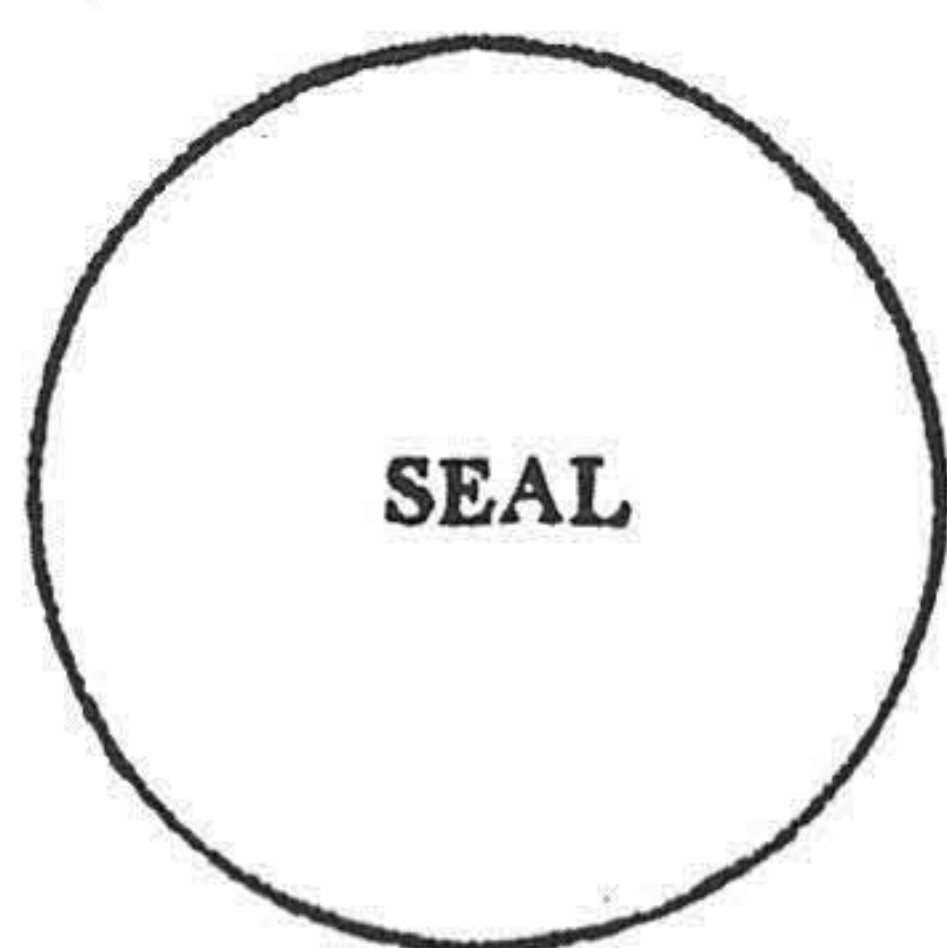


STATE OF BRUNEI

E 3 OF 1975

THE CO-OPERATIVE SOCIETIES
ENACTMENT, 1975

I assent



HASSANAL BOLKIAH
Sultan.

An Enactment to make provision for the establishment of Co-operative Societies :—

[]

BE IT ENACTED by His Highness the Sultan with the advice and consent of the Legislative Council as follows :—

PART I

Preliminary

1. This Enactment may be cited as the Co-operative Societies Enactment, 1975 and shall come into force on such date as the Menteri Besar, may, by notification in the *Gazette* appoint. [1-7-1975] S. 92/75

Short title and
Commence-
ment.

2. In this Enactment, unless the context otherwise requires —

Interpretation.

“Bonus” means a share of the profits of a registered society divided among its members in proportion to the share business done with the society by them from which the profits of the society were derived.

“By-laws” means the registered by-laws made by a society in the exercise of any power conferred by this Enactment, and includes a registered amendment of the by-laws.

“Committee” means the governing body of a registered society, admitted to membership of its affairs is entrusted.

“Dividend” means a share of the profits of a registered society divided among its members in proportion to the volume of capital held by them.

“Member” includes a person or registered society joining in the application for the registration of a society, and a person or ship after registration in accordance with the by-laws.

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

“Registered Society” means a Co-operative society registered under this Enactment.

“Registrar” means the Registrar of Co-operative societies appointed under Section 3 of this Enactment and includes any person when exercising such powers of the Registrar as may be conferred upon him under that section.

“Rules” means rules made under this Enactment.

PART II

Registration

3. (1) The Sultan shall appoint a fit and proper person to be Registrar of Co-operative Societies for Brunei and may appoint persons to assist such Registrar, and may, by general or special order published in the *Gazette*, confer on any such persons all or any of the powers of a Registrar under this Enactment.

Appointment
of Registrar
and Assistant
Registrars.

S. 102/75

(2) Any act or thing directed to be done by or to the Registrar may be done by or to any officer authorised by the Mentri Besar.

4. (1) Subject to the provision hereinafter contained, a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this

Societies which
may be re-
gistered.

Enactment with or without limited liability as the Registrar may decide :

Provided that the liability of a society which includes at least one registered society among its members shall be limited.

5. (1) No society, other than a society of which a member is a registered society, shall be registered under this Enactment, which does not consist of at least 10 persons, each of whom is qualified under Section 21 for membership under this Enactment. Conditions of registration.

(2) The word "Co-operative" or its vernacular equivalent shall form part of the name of every society registered under this Enactment.

(3) The word "limited" or its vernacular equivalent shall be the last word in the name of every society with limited liability registered under this Enactment.

(4) When for the purposes of this section any question arises as to age, residence, or occupation of land consisting the qualification of any persons, that question shall be decided by the Registrar, whose decision shall be final.

6. (1) For the purposes of registration an application shall be made to the Registrar. Application for Registration.

(2) The application shall be signed :—

- (a) in the case of a society of which no member is a registered society, by at least 10 persons qualified in accordance with the requirements of Section 5(1); and
- (b) in the case of a society of which a member is a registered society, by a duly authorised person on behalf of every such registered society, and where all the members of the society are not registered societies by 10 other members,

or, when there are less than 10 other members, by all of them.

(3) The application shall be accompanied by copies of the proposed by-laws of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

7. (1) If the Registrar is satisfied that a society has complied with the provisions of this Enactment and the rules, and that its proposed by-laws are not contrary to the Enactment or to the rules, he may, if he thinks fit, register the society and its by-laws. An appeal shall lie to the Mentri Besar against the refusal of the Registrar to register any society within one month from the date of such refusal. **Registration.**

(2) On application for registration the society shall pay such fees as may be prescribed by the rules.

8. The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to 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 purpose of its constitution. **Societies to be bodies corporate.**

9. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered, unless it is proved that the registration of the society has been cancelled. **Evidence of Registration.**

PART III

Duties and Privileges of Societies

10. (1) Any registered society may, subject to this Enactment and the rules, amend its by-laws, including the by-laws of a registered society. **Amendment of the by-laws of a registered society.**

ing the by-law which declares the name of the society.

(2) No amendment of the by-law of a registered society shall be valid until that amendment has been registered under this Enactment, for which purpose copies of the amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that any amendment of the by-laws is not contrary to this Enactment or to the rules, he may, if he thinks fit, register the amendment. An appeal shall lie to the Mentri Besar against the refusal of the Registrar to register any amendment of any by-law within one month from the date of such refusal.

(4) An amendment which changes the name of a society shall not affect any right or obligation of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) When the Registrar registers an amendment of the by-laws of a registered society, he shall issue a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section, "amendment" includes the making of a new by-law and the variation or rescission of a by-law.

11. Every registered society shall have an address, registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar notice of every change of that address.

Address of
Society.

12. Every registered society shall keep a copy of this Enactment and of the rules and of its by-laws and a list of its members open to inspection, free of

Copy of Enactment, rules, by-laws, etc., to be open to inspection,

charge, at all reasonable times at the registered address of the society.

13. (1) A registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of its members, whether the produce of agriculture, animal husbandry, forestry, fisheries, handicraft or otherwise, may provide in its by-laws or may otherwise contract with its members :—

Disposal of produce to or through a registered society.

- (a) that every such member who produces any such article shall dispose of the whole or any specified amount, proportion or description thereof to or through the society; and
- (b) that any member who is proved or adjudged, in such manner as may be prescribed by the rules to be guilty of a breach of the by-laws or contract pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the aforesaid rules or its by-laws.

(2) No contract entered into under the provision of this section shall be contested in any court on the ground only that it constitutes a contract in restraint of trade.

14. Subject to any prior claim of the Government on the property of the debtor and to the lien or claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon:—

Creation of charges in favour of registered societies.

- (a) any debt or outstanding demand payable to a registered society by any member or past member shall be a first charge on all crops or other agricultural produce, felled timber or other for-

est produce, marine produce, fish (fresh-water and salt-water), live-stock, fodder, agricultural, industrial and fishing implements, plant, machinery, boats, tackle and nets, raw materials, stock-in-trade and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given him by the society :

Provided that nothing herein contained shall affect the claim of any bona fide purchaser or transferee without notice;

- (b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights payable to such society shall be a first charge upon his interest in the immovable property of the society.

15. A registered society shall have a charge upon the shares or interest in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus or profits payable to a member or past member or to the estate of a deceased member in respect of any debt due to the society from such member or past member or estate and may set off any sum credited or payable to a member or estate of a deceased member in or towards payment of any such debt.

Charge and set-off in respect of shares or interests of members.

16. Subject to the provisions of section 15, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and neither his assignee in insolvency nor a receiver duly appointed shall be entitled to, or have any claim on, such share or interest.

Shares or interest not liable to attachment or sale.

17. (1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or if there is no person so nominated, to such persons as may appear to the committee to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws :

Transfer of interest on death of member.

Provided that :—

- (a) in the case of a society with unlimited liability such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;
- (b) in the case of a society with limited liability, the society may transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within six months of the death of the deceased member to any person specified in the application who is so qualified.

(2) A registered society shall pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

18. (1) A registered society may receive deposits from or for the benefit of minors and it shall be lawful for a registered society to pay such minors the interest which may become due on such deposits. Any deposits made by a minor may, together with the interest accrued thereon, be paid to that minor; and any deposit made on behalf of a minor may, together with the interest accrued thereon, be paid to the guardian of that minor for the use of the minor.

Deposits by or
on behalf of
minors.

(2) The receipt of any minor or guardian for money paid to him under this section shall be sufficient discharge of the liability of the society in respect of that money.

19. (1) Any register or list of members kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein :—

Register of
Members.

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

20. (1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such a manner as may be pres-

Proof of entries
in books of
society.

cribed by the rules, be received in any legal proceeding, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) No officer of any such society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the contents of which can be proved under subsection (1) or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the court for special reasons so directs.

PART IV

Rights and Liabilities of Members

21. In order to be qualified for membership of a co-operative society a person, other than a registered society, must .— Qualification for membership.

- (a) have attained the age of 18 years; and
- (b) be resident within or in occupation of land within the society's area of operations as described by the by-laws.

22. No member of a registered society shall exercise rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws. Members not to exercise rights till due payment made.

23. Except with the sanction of the Registrar, no person shall be member of more than one registered society whose primary object is to grant loans to its members. Restriction of membership in society.

24. Each member of a registered society shall have one vote only as a member, in the affairs of the registered society except that in case of an equality Votes of members.

of votes the chairman shall have a casting vote in addition to his vote as a member:

Provided that a registered society which is a member of any other registered society shall have as many votes as may be prescribed by the by-laws of such other society, and may, subject to such by-laws, appoint any number of its members not exceeding the number of such votes, to exercise its voting power. No other proxies shall be allowed.

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

Contracts with society of members who are minors.

26. No member, other than a registered society, shall hold more than one-fifth of the share capital of any co-operative society.

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

27. (1) The transfer or charge of the share or interest of a member or past member or deceased member in the capital of a registered society shall be subject to such conditions as to maximum holdings as may be prescribed by this Enactment or by the rules.

Restrictions on transfer or charge of share or interest.

(2) In the case of a society registered with unlimited liability, a member shall not transfer any

share held by him or his interest in the capital of the society or any part thereof, unless:—

(a) he has held such share or interest for not less than one year; and

(b) the transfer or charge is made to the society, or to a member of the society, or to a person whose application for membership has been accepted by the committee.

28. (1) The liability of a past member for the debts of a registered society as they existed on the date on which he ceased to be a member shall not continue for a period of more than two years reckoned from that date.

Liability of past member and estate of deceased for debts of society.

(2) The estate of a deceased member shall not be liable for the debts of the society as they existed on the date of his decease for a period of more than two years reckoned from the date of his decease.

PART V

Property and Funds of Registered Societies

29. (1) A registered society shall not, except as provided in Section 32, make any loan to any person other than a member : Provided that, with the consent of the Registrar, a registered society may make loans to another registered society.

Loans made by a registered society.

(2) Except with the permission of the Registrar, a registered society shall not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

(3) The Mentri Besar may, by general or special order prohibit or restrict the lending of money on a mortgage or charge of any description of immovable property by any registered society or class of registered societies.

30. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules and by-laws. **Deposits and loans received by a registered society.**

31. Save as is provided in Sections 29 and 30, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed by the rules. **Restriction on other transaction with non-members.**

32. A registered society may invest or deposit its funds :— **Investment of funds.**

- (a) in the Post Office Savings Bank; or
- (b) with any bank or persons carrying on the business of banking approved for this purpose by the Registrar; or
- (c) in any securities issued or guaranteed by the government; or
- (d) with any other registered society approved for this purpose by the Registrar; or
- (e) in any other mode approved by the Registrar.

33. (1) At least one fourth of the net profits of every registered society, as ascertained by the audit prescribed by Section 34, shall be carried to a fund called the reserve fund, which shall be employed as prescribed by the rules. Provided that the Registrar may at his discretion lower the percentage of contribution or exempt a society from the obligation to maintain a Reserve fund. The remainder of such profits and any profits of past years available for distribution may be divided among members by way of dividend or bonus, or allocated to any funds con- **Disposal of profits.**

stituted by the society to such extent or under such conditions as may be prescribed by the rules or by-laws :

Provided further that, in the case of a society with unlimited liability, no distribution of profits shall be made without the general or special order of the Mentri Besar.

(2) Any registered society may, with the sanction of the Registrar, after one-fourth of the net profits in any year has been carried to a reserve fund, contribute an amount not exceeding 10 per cent of the remaining net profits to any charitable purposes or to a common-good fund.

PART VI

Audit, Inspection and Inquiry

34. (1) The Registrar shall audit or cause to be **Audit.** audited by some person authorised by him by general or special order in writing the accounts of every registered society once at least in every year.

(2) The audit under subsection (1) shall include an examination of overdue debts, if any, and a valuation of the assets and liabilities of the registered society.

(3) The Registrar and every other persons appointed to audit the accounts of a society shall have power when necessary :—

- (a) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give material information in regard to any transactions of the society or the management of its affairs; or

- (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

35. The Registrar, or any person authorised by general or special order in writing by the Registrar shall at all times have access to all the books, accounts, papers and securities of a registered society, and shall be entitled to inspect the cash in hand; and every officer of the society shall furnish such information in regard to the transaction and working of the society as the person making such inspection may require.

Power of Registrar to inspect societies' books, etc.

36. (1) The Registrar may of his own motion, and shall on the application of a majority of the committee, or of not less than one-third of the members of a registered society, hold an inquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society; and all officers and members of the society shall furnish such information in regard to the affairs of the society and produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorised by him may require.

Inquiry and inspection.

(2) The Registrar shall, on the application of a creditor of the registered society, inspect or direct some person authorised by him in writing in this behalf to inspect the books of the society, if the applicant :—

- (a) proves that an ascertained sum of has demanded payment thereof and money is then due to him and that he

has not received satisfaction within a reasonable time; and

- (b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any such inspection to the creditor and to the society into whose affairs inquiry has been made.

(4) Where an inquiry is held under subsection (1), or an inspection is made under subsection (2), the Registrar may by a certificate under his hand make an award apportioning the costs or such part of the costs, as he may think right, between the registered society, the members demanding an inquiry, the officers or former officers of the society, and the creditor, if any, on whose application the inquiry was made.

(5) Any sum awarded by way of costs against any society or person under this Section may be recovered on production of the certificate referred to in subsection (4) to a court having jurisdiction in the place where the registered office of the society is situated or the person resides or carries on business for the time being, in like manner as a fine imposed by the court.

PART VII

Dissolution.

37. (1) If the Registrar, after holding an inquiry or **Dissolution.** making an inspection under Section 36 or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the

society ought to be dissolved, he may make an order for the cancellation of the registration of the society.

(2) Any member of a registered society may, within two months from the date of an order under subsection (1), appeal from such order to the Mentri Besar.

(3) Where no appeal is presented within two months from the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the Mentri Besar.

(4) Where the Registrar makes an order for the cancellation of the registration of a society under subsection (1), he may make such further order as he may think fit for the custody of the books and documents and the protection of the assets of the society until the order cancelling registration takes effect.

(5) No registered society shall be wound up save by an order of the Registrar.

38. The Registrar may, by order in writing, cancel the registration of any registered society other than a society which includes among its members one or more registered societies, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than 10. Every such order shall take effect from the date thereof.

Cancellation of registration of a society due to lack of membership.

39. Where the registration of a society is cancelled by an order under section 37 or under Section 38 the society shall cease to exist as a corporate body from the date on which the order takes effect, hereinafter referred to as the date of dissolution :

Effect of cancellation of registration.

Provided that any privileges conferred on the society by or under Sections 14, 15, 16 and 17 shall be deemed to be vested in any liquidator appointed for that society by the Registrar.

40. Where the registration of a society is cancelled under Section 37 or Section 38 the Registrar may appoint one or more persons to be, subject to his direction and control, the liquidator or liquidators of the society.

Liquidation
after cancella-
tion of regis-
tration of
society.

41. (1) A liquidator appointed under Section 40 shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under Section 42 have power to:—

Liquidator's
powers.

- (a) determine from time to time the contributions to be made by members and past members or by the estates of deceased members of the society to its assets;
- (b) appoint a day by proclamation or notice before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
- (c) decide any question of priority which arises between creditors and draw up a scheme for the payment of their dues;
- (d) refer disputes to arbitration and institute and defend suits and other legal processings by and on behalf of the society by his name of office and to appear in court as a litigant in person on behalf of the society;
- (e) empower any person to make collections and to grant valid receipts on his behalf;

- (f) decide by what persons and in what proportions the costs of liquidation are to be borne;
- (g) give such directions in regard to the collection and distribution of the assets of the society and the disposal of the books and documents of the society as may be necessary in the course of winding up the society;
- (h) compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
- (i) call such general meetings of members as may be necessary for the proper conduct of the liquidation;
- (j) take possession of the books, documents and assets of the society;
- (k) sell the property of the society;
- (l) carry on the business of the society so far as may be necessary for winding it up beneficially :
Provided that nothing herein contained shall entitle the liquidator of a credit society to issue any loan; and
- (m) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.

(2) A liquidator shall deposit the funds and other assets of a dissolved society which are collected by him or which come into his possession as liquidator in such a manner and in such a place as may from time to time be determined by the Registrar.

(3) A liquidator shall, every three months, submit to the Registrar a report stating the progress

made in winding up the affairs of the society, and shall, on completion of the liquidation proceedings, submit a final report and make over to the Registrar all books, registers and accounts belonging to the society and all books and accounts relating to such proceedings kept by him.

(4) Any liquidator appointed under this Enactment shall in so far as such 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 same means and (so far as may be) in the same manner as is provided in the case of a court.

42. A liquidator shall exercise his powers subject to the control and revision of the Registrar, who may :—

Power of Registrar to control liquidation.

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) by order in writing limit the powers of a liquidator under Section 41;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
- (g) make an order for the remuneration of the liquidator; or

- (h) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator.

43. (1) The decision of an arbitrator on any matter referred to him under Section 42 shall be binding upon the parties, and shall be enforceable in like manner as an order made by the Registrar under that section. **Enforcing an order.**

(2) An order made by a liquidator or by the Registrar under Section 41 or Section 42 shall be enforced by any court having jurisdiction over the place where the registered office of the society is situated in like manner as a decree of that court.

44. Save insofar herein before expressly provided, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society under this Enactment, and no appeal shall lie to any civil court from any order of the liquidator. **Limitation of the jurisdiction of the court.**

45. (1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, provided the by-laws of the society permit, to the payment of a dividend at a rate not exceeding 10 per cent per annum for any period for which no disposal of profits was made. **Closure of liquidation.**

(2) When liquidation of a society has been closed and any creditor of that society has not claimed or received what is due to him under the scheme

of distribution, notice of the closing of the liquidation shall be published in the *Gazette*; and, all claims against the funds of the society liquidated shall be proscribed when two years have elapsed from the date of publication of the *Gazette* notice.

(3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1), including moneys remaining in respect of claims proscribed under subsection (2), shall be applied to such local object or objects of public utility as may be selected by a majority of the votes of the members of the society (as they existed at the date of the dissolution) assembled in a special meeting and approved of by the Registrar. If within three months of the dissolution of the society the members fail to make a selection which is approved by the Registrar, the latter shall place the said balance on deposit in some co-operative or other bank until a new co-operative society with a similar area of operation is registered, in which event it shall be credited to the reserve fund of such society.

(4) The interest accruing in respect of the balance in any bank in accordance with the provisions of subsection (3) may be applied by the Registrar for the furtherance of co-operative principles in such manner as the Menteri Besar may, from time to time, direct.

(5) When any balance placed on deposit in a bank in accordance with the provision of subsection (3) has remained on deposit for a period of ten years such balance may after the expiration of such period be applied by the Registrar for such purposes specified in subsection (4) as the Menteri Besar may, from time to time, direct.

PART VIII.

Surcharge and attachment

46. (1) Where, in the course of the winding-up of a registered society it appears that any person who has taken part in the organisation or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society, the registrar may, on the application of the liquidator or any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just. Such order shall be enforced in the same manner as if the order had been a judgement of a court.

Power of Registrar to surcharge officers etc., of a registered society.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

47. Any person aggrieved by any order of the Registrar under Section 46 may appeal to the Mentri Besar within twenty-one days from the date of the order and the decision of the Mentri Besar shall be final and conclusive.

Appeal to the Mentri Besar.

PART IX

Disputes.

48. (1) If any dispute touching the business of a registered society arises :—

Settlement of disputes.

- (a) among members, past members or persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its committee or any officer of the society; or
- (c) between the society or its committee and any officer of the society; or
- (d) between the society and any other registered society;

such disputes shall be referred to the Registrar for decision.

A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, shall be deemed to be a dispute touching the business of the society within the meaning of this subsection.

(2) The Registrar may, on receipt of a reference under subsection (1):—

- (a) decide the dispute himself; or
- (b) refer it for disposal to an arbitrator or arbitrators.

(3) Any party aggrieved by the award of an arbitrator or arbitrators may appeal therefrom to the Registrar within such period and in such manner as may be prescribed.

(4) A decision of the Registrar under subsection (2) or on appeal under subsection (3) shall be final and shall not be called in question in any legal proceedings whatsoever.

(5) The award of the arbitrator or arbitrators under subsection (2) shall, if no appeal is preferred to the Registrar under subsection (3), or if any such

appeal is abandoned or withdrawn, be final and shall not be called in question in any legal proceedings whatsoever and shall be enforced in the same manner as if the award had been a judgement of a court.

49. (1) Notwithstanding anything contained in the last forgoing section, the Registrar at any time when proceeding to a decision under this Enactment, or the Mentri Besar at any time when an appeal has been preferred to him against any decision of the Registrar under this Enactment, may refer any question of law arising out of such decision for the opinion of the High Court. Case stated on question of law.

(2) Any judge, or judges of the High Court as the Chief Justice may direct, may consider and determine any question of law so referred, and the opinion given on such question shall be final and conclusive.

PART X

Rules

50. (1) Mentri Besar may make all such rules as **Rules.** may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Enactment. S 120/75

(2) In particular, and without prejudice to the generality of the power conferred by subsection (1), such rules may .—

- (a) prescribe the forms to be used and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such application;
- (b) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and provide for the election and admission of

- members from time to time, and the payments to be made and interest to be acquired before exercising rights of membership;
- (c) subject to the provisions of Section 26 of this Enactment, prescribe the maximum number of shares or portion of the capital of a registered society which may be held by a member;
 - (d) prescribe the extent to which a registered society may limit the number of its members;
 - (e) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled, and for the liabilities of past members;
 - (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
 - (g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;
 - (h) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and rescinding by-laws, and the conditions to be satisfied prior to such making, alteration or rescission.
 - (i) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

- (j) prescribe the conditions to be observed by a registered society applying for financial assistance from government;
- (k) prescribe the payments to be made, the conditions to be complied with and the forms of the bonds, instruments or other documents to be executed, by the members applying for loans or cash credits, the period for which loans may be made or credits granted, and the maximum amount which may be lent and the maximum credit which may be allowed to individual members with or without the consent of the Registrar;
- (l) provide for the mode in which the value of a deceased member's interest shall be ascertained and for the nomination of a person to whom such interest may be paid or transferred;
- (m) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
- (n) provide for the formation and the maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of any registered society;
- (o) prescribe the conditions under which profits may be distributed to the members of a society with unlimited liability and maximum rate of dividend which may be paid by societies;
- (p) prescribe the accounts and books to be kept by a registered society, and for the

periodical publication of a balance sheet showing the assets and liabilities of a registered society.

- (q) provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit;
- (r) prescribe the returns to be submitted by registered societies to the Registrar, and the persons by whom and the form in which the same are to be made;
- (s) provide for the persons by whom, and the form in which, copies of entries in books of registered societies may be certified;
- (t) provide for the formation and maintenance of a register of members, and, where the liability of members is limited by shares, of a register of shares;
- (u) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;
- (v) prescribe the manner in which any question as to the breach of any by-law or contract relating to the disposal of produce to or through a society, may be determined, and the manner in which the liquidated damages for any such breach may be ascertained or assessed;
- (w) prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators;
- (x) prescribe the procedure to be followed by a liquidator appointed under Sect-

ion 40 and the cases in which appeals shall lie from the orders of such liquidator;

- (y) prescribe the forms to be used, the fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Enactment or the rules.

PART XI

Miscellaneous

51. (1) All sums due from a registered society or from an officer or past member of a registered society as such to the Government may be recovered in the manner provided for the recovery of debts due to the government under the law for the time being in force.

Recovery of
sums due to
Government.

(2) Sums due from a registered society to the Government and recoverable under subsection (1) may be recovered first, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability; and thirdly, in the case of other societies, from the members.

52. Notwithstanding anything contained in this Enactment the Sultan in Council may by special order in each case and subject to such conditions as he may impose, exempt any society from any of the requirements as to registration.

Powers to ex-
empt any society
from require-
ments as to regis-
tration.

53. The Sultan in Council may by general or special order exempt any registered society or class of societies from any of the provisions of this Enact-

Power to exempt
societies from
provisions
Enactment.

ment, or may direct such provisions shall apply to any society or class of societies with effect from such date or with such modification as may be specified in the order.

54. (1) The Sultan in Council by notification in the *Gazette* may, in the case of any registered society or class of registered societies, reduce or remit :—

Power to exempt from stamp duty and registration fees.

- (a) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society, or by an officer or member, and relating to the business of such society, or any class of such instruments are respectively chargeable; or
- (b) any fee payable under any laws relating to registration or licensing for the time being in force.

(2) A notification exempting any registered society from the fees referred to in paragraph (b) of subsection (1) may provide for the withdrawal of such exemption.

55. (1) No person other than a registered society shall trade or carry on business under any name or title which contains the word "Co-operative" is part without the consent of the Sultan in Council :

Prohibition of the use of the word "Co-operative".

Provided that nothing in this Section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business at the commencement of this Enactment.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding five hundred dollars and, in the case of a continuing offence, to a further fine of fifty dollars for each day during which the offence continues.

56. The provisions of the Companies Enactment, the Societies Enactment, the Income Tax Enactment and the Trade Unions Enactment shall not apply to societies registered under this Enactment.

Companies Enactment, Societies Enactment, Income Tax Enactment and Trade Unions Enactment not to apply.

57. (1) Any :—

- (a) registered society or officer or member thereof wilfully neglecting or refusing to do any act or to furnish any information required for the purposes of this Enactment by the Registrar or other person duly authorised by him in that behalf; or

Penalty for non-compliance with Enactment.

- (b) person wilfully or without reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Enactment, or failing to furnish any information lawfully required from him by a person authorised to do so under the provisions of this Enactment,

shall be guilty of an offence against this Enactment.

(2) Every offence referred to in subsection (1) shall be punishable by a fine not exceeding five hundred dollars and in the case of a continuing offence, to a further fine of fifty dollars for each day during which the offence continues.

In the case of a second or subsequent offence it shall be punishable by a fine not exceeding two thousand dollars and in the case of a continuing offence, to a further fine of two hundred dollars for each day during which the offence continues.

PART XII

Transitional Provisions

58. (1) The Registrar may by notice in the *Gazette* require any society or association which was immediately before the commencement of this Enactment registered under the Societies Enactment and which is, in the opinion of the Registrar of Co-operative Societies, a co-operative society within the meaning of Section 4 of this Enactment call upon such society or association to show cause why it should not be registered under this Enactment and notifying that unless the governing body of such society or association notifies the Registrar in writing within one month from the date of the notice that it does not desire that this provision shall apply in respect of such society or association, the society or association shall be deemed to be registered under and for the purpose of this Enactment. Transitional provisions.

(2) Any society or association deemed to be registered under this Section shall within a period of three months from the date of the notice under subsection (1) or such longer period as the Registrar may allow in any particular case, comply with such orders or requisitions of the Registrar for the subsection (1) or such longer period as the Registrar Enactment.

Passed this 4th day of January, 1975.

JUDIN ASAR
*Clerk of Councils,
Brunei.*