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CHAPTER 28

INCORPORATED SOCIETIES

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CHAPTER 28

INCORPORATED SOCIETIES

Act 29 of 1984

AN ACT TO MAKE PROVISION FOR THE INCORPORATION OF SOCIETIES
WHICH ARE NOT ESTABLISHED FOR THE PURPOSE OF PECUNIARY GAIN

Commencement.

[6th April, 1988]

Short Title. 1. This Act may be cited as the Incorporated Societies Act.

Interpretation. 2. In this Act, unless the context otherwise requires—

“Prescribed” means prescribed by this Act or by regulations;

“Minister” means the Minister of Labour Commerce and Industries;

“Registrar” means the Registrar of Incorporated Societies under this Act;

“Regulations” means regulations made by the King and Privy Council under the authority of this Act;

“Society” means a society incorporated under this Act.

Incorporated Societies.

3. (1) Any society consisting of not less than 5 persons associated for any lawful purpose but not for pecuniary gain may, on application being made to the Registrar in accordance with this Act, become incorporated as a society under this Act.

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

(3) No society shall be registered under a name which contains the word “Royal” without the consent of His Majesty in Privy Council.

Pecuniary gain.

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

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

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

(c) that the society is established for the protection or regulation of some trade, business, industry, or calling in which the members are engaged or interested, if the society itself does

not engage or take part in any such trade, business, industry, or calling, or any part or branch thereof;

- (d) that any member of the society derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- (e) that any member of the society derives from the society any pecuniary gain to which he would be equally entitled if he were not a member of the society;
- (f) that the members of the society compete with each other for trophies or prizes other than money prizes.

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

- (a) the name of the society, with the addition of the word “Incorporated” as the last word in that name;
 - (b) the objects for which the society is established;
 - (c) the modes in which persons become members of the Society;
 - (d) the modes in which persons cease to be members of the Society;
 - (e) the mode in which the rules of the society may be altered, added to, or rescinded;
 - (f) the mode of summoning and holding general meetings of the society, and of voting threat;
 - (g) the appointment of officers of the society;
 - (h) the control and use of the common seal of the society;
 - (i) the control and investment of the funds of the society;
 - (j) the powers (if any) of the society to borrow money;
 - (k) the disposition of the property of the society in the event of the winding up of the society;
 - (l) such other matters as the Registrar may require to be provided for in any particular instance.
- (2) The rules of the society may contain any other provisions which are not inconsistent with this Act or with law.
- (3) The rules of the society and any amendment of those rules shall be printed or typewritten.

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

- (a) two copies of the rules of the society having written thereon an application for incorporation in the form in the Schedule hereto or to the like effect shall be signed by not less than 5 persons being members of the society and each subscriber to the application shall add to his signature his description and address, and his signature shall be attested by a witness who is

Rules of incorporated societies.

Application for incorporation.

not a subscriber. When any body corporate is a subscriber its seal shall be affixed to the said application;

- (b) the 2 copies of the said rules so signed or sealed shall be delivered to the Registrar, together with the prescribed fee, and together with a statutory declaration made by an officer of the society or by a solicitor to the effect that a majority of the members of the society have consented to the application, and that the rules so signed or sealed are the rules of the society.

Registrar to register society if in order.

7. The Registrar, on being satisfied that the requirements of this Act have been observed, shall thereupon do the following things:

- (a) enter the name of the said society in the register kept by him under this Act, together with such other particulars with respect to the society as he thinks fit;
- (b) issue under his seal a certificate that the society is incorporated under this Act;
- (c) register the rules of the society by sealing with his seal the said copies thereof;
- (d) return one of those copies to the subscribers and retain the other copy.

Certificate of incorporation to be conclusive evidence of registration.

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

Upon issue of certificate.

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

Name of society not to be the same as the name of another society or body corporate.

10. No society shall be registered under a name which is identical with that of any other society registered under this Act, or of a company carrying on business in Tonga (whether registered in Tonga or not) or of any other body corporate established or registered in Tonga under any Act, or so nearly resembles that name as to be calculated to deceive, except where that other society or company or body corporate, as the case may be, signifies its consent in such

manner as the Registrar requires, and the Registrar is satisfied that registration of the society by the proposed name will not be contrary to the public interest.

11. (1) If, through inadvertence or otherwise, a society at its first registration, or on its registration by a new name, is registered by a name which is in contravention of section 10 of this Act, or of any enactment, other than this Act, relating to restrictions on the use of any name, the society shall, within a period of 6 weeks from the date of its being required by the Registrar to do so, or such longer period as he may allow, change its name in accordance with section 21 of this Act to a name that is not in contravention as aforesaid.

Change of name.

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

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

12. An appeal shall lie to the Privy Council from any refusal of the Registrar to register a society or any amendment of the rules of a society, and the decision of the Privy Council on any such appeal shall be final.

Appeal from Registrar to Privy Council.

13. Except when otherwise expressly provided in this Act, No liability on members for obligation of society.

membership of a society shall not of itself impose on the members any liability in respect of any contract, debt, or other obligation made or incurred by the society.

14. Except when otherwise expressly provided by this Act or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

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

Contracts by Society.

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

(3) Any contract which, if made between private persons, might be made without writing may, when made by a society, be made without

writing by any person acting on behalf of and under the express or implied authority of the society.

Service of
summons,
etc., on
society.

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

Security for
costs where
society is
plaintiff.

17. Where a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the society will be insufficient to pay his costs, any Court or Judge having jurisdiction in the matter may require sufficient security to be given for those costs and may stay all proceedings until that security is given.

Registered
office.

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

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

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

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

Restriction
of operations
of society.

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

(2) If after the receipt of that notice the society fails or refuses to conform thereto, every officer of the society and every member of the committee or other governing body of the society shall be liable to a fine not exceeding \$20 for every day during which that failure or refusal continues, unless he proves that the failure or refusal has taken place without his authority or consent.

Society not
to engage in
operations
involving
pecuniary
gain.

20. (1) No society shall do any act of such a nature that if the doing thereof were one of the objects for which the society was established the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 4 and 5 hereof.

(2) Every society which does any such act shall be liable to a fine not exceeding \$100.

(3) Every member who aids, abets, procures, assists, or takes part in the doing of any such act by a society shall be liable to a fine not exceeding \$20 and all such members shall be jointly and severally liable to any creditor of the society for all debts and obligations incurred by the society in or in consequence of the doing of that act.

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

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

Alteration of
rules.

(2) Every such alteration shall be in writing, signed or sealed in duplicate by at least 3 members of the society, and the documents so signed or sealed shall be delivered to the Registrar, accompanied by a statutory declaration made by a solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

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

(4) Notwithstanding anything in subsection (3) of this section, the Supreme Court, on an application made to it by any member of the society, may in its discretion, if it is satisfied that any such condition as aforesaid has not been duly fulfilled, declare the alteration to be void in whole or in part, and order that the registration be cancelled in whole or in part and give such directions and make such provisions as seem just in the circumstances of the case. On the delivery to the Registrar of a sealed copy of the Court's order he shall forthwith amend the register accordingly.

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

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

Register of members.

22. (1) Every society shall keep a register of its members.
 (2) The register shall contain the names, addresses, and occupations of those members, and the dates at which they became members.
 (3) Every society shall from time to time, when required by the Registrar so to do, send to him a list of the names, addresses, and occupations of its members, accompanied by a statutory declaration verifying that list and made by some officer of the society.

Annual financial statement.

23. (1) Every society shall deliver annually to the Registrar, in such form and at such time as he requires, a statement containing the following particulars:
- (a) the income and expenditure of the society during the society's last financial year;
 - (b) the assets and liabilities of the society at the close of the said year;
 - (c) all mortgages, charges, and securities of any description affecting any of the property of the society at the close of the said year.
- (2) The said statement shall be accompanied by a certificate signed by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.
- (3) If any default is made by a society in the observance of the provisions of this section, every officer of the society shall be liable to a fine not exceeding 10 seniti for every day during which the default continues.

Voluntary winding up of society.

24. (1) A society may be wound up voluntarily if the society, at a general meeting of its members, passes a resolution requiring the society so to be wound up and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days after the date on which the resolution so to be confirmed was passed.
- (2) In subsection (1) of this section the term "resolution" means a resolution carried by a majority of the valid votes cast by members voting at the general meeting in person or, if so allowed by the society's rules, by proxy; and for the purposes of that subsection the resolution shall be taken to be confirmed if carried by such a majority.
- (3) Subject to this Act and to any regulations made under the authority thereof, the voluntary winding up of a society shall be governed by the same rules as the voluntary winding up of a company.

Winding up of society by Supreme Court.

25. A society may be wound up by the Supreme Court under the following circumstances, that is to say:
- (a) if the society suspends its operations for the space of a whole year; or

- (b) if the members of the society are reduced in number to less than 5; or
- (c) if the society is unable to pay its debts; or
- (d) if the society carries on any operation whereby any member thereof makes any pecuniary gain contrary to the provisions of this Act; or
- (e) if the Supreme Court or a Judge thereof is of opinion that it is just and equitable that the society should be wound up.

26. (1) Any application to the Supreme Court for the winding up of a society shall be by petition presented either by the society or by a member thereof, or by a creditor thereof, or by the Registrar.
- (2) All costs incurred by the Registrar in making application for the winding up of a society shall, unless the said Court or a Judge thereof otherwise orders, be a first charge on the assets of the society.
- (3) Subject to this Act and to any regulations made under the authority thereof, every application to the Supreme Court for the winding up of a society and every winding up of a society by the said Court, shall be governed by the same rules as in the case of the winding up of a company by the said Court under the Companies Act.

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

28. (1) If at any time the Registrar is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, he may make under his seal a declaration that the society is dissolved as from the date of the declaration, and shall thereupon publish the declaration in the Gazette and make in the register an entry of the dissolution of the society.
- (2) On the making of that entry the society shall be dissolved as from the date of the declaration.

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

Petition to Court for winding up.

Division of surplus assets on winding up.

Dissolution by Registrar.

Corporate body may become member of society.

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

Pecuniary gain received by member of such corporate body.

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

Corporate body to be equivalent to 3 members.

31. In estimating—

(a) the number of subscribers to the rules of a society for the purposes of section 3 or section 6 of this Act, to the rules of branch; or

(b) the number of members of a society for the purposes of section 3 or section 25 of this Act, every corporate body that is a subscriber or member shall be taken as the equivalent of 3 subscribers or 3 members, as the case may be.

Registrar.

32. His Majesty in Privy Council may from time to time appoint some person to be the Registrar of Incorporated Societies, and may make regulations, consistent with this Act, prescribing the duties and powers of the Registrar.

(2) The Registrar so appointed may hold his office in conjunction with any other office which His Majesty in Privy Council deems not incompatible therewith.

Registrar to keep register of incorporated societies.

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

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

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

(4) All fees so paid to the Registrar shall be paid by him into the Public Account and shall form part of the General Revenue Account.

(5) All expenses incurred in the administration of this Act shall be paid out of money appropriated by the Legislative Assembly.

Inspection of documents.

34. (1) Every person may, on payment of the prescribed fee, inspect the register or any documents lodged with the Registrar.

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

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

35. No document required by this Act to be delivered to the Registrar shall be liable to any stamp duty. Documents not liable to stamp duty.

36. The Minister may, by Order in Council gazetted, make such regulations as he deems necessary for carrying into full effect the provisions of this Act. Regulations.

SCHEDULE

Section 6(a)

APPLICATION FOR INCORPORATION

We, the several persons whose names are subscribed hereto, being members of the abovementioned society, hereby make application for the incorporation of the society under the foregoing rules, in accordance with the Incorporated Societies Act.