committee may refuse to start inquiry proceedings, if the reason for the inquiry is considered to be frivolous and in this event, the requesting members may start the inquiry by themselves at their own expense and their expenses may be refunded, if the results of the inquiry prove to the General Meeting that their request was justified.

- (4) At the end of an inquiry, a Special General meeting may be convened to hear the report of the Commission of Inquiry or the Supervisory Committee, to deliberate on appropriate measures to be taken or to decide on the election of new members of the Board before the end of the current term of service of the members of the Board.
- (5) An inquiry may cover the organisation, management, working and the financial situation of the co-operative.

#### Inquiry by Registrar

- 86.—(1) The Registrar may, on his or her own motion, if there are suspected violations of this Act or the by-laws of a co-operative, on the written application of a majority of the members of the Board or on the request of the Supervisory Committee as provided for in subsection (2) of Section 85 hold an inquiry or direct any person authorised by him or her by order in writing on his or her behalf to hold an inquiry into the constitution, management, working and financial condition of the co-operative.
- (2) All officers, employees and members of the co-operative shall produce such books, accounts, papers and securities of the co-operative and shall furnish any information in regard to the affairs of the co-operative as the Registrar or the person authorised by him or her may require.
- (3) The Registrar shall communicate the results of the inquiry to the co-operative into whose affairs the inquiry has been made.

#### Examination of books of indebted co-operative

- 87.—(1) The Registrar may, on the application of a creditor of the co-operative, examine or direct any person authorised by him or her by order in writing

on his or her behalf to examine the books of the co-operative, if the applicant —

- (a) proves to his or her satisfaction that a sum of money is then due to him or her and that he or she has demanded payment thereof and has not received satisfaction within a reasonable time; and
  - (b) deposits with the Registrar, if this is considered necessary, such sum as security for the costs of the proposed examination as the Registrar may require.
- (2) The Registrar shall communicate the results of the examination carried out to the creditor and to the co-operative the books of which were examined.

#### Communication of defects in the working of co-operatives

88. —(1) If an audit, inquiry or examination of books made under this Act discloses any defects in the working of a co-operative, the Registrar may bring such defects to the notice of the co-operative and if the co-operative is a member of a secondary co-operative or of an apex organization, also to the notice of that other co-operative.
- (2) The Registrar may make an order directing the co-operative or its officers to take any action as may be specified in the order within the time mentioned therein to remedy the defects disclosed in the audit, inquiry or examination of books.

#### Costs of inquiry and examination

89. —(1) Where an inquiry is held under **Section 86** of this Act or an examination is held under **Section 87** of this Act the Registrar may make an award apportioning the costs, or such part of the costs, as he or she may think right, between the co-operative, the members or creditor demanding the inquiry or examination and the officers or past officers of the co-operative and the decision of the Registrar shall be final.
- (2) A sum awarded by way of costs under subsection (1) of this Section shall be deemed to be a civil debt recoverable in the same way as any other civil debt.

## PART X – PROPERTY AND FUNDS OF A CO-OPERATIVE

#### Funds of a co-operative

90. The capital of co-operatives shall be raised by any or all of the following:
- (a) entrance fees which shall not be refundable except in cases where an application for membership has been rejected;

- (b) shares subscribed and paid-up by each member of which a minimum number prescribed by the by-laws shall only be withdrawable after termination of membership, while shares subscribed in excess of this minimum contribution may be withdrawable and transferable, or either withdrawable or transferable, subject to the provisions of this Act and to any restrictions laid down in the by-laws;
- (c) reserves formed by allocation of surplus at the end of the financial year which shall be indivisible share capital of the co-operative;
- (d) grants, donations and other contributions in cash or in kind form public or private donor organisations ;
- (e) capital borrowed from members in the form of voluntary savings, deposits from other co-operatives or banks and public or private credit institutions, or from any other technical or financial assistance organisation subject to any conditions and restrictions as are provided for in this Act and the by-laws ;
- (f) other contributions by members to the equity capital as stipulated in the by-laws

#### Nature of share capital

91. —(1) Every co-operative shall provide for the nominal value of each share in their by-laws:

Provided that the minimum nominal value of each share shall be one (1) dollar and the minimum number of shares to be held by each member shall be determined by the by-law of a co-operative.

- (2) The by-laws of a co-operative may provide for any mode of payment of the shares:

Provided that at-least ten percent of the minimum share contribution as laid down in the by-laws shall be payable on admission to a co-operative.

- (3) The by-laws of a co-operative may provide for a system of staggered share contributions whereby the minimum share contribution for each member can be different according to criteria provided for in the by-laws of a co-operative.

#### Issue of share certificates

92. Share certificates bearing the names of a member and the nominal value of the shares in the possession of a member shall be prima facie evidence of the member's share capital contribution to the co-operative.

## Restriction on holding of share capital

93. No member other than a co-operative shall hold more than one-fifth of the share capital of any co-operative.

## Restriction on transfer of shares or interest

94. —(1) The transfer or charge of the share or interest of a member or past member or deceased member in the capital of a co-operative shall be subject to such conditions as to maximum holding as are laid down in **Section 93** of this Act or as may be prescribed by the by-laws of the co-operative.
- (2) No member of a co-operative shall transfer any share held by him or her or his or her interest in the capital of the co-operative or any part thereof unless—
- (a) he or she has held such share or interest for not less than one year; and
  - (b) the transfer or charge is in favour of the co-operative, a member of the co-operative or a person whose application for membership has been accepted by the Board of the co-operative.

## Liability of a member Limited by shares or by guarantee

95. —(1) Notwithstanding the provisions of any by-laws, the liability of a member, present or past of a co-operative limited by shares shall extend to the nominal value of any shares held or subscribed by him or her.
- (2) Where in the by-laws of a co-operative the amount of the liability of a member is expressed to be greater than the nominal value of any shares held or subscribed for by him or her then the liability of such member shall extend to such greater amount.
- (3) Where in the by-laws of a co-operative the amount of the liability of a member is unlimited his or her liability shall extend to his or her assets up to an unlimited amount.

## Liability of past member and of the estate of deceased member for debts of co-operative

96. —(1) The liability of a past member for the debts of a co-operative within the limitations of Section 95 of this Act, as they existed on the date on which he or she ceased to be a member shall not continue for a period of more than two years from that date.
- (2) The estate of a deceased member, who is not a past member to whom subsection (1) of this Section applies, shall not be liable for debts of the



co-operative as they existed on the date of his or her death for a period of more than two years from the date of his or her death.

- (3) A past member or the estate of a deceased member shall not be liable for the debts of a co-operative, if the first audit of the accounts of co-operative after the termination of membership of the past or deceased member disclosed that the co-operative is solvent.

#### Restriction on borrowings

97. A co-operative may receive deposits and loans from members and non-members only to such extent and under such conditions as may be prescribed by its by-laws:

Provided that any amendment of the by-laws of a co-operative concerning the maximum liability which it may incur in loans and deposits from members and non-members shall be subject to the approval of the Registrar in consultation with the National Co-operative Federation.

#### Restrictions on loans and on credit sales

98. —(1) A co-operative shall make loans or allow any credit to any person only to the extent and subject to the restrictions laid down in the by-laws and in the resolutions made at a General Meeting.
- (2) No member of a co-operative shall buy goods, produce or equipment of any kind on credit from its co-operative worth more than ten percent of his or her total transactions with the co-operative in any financial year.
- (3) The by-laws of a co-operative may provide for the imposition of fines on members for a breach of the provisions of sub-section (2) of this Section.

#### Investment of funds

99. —(1) A co-operative may invest or deposit its funds subject to the limitations laid down in the by-laws and to the provisions of this Act.

Provided that no investments above a certain sum to be specified in the by-laws shall be made without the prior approval of the Supervisory Committee or the General Meeting.

- (2) Any investments in immovable property or in forms of enterprise other than a co-operative shall have to be in accordance with the provisions of this Act and the objectives of the co-operative as laid down in the by-laws.

- (3) If the Registrar is of the opinion that the provisions of subsection (2) of this Section are being violated or if he or she receives a written request of inquiry by the Supervisory Committee according to the provisions of **Section 86** of this Act he or she may institute an inquiry into the operations of the co-operative.

## Reserve Fund

100.—(1) Every co-operative shall maintain a reserve fund, which shall be used in such manner as may be prescribed in the by-laws.

- (2) Every co-operative shall allocate to the statutory reserve fund at least thirty percent of its surplus resulting from the transactions of the co-operative with its members during the financial year. The entire surplus resulting from the transactions with non-members of the co-operative during the financial year shall be allocated to the reserve fund:

Provided that when the reserve fund reaches at least half the value of the total assets of the co-operative the co-operative may reduce its allocation to the reserve fund to at least five percent of its surplus.

- (3) All co-operatives registered after the enactment of this Act shall allocate to its statutory reserve fund at least fifty percent of its surplus for the first four years after registration.
- (4) At least twenty-five percent of the allocations to the statutory reserve fund shall be transferred to the National Reserve Investment Trust Fund to be administered by the National co-operative Federation.
- (5) **The administration, utilisation, and objectives of the National Reserve Investment Trust Fund shall be prescribed in the regulations.**
- (6) The reserve fund of co-operatives shall be indivisible and no member shall be entitled to claim a specific share of it.

## Central Co-operative Fund

101.—(1) There shall be established a fund to be known as the Central Co-operative Fund hereinafter referred to as “the Fund”, into which there shall be paid the balance standing at the time of enactment of this Act to the credit of the Fiji Co-operative Union Limited Fund constituted under the repealed Co-operative Societies Act, and every co-operative other than the National Co-operative Federation shall make annually a contribution to the Fund as prescribed by the Registrar in consultation with the National Co-operative Federation. The Fund shall be held by the Registrar and administered by him or her for and towards the purposes of strengthening the National Co-operative Federation and promoting the co-operative movement.

- (2) The Registrar shall fix the amount of the annual contribution of every co-operative called upon to contribute to the Fund and the amount of annual contribution for each co-operative required to contribute shall not in any case be less than 40 dollars.
- (3) The administration of the Fund shall be transferred to the National Co-operative Federation within seven years after the enactment of this Act and shall henceforth be utilised to promote the co-operative movement in Fiji.
- (4) For the purposes of the accounts of the registered co-operatives any contribution made to the Fund shall be deemed to be an expense incurred by the co-operative.
- (5) No claims shall lie against any person as a result of the payment to the Fund of the balance standing to the credit of the Fiji Co-operative Union Limited Fund in accordance with subsection (1) of this Section.

Distribution of net surplus

102. —(1) After the statutory contribution to the reserve fund has been made in accordance with Section 100 of this Act the remainder of the surplus resulting from the operations of a co-operative during the financial year together with any surplus carried forward from preceding years may be utilised for any or all of the following purposes:
- (a) bonus paid to members according to their volume of transactions with the co-operative;
  - (b) interest paid on share capital which shall not exceed 20 percent;
  - (c) incentive bonus paid to employees and workers of the co-operative;
  - (d) allocations to any special funds as provided for by the by-laws:  

Provided that every co-operative shall allocate at least ten percent of its net surplus to an education fund of the co-operative which shall be utilised for the development of human resources of the co-operative's members, officers and employees;
  - (e) donations and grants for charitable or social purposes provided that this sum shall not exceed ten percent of the net surplus;
  - (f) payment of honorarium to members of the Board to such extent and under such conditions as may be prescribed under this Act and the by-laws;

- (g) for issuing bonus shares according to the provisions of **Section 103** of this Act;
  - (h) for any other purpose provided for in the by-laws.
- (2) In the case of loss incurred during a financial year, no surplus shall be distributed to members during the following years until the losses have been covered.
103. —(1) A co-operative may distribute a part of its net surplus among its members in the form of bonus shares.
- (2) Bonus shares held by members can be withdrawn or transferred only after five years from the date the bonus shares were issued.

#### PART XI – AMALGAMATION, TRANSFER, DIVISION AND CONVERSION OF CO-OPERATIVES

##### Amalgamation of co-operatives

104. —(1) Any two or more co-operatives may, at Special General Meetings specially called for the purpose after due notice, resolve to amalgamate into one co-operative.
- (2) The resolution to amalgamate into one co-operative shall be passed at the Special General Meetings by not less than two-thirds of the members present and voting:
- Provided that the by-laws may prescribe a higher percentage.
- (3) Whenever an amalgamation involves the transfer of liabilities by one co-operative to another co-operative, at least three months' notice of the amalgamation shall be given to all creditors of the amalgamating co-operatives.
- (4) Creditors of any of the amalgamating co-operatives shall be entitled to a refund of any sum due to them if they make a written demand to this effect at least one month before the date fixed for the amalgamation, but if the amalgamating co-operatives can obtain the prior agreement in writing of not less than three-quarters in value of the creditors not to make a demand for a refund, then, in that event, the agreement shall be binding on all the creditors.
- (5) A member of the amalgamating co-operatives may, notwithstanding any by-law to the contrary, by notice in writing given to his or her co-operative at least one month before the date specified as the date of amalgamation declare his or her intention not to become a member of the amalgamated co-operative.

- (6) If the Registrar is satisfied that--
- (a) the proposed by-laws of the proposed amalgamated co-operative are in accordance with the provisions of this Act; and
  - (b) all requirements laid down in subsections (1), (2) and (3) of this Section have been complied with, he or she shall register the amalgamated co-operative and its by-laws and thereupon—
    - (i) the registration of all the amalgamating co-operatives shall be cancelled, and the amalgamating co-operatives shall be dissolved;
    - (ii) the registration of the amalgamated co-operative shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating co-operatives in the amalgamated co-operative;
    - (iii) the remaining members of the amalgamating co-operatives shall become members of the amalgamated co-operative subject to its by-laws; and
    - (iv) the creditors of the amalgamating co-operatives or any other persons who have claims against the amalgamating co-operatives, and whose claims were not satisfied before the registration of the amalgamated co-operative, may pursue such claims or cause of action against the amalgamated co-operative.

Transfer of assets and liabilities of co-operatives

105. —(1) A co-operative may at any Special General Meeting specifically called for such purpose after due notice, resolve to transfer its assets and liabilities to another co-operative which is prepared to accept them hereinafter referred to as “the receiving co-operative.”
- (2) The resolution to transfer the assets and liabilities to a receiving co-operative and to receive the assets and liabilities by the receiving co-operative has to be passed at the Special General Meetings of the transferring and receiving co-operatives by not less than two-thirds of the members present and voting and the by-laws may provide for a higher percentage.
  - (3) Wherever the transfer of assets and liabilities involves the transfer of liabilities by the transferring co-operative to the receiving co-operative, at least three months’ notice of the transfer shall be given to all creditors of the transferring co-operative.
  - (4) Creditors of the transferring co-operative shall be entitled to a refund of any sum due to them if they make a written demand to this effect at least

one month before the date fixed for the transfer, but if the transferring co-operative can obtain the prior agreement in writing of not less than three-quarters in value of the creditors not to make a demand for a refund, then, in that event, the agreement shall be binding on all the creditors.

- (5) A member of the transferring co-operative may, notwithstanding any by-law to the contrary, by notice in writing given to his or her co-operative at least one month before the date specified at the date of transfer declare his or her intention not to become a member of the receiving co-operative.
- (6) Where the Registrar is satisfied that all requirements laid down in subsections (1), (2) and (3) of this Section are complied with, he or she may approve the transfer and thereupon —
  - (a) the registration of the transferring co-operative shall be cancelled and the transferring co-operative shall be dissolved;
  - (b) the approved resolution in accordance with subsection (2) of this Section shall be sufficient conveyance to vest the assets and liabilities of the transferring co-operative in the receiving co-operative;
  - (c) the remaining members of the transferring co-operative shall become members of the receiving co-operative, subject to its by-laws; and
  - (d) the creditors of the transferring co-operative or any other person, who have claims against the transferring co-operative and whose claims were not satisfied before the approval of transfer by the Registrar may pursue such claims or course of action against the receiving co-operative.

Division of co-operative

106. —(1) A co-operative may divide itself into two or more co-operatives and if the Registrar is satisfied that—
- (a) the newly divided co-operatives conform with the conditions and requirements for registration according to the provisions of this Act;
  - (b) a resolution to divide the co-operative is passed at a Special General Meeting especially called for that purpose;
  - (c) all requirements in subsections (2), (3), (4) and (5) of this Section have been complied with;

he or she shall register the newly divided co-operatives and their by-laws.

- (2) The resolution to divide the co-operative shall--
  - (a) be passed by at least two-thirds of the members present and voting at the Special General Meeting and the by-laws may provide for a higher percentage;
  - (b) contain proposals for the division of the assets and liabilities of the co-operative among the proposed new co-operatives;
  - (c) specify the members who will constitute each new divided co-operative;
  - (d) prescribe the area of operation of each new divided co-operative;
  - (e) be sent to all members and creditors of the co-operative.
- (3) A member of the co-operative may declare his or her intention to withdraw his or her membership by notice in writing or in any other form prescribed in the by-laws at least one month before the division date.
- (4) A creditor of the co-operative shall be entitled upon making a written demand to a refund of any sum due to him or her at least one month before the date fixed for the transfer irrespective of any agreement to the contrary.
- (5) A person whose interest will be effected by the division may by written notice within one month before the date fixed for the transfer, object to the division of the co-operative.
- (6) Upon the registration of the new divided co-operatives, the Registrar shall specify by notice in the Gazette--
  - (a) the date on which the co-operative is divided;
  - (b) the names of the new co-operatives;
  - (c) the manner in which the assets and liabilities of the co-operative are divided or distributed amongst the new co-operatives;
  - (d) where necessary, the area of operation of each new co-operative;
  - (e) such directions as the Registrar considers necessary for giving effects to the division of the co-operative;

- (f) the cancellation of the registration of the co-operative effective from the date of division;
- (g) the registration of the new divided co-operatives.

Conversion of co-operatives to any other legal form

107. —(1) Any co-operative intending to convert itself to any other legal form can do so with the written consent of at least two-thirds of all registered members and the by-laws may provide for a higher percentage.
- (2) Wherever the transfer of assets and liabilities involves the transfer of liabilities of the co-operative to the organisation having another legal form at least three months notice of the intention of the co-operative to convert has to be given to all creditors of the co-operative.
  - (3) Creditors of the co-operative shall be entitled to a refund of any sum due to them if they make a written demand to this effect at least one month before the date fixed for the conversion.
  - (4) A member of the co-operative may, by notice in writing given to the co-operative at least one month before the date specified for the conversion declare his or her intention not to become a member or share-holder or any form of owner of the organisation having another legal form to which the assets and liabilities of the co-operative are going to be transferred.
  - (5) Where the Registrar is satisfied that—
    - (a) all the requirements laid down in subsections (1) and (2) of this section have been fulfilled;
    - (b) all dissenting creditors and members have received the sums due to them;

and is duly informed that the legal conditions necessary for the formation of the new organisation under any law or laws which may apply to it have been fulfilled he or she shall cancel the registration of the co-operative and from that day on the co-operative shall cease to exist.

Provided that the reserve fund of a co-operative which intends to convert to another legal form including its share in the National Reserve Investment Trust Fund shall be subject to company tax before transferring that reserve fund to the organisation having another legal form.



## PART XII – DISSOLUTION AND LIQUIDATION OF CO-OPERATIVE

## Dissolution of co-operatives

108. —(1) If the Registrar, after an audit has been held in terms of **Section 81** of this Act or after an inquiry has been held in terms of **Section 87** of this Act or after an examination has been held in terms of **Section 87** of this Act or on receipt of the written consent of two-thirds of the members of a co-operative, is of the opinion that a co-operative ought to be wound up, he or she may issue an order directing it to be wound up.
- (2) The Registrar may, on his or her own motion, make a winding-up order in respect of a co-operative which has ceased working continuously over a period of six months or the membership of which is reduced to less than the minimum membership prescribed in **Section 7** of this Act.
- (3) No co-operative shall be wound up save by an order of the Registrar.
- (4) A member of a co-operative may, within one month from the date of a winding-up order under subsection (1) or (2) of this Section, appeal in writing against the order to the Co-operative Tribunal which shall make a decision within two months.
- (5) When making a winding-up order under subsection (1) or (2), of this Section the Registrar may appoint a liquidator for this purpose and fix his or her remuneration.
- (6) A liquidator shall not wind up a co-operative until a decision has been taken upon the appeal instituted under the provisions of subsection (4) of this Section.

## Powers of liquidator

109. —(1) Subject to the provisions of any order made by the Registrar under Section 110 of this Section a liquidator appointed by the Registrar shall have power to —
- (a) take immediate possession of all assets belonging to the co-operative and of all books, records and other documents pertaining to its business;
- (b) carry on the business of the co-operative so far as may be necessary for winding-up except that he or she shall not for this purpose be entitled to issue any loan;
- (c) fix by notice published in the Gazette a date before which creditors shall state their claims for admission or be excluded from any distribution made before they have proved them;

- (d) refer a dispute to arbitration and institute and defend suits and other legal proceedings on behalf of the co-operative by his or her name or office;
  - (e) give such directions in regard to the collection and realisation of assets as may be necessary in the course of winding-up the co-operative;
  - (f) investigate all claims against the co-operative and, subject to the provisions of this Act, decide by order questions of priority arising between claimants;
  - (g) pay claims against the co-operative including interest payable up to the date of the winding-up order according to the respective priorities, if any, in full or to such extent as the assets of such co-operative permit;
  - (h) compromise any claim by or against the co-operative, provided that the approval of the Registrar has first been obtained;
  - (i) call such meetings of members as may be necessary for the proper conduct of the liquidation, giving not less than fifteen clear days notice of every such meeting.
  - (j) decide by order subject to any by-law limiting the liability of members, the contributions to be made by members, past members or by the estates of deceased members of the co-operative to its assets;
  - (k) arrange for the distribution of the assets of the co-operative in a convenient manner when a scheme of distribution has been approved by the Registrar, and
  - (l) order by what person and in what proportions the costs of the liquidation are to be borne.
- (2) Any person aggrieved by any order of the liquidator made under the provisions of paragraph (f), (j) or (l) of subsection (1) of this Section may appeal in writing to the Registrar within thirty days of the date of the order provided that the appeal involves a dispute as defined in **Section 115** of this Act.
- (3) A person aggrieved by a decision of the Registrar under the provisions of subsection (2) of this Section may appeal in writing to the Co-operative Tribunal within thirty days of the making of the decision and the Co-operative Tribunal shall make a decision.
- (4) A liquidator shall deposit the funds and other assets of a dissolved co-operative which are collected by him or her which come into his or her

possession as liquidator in such manner and in such place as may from time to time be determined by the Registrar.

- (5) A liquidator shall, once in every three months, submit to the Registrar a report stating the progress made in winding-up the affairs of the co-operative, and shall, on completion of the liquidation proceedings, submit a final report and hand over to the Registrar all books, registers and accounts relating to such proceedings kept by him or her.
- (6) A liquidator appointed under this Act shall, in so far as the powers are necessary for carrying out the purposes of this Section, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents by the means and, so far as may be, in the same manner as is provided in the case of a Court.

#### Powers of Registrar to control liquidation

110. A liquidator shall exercise his or her powers subject to the control and supervision of the Registrar, who may—
  - (a) rescind or vary an 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 co-operative;
  - (d) by order in writing limit the powers of a liquidator under **Section 109** of this Section;
  - (e) require accounts to be rendered to him, or her by the liquidator;
  - (f) cause the liquidator's accounts to be audited and authorise the distribution of the assets of the co-operative;
  - (g) make an order for the remuneration of the liquidator, which remuneration shall be included in the cost of liquidation and shall be payable out of the assets in priority to all other claims.

#### Enforcement of order

111. An order made by a liquidator, by the Registrar, or by the Co-operative Tribunal under Section 109 or 110 shall be enforced by any Court in like manner as an order of that Court.

#### Limitation of jurisdiction of civil court

112. Save in so far as expressly provided in this Act no court shall have any jurisdiction in respect of a matter concerned with the dissolution of a

co-operative in this Act, and no appeal shall lie to a court from an order of the liquidator, the Registrar or the Co-operative Tribunal.

Disposal of assets on liquidation

113. Upon winding-up of a co-operative, the assets, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of all deposit liabilities to its depositors, then to the discharge of all other liabilities of the co-operative, then to the payment of share capital held by members and then, provided that the by-laws of the co-operative permit, to the payment of a dividend or bonus at a rate not exceeding that laid down in the by-laws of the co-operative for any period during which no dividend or bonus was in fact paid.

Cancellation of registration

- 114.—(1) When the affairs of a co-operative, in respect of which a liquidator has been appointed, have been wound-up and, where no liquidator has been appointed, after two months from the making of a winding-up order under **Section 108** of this Act by the Registrar, the Registrar shall make an order canceling the registration of such co-operative and the co-operative shall be dissolved and shall cease to exist as a body corporate from the date of such order: Provided that the cancellation order shall be published in the Gazette.
- (2) The claim of a creditor or a member of the co-operative who has not received what is due to him or her under the approved scheme of distribution shall be processed within two years from the date of cancellation of registration.
- (3) Any moneys remaining after the application of the funds to the purposes specified in **Section 113** of this Act and any sums unclaimed after two years under subsection (2) of this Section shall be paid by the Registrar to the National Co-operative Federation for the furtherance of any objectives related to co-operative development.

PART XIII – SETTLEMENT OF DISPUTES

Settlements of disputes

115. — (1) If a dispute concerning the by-laws, election of officers, conduct of meetings, management or business of a co-operative arises—
- (a) among members, past members and persons claiming through members, past members and deceased members;
- (b) between a member, past member or persons claiming through a deceased member, and the co-operative, its Board or any other officer of the co-operative;

- (c) between the co-operative or its Board and any other officer of the co-operative;
- (d) between the co-operative and any other co-operative,

such dispute may be referred, after due attempts to settle the issue by local informal mediators, to the Registrar or directly to the Co-operative Tribunal constituted under **Section 116** of this Act for decision.

- (2) Without prejudice to the generality of subsection (1) of this Section--
  - (a) a claim by a co-operative for a debt or demand due to it from a member, past member or the nominee or legal representative of a deceased member, whether such debt or demand is admitted or not; and
  - (b) a claim by a member who was a guarantor of a loan against the member whose loan he or she guaranteed resulting from the repayment by the guarantor of the loan to the co-operative, for the repayment of the amount by the borrower, shall be deemed to be disputes concerning the business of the co-operative within the meaning of subsection (1) of this Section.
- (3) The Registrar shall, on receipt of a reference under subsection (1) of this Section have regard to the nature and complexity of the dispute, and decide whether—
  - (a) to settle the dispute himself or herself; or
  - (b) to refer the dispute to the Co-operative Tribunal.
- (4) Where the Registrar decides to settle the dispute himself or herself and gives a ruling thereon which aggrieves a party to the dispute, that party may, within 30 days of the date of the Registrar's ruling, appeal to the Co-operative Tribunal and the Co-operative Tribunal shall make a decision within two months of receiving the appeal and that decision shall be final and conclusive.
- (5) Where the Registrar decides to refer the dispute to the Co-operative Tribunal according to the provision of subsection (3) of this Section, the Co-operative Tribunal shall deliberate on the case and make a decision within two months and that decision shall be final and conclusive.
- (6) Where the parties to a dispute refer a case to the Co-operative Tribunal directly according to the provisions of subsection (1) of this Section the Co-operative Tribunal shall deliberate on the case and make a decision within two months and that decision shall be final and conclusive.

## Co-operative Tribunal

116.—(1) There is established a Co-operative Tribunal consisting of three persons namely—

(a) the Registrar or a duly authorised co-operative officer;

Provided that in the case of an appeal against a decision made by the Registrar or a duly authorised co-operative officer, such person as may be appointed by the Attorney-General;

(b) a representative of the co-operative movement, approved by both the disputed parties and appointed by the National Co-operative Federation;

(c) a person appointed from the office of the Attorney-General,

and in the case of the representative approved or appointed under paragraph (b) of this subsection if the disputing parties cannot agree on the choice of persons, the Registrar shall have the right to appoint a person.

- (2) All three persons shall be present when the Co-operative Tribunal is in session.
- (3) The Co-operative Tribunal may call witnesses, and may demand the production of books, records and documents, both financial or otherwise or it may cause a person or persons to undertake additional fact finding and the Tribunal shall ensure that both the parties to the dispute shall have the right to be heard during the deliberations.
- (4) The Co-operative Tribunal shall make a ruling on any dispute or appeal when at least two of the members of the Tribunal agree to the ruling.
- (5) The terms and conditions of service and the procedures for deliberation of disputes and appeals of the Co-operative Tribunal shall be prescribed in the regulations.

## PART XIV - MISCELLANEOUS PROVISIONS

## Power of Minister to make regulations

117. — (1) The Minister shall make regulations for matters, which in this Act are required to be prescribed in the regulations.
- (2) The Minister may make regulations generally for the purpose of better carrying out the provisions of this Act.

## Prohibition of the use of the word “co-operative”

118. — (1) No person other than a co-operative shall trade or carry on business under a name of title of which the word “co-operative” is part, without the approval of the Registrar.
- (2) Every person who contravenes the provisions of subsection (1) of this Section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding an amount to be stipulated in the regulations and in the case of a continuing offence to a further fine not exceeding an amount to be stipulated for each day during which the offence is continued after conviction.

## Penalty for non-compliance with Act

119. — (1) It shall be an offence under this Act if—
- (a) a co-operative or an officer, an employee or a member thereof willfully neglects or refuses to do an act or furnish information required for the purposes of this Act by the Registrar or a person duly authorised on that behalf by the Registrar, as the case may be;
  - (b) a co-operative or an officer or an employee or a member thereof willfully makes a false return or furnishes false information;
  - (c) a person willfully or without reasonable excuse disobeys any summons , requisition or lawfully written order issued under the provisions of this Act or does not furnish information lawfully required from him or her by a person authorised to do so under the provisions of this Act;
  - (d) a person acts or purports to act as a member of the Board when not entitled to do so;
  - (e) a co-operative or an officer or an employee or a member willfully performs any act which requires the consent or approval of the Registrar without having first obtained the consent or approval;
  - (f) a co-operative or an officer or a member thereof willfully neglects or refuses to do an act which is required by or under this Act to be done;
  - (g) a co-operative or an officer or a member willfully does or causes to be done an act prohibited by or under this Act;
  - (h) a co-operative or an officer or an employee or a member willfully destroys or conceals any documents, books or records lawfully required from him or her by a person authorised to do so under the provisions of this Act.

- (2) every co-operative, officer, employee or member of a co-operative or other person guilty of an offence under this Section shall be liable on conviction to a fine not exceeding an amount to be stipulated in the regulations and in the case of a continuing offence to a fine not exceeding an amount to be stipulated in the regulations for each day during which the offence is continued after conviction.

Exemption from provisions of Companies Act

120. The provisions of the Companies Act shall not apply to co-operatives.

Transitional provision

121. —(1) A Co-operative which was registered under the provisions of the Co-operative Societies Act, shall be deemed to be a co-operative registered under this Act.
- (2) A co-operative that is deemed by virtue of subsection (1) of this Section to be registered under this Act shall adapt to the satisfaction of the Registrar its by-laws in conformity with this Act not later than two years from the commencement of this Act.

Repeal

- 122 The Co-operative Societies Act, Chapter 250 is repealed.