

SAMOA

Arrangement of Provisions

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2012, No. 12**AN ACT to amend the Incorporated Societies Ordinance 1952.***[16th March 2012]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Incorporated Societies Amendment Act 2012 and shall be read with and form part of the Incorporated Societies Ordinance 1952 (hereinafter called the "Principal Act").

(2) This Act commences on the date it is assented to by the Head of State.

2. Interpretation - In section 2 of the Principal Act insert the following words in correct alphabetical order:

““audited statement” means a document in written or electronic form that contains formal periodic examination and checking of accounts or financial records to verify correctness which have been audited by a Certified Public Accountant under the Samoa Institute of Accountants Act 2006;

“charge” means any form of security for payment or security for performance of obligation and includes:

(a) a charge on debentures;

(b) a charge created or evidenced by a document that, if executed by an individual, would require registration under the Chattels Transfer Act 1975;

(c) a charge on any motor vehicle of the society;

(d) a charge on any property of the society;

(e) a charge or mortgage on land, or leasehold interest in land wherever situated; or

(f) a charge on goodwill, on a patent or a licence under a patent, on a trademark or a licence under a trademark, or on a copyright or a licence under a copyright.

“Court” means the Supreme Court of Samoa;

“Dispute” means any dispute within an incorporated society or between incorporated societies (whether or not it is the subject of court proceedings), which has been, or is eligible to be, referred to the Tribunal under this Act;

“Samoa Sports Disputes Tribunal” means the Tribunal established under section 11 of the Sports Disputes Resolution Act 2008;

“Ministry” means the Ministry of Commerce, Industry and Labour;

“Panel” means the list of people appointed under section 41 from which the presiding member of a tribunal appoints two (2) other members of the tribunal;

“Register” means a Register kept by the Registrar pursuant to section 32 of the Act; and

“Tribunal” means the Incorporated Societies Disputes Tribunal established under section 39.”.

3. Penalty for improper use of the word “Incorporated” - For section 5B of the Principal Act substitute:

“5B. Penalty for improper use of the word “Incorporated” - If any person or persons carry on business or activity under the name or title of which “Incorporated”, or any contraction or imitation of that word, is the last word, that person or those persons actively carrying on business activities commit an offence and shall, unless duly incorporated pursuant to this Ordinance, be liable upon conviction to a fine of 1 penalty unit for every day upon which that name or title is used.”.

4. Insertion of new provisions - After section 7 of the Principal Act insert:

“7A. Renewal of registration-(1) A society must apply for renewal of registration on or before 30 June of every financial year:

- (a) in the form approved by the Registrar, and made available from time to time; and
- (b) accompanied by the approved fee; and
- (c) by submission of audited annual financial statements as required under section 22.

(2) If a society fails to renew registration pursuant to subsection (1), every member of the society shall upon conviction be liable to a fine not exceeding 2 penalty units each.

(3) Upon fulfilment of the requirements in subsection (1) and satisfaction of the Registrar with such, the Registrar shall issue a Notice of renewal under the seal of the Registrar.

7B. Removal from Register - If a society fails to comply with any statutory obligations under the Act the Registrar may:

- (a) remove that society off the Register if after three (3) months that society has not complied with a notice to conform issued by the Registrar; or
- (b) publish a public notice in the Savali and any newspaper circulating in Samoa or communicate through any other medium the name of the society to the effect that the society will be removed from the Register unless cause is shown to the contrary.

7C. Restoration of removed society to Register-(1) A society that has been removed from the Register pursuant to section 7B may be restored to the Register, where:

- (a) an application for restoration is made by a person who was a member of the society and this section is complied; or
 - (b) a court order is issued to this effect pursuant to section 7D.
- (2) The Registrar upon receipt of the approved fee and the application in subsection (1):
- (a) may require any of the provisions of this Act or any other Act or any regulations made under this Act or any other Act, being provisions with which the society had failed to comply, before it was removed from the Register, to be complied with; and
 - (b) must give a public notice setting out -
 - (i) the name of the society; and
 - (ii) the name and address of the applicant; and
 - (iii) the date by which an objection to restoring the society to the Register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.

(3) The Registrar must not restore a society to the Register if:

- (a) he or she receives and accepts an objection to be validly made to the restoration within the period stated in the notice; or
- (b) the applicant has failed to comply with the requirement in subsection (2)(a); or
- (c) the restoration of the society to the Register is viewed by the Registrar to be contrary to public interest.

(4) A society that is restored to the Register pursuant to this section is deemed to have continued in existence as if it had not been removed from the Register.

7D. Court may give directions or make orders-(1) The Court may, on the application of the Registrar or any person applying to restore a society to the Register, give any directions or make any orders that may be necessary or desirable for the purpose of placing a society restored to the Register under section 7C in as near as possible to the same position as if the society had not been removed from the Register.

(2) The Court may order that a society that has been removed from the Register be restored to the Register if for any reason it is just and equitable to do so.”.

5. Appeal from Registrar to Court - In section 11 of the Principal Act, for “Head of State” wherever occurring substitute “Court”.

6. Insertion of new provisions-(1) After section 17 of the Principal Act insert:

“17A. Registrar to call meetings of society-(1) The Registrar may call a meeting of a society at the signed request of not less than one third of financial members of that society.

(2) All costs associated with the calling and convening of the meeting shall be borne by the society.”.

(2) After section 19 of the Principal Act insert:

“19A. Appointment of Investigator-(1) The Registrar may investigate complaints that are lodged with the Ministry.

(2) In his or her absence, the Registrar may appoint:

(a) the Assistant Registrar of Incorporated Societies;
or

(b) a senior officer of the Office responsible for
Registry of Incorporated Societies,

to carry out the investigation.

(3) The appointed Investigator shall be authorised to act according to their warrant or letter of appointment.

19B. Investigation of complaints-(1) The Registrar or any person appointed under section 19(A)(2) may in the public interest investigate any written complaint against a society lodged by:

(a) a member or members of a different society; or

(b) one third of the members of the society that is the
subject of the complaint; or

(c) any other person.

(2) All records or any other documentation of the society considered by the Registrar to be relevant to the investigation must be provided upon the request of the Registrar or person appointed under section 19A(2) to investigate the complaint.

(3) Any person who obstructs or delays the investigation of a complaint commits an offence and is liable upon conviction to a penalty not exceeding 5 penalty units or three (3) months imprisonment, or both.

(4) The Registrar in conducting an investigation or completing an investigation may:

(a) refer to any possible breach of law to the Police for further investigation; or

(b) determine that a society is in breach of statutory obligations; or

- (c) require that a society comply with any statutory obligations that have not been complied with; or
- (d) make recommendations to the society where appropriate; or
- (e) refer a dispute to the Tribunal for resolution, upon consultation with the Attorney General; or
- (f) take any action necessary or required by law.”.

7. Alteration of Rules - For section 20(5) of the Principal Act, substitute:

- “(5) In the case of any alteration of the name of a society:
- (a) an application must be -
 - (i) made in a form approved by the Registrar, and made available from time to time; and
 - (ii) accompanied by the approved fee; and
 - (b) the Registrar -
 - (i) may approve or refuse the application based on satisfaction with matters referred to in section 20(5)(a); and
 - (ii) shall enter the change of name into the register if application is approved for registration, and issue a Certificate of Change of Name of the Society; and
 - (iii) shall publicly advertise the change of name of the society in such manner as the Registrar thinks fit.”.

8. Insertion of new provisions-(1) After section 21 of the Principal Act insert:

“**21A. Registration of charges**-(1) Any charge created over any asset of the society:

- (a) must be registered with the Registrar in accordance with subsection (2); and
- (b) is subject to an approved fee.

(2) The copy of the instrument by which the charge is created must be submitted to the Registrar for registration within 20 working days from the date of execution of that instrument or within any extended period granted by the Registrar.

(3) The Registrar upon registration of a charge will issue a Certificate of Registration of Charge.

21B. Satisfying a registered charge-(1) Where a charge has been satisfied, a society must submit to the Registrar in a form approved by the Registrar and signed by the secured party that the:

- (a) charge has been satisfied in whole or partially; or
- (b) the secured property has been released.

(2) Upon receipt of the form in subsection (1) the Registrar shall enter in the Register:

- (a) a memorandum of full or partial satisfaction of the charge; or
- (b) a memorandum that part or all of the secured property has been released from the charge.

(3) The Court may order that a memorandum of satisfaction of charge under subsection (2) be entered in the Register.

(4) If the Court makes order under subsection (3), the Registrar must enter the memorandum in the Register accordingly.”.

(2) After section 22 of the Principal Act insert:

“22A. Other annual documents - Every society shall deliver annually to the Registrar resolutions of its previous annual general meeting and an updated list of its executive committee and members of the society not later than 20 working days after its annual general meeting.”.

9. Division of surplus assets - Section 26 of the Principal Act is amended:

- (a) in the title of the section, omit “on winding up”;
- (b) in subsection (1), insert “or upon removal from the Register” after “dissolution”; and
- (c) in subsection (2), for “Head of State” substitute “Court”.

10. Insertion of new provision - After section 34 of the Principal Act, insert:

“34A. Approved Fees - The Minister, shall by notice published in the Savali:

- (a) determine fees approved under the Act; and
- (b) amend fees currently prescribed under the Act.”.

11. Insertion of new provisions - After section 36 of the Principal Act, insert:

“37. Referral of dispute-(1) A dispute may be referred to the Tribunal by:

- (a) the Registrar in accordance with section 19B; or
 - (b) a person who wishes to lodge an appeal against a decision of the Registrar; or
 - (c) a Court that is hearing the dispute.
- (2) A referral must:
- (a) identify the nature of the dispute being referred to the Tribunal; and
 - (b) identify the parties to the dispute insofar as they are known at the date of referral; and
 - (c) by copy, be provided to the Attorney General and the Registrar where appropriate.

(3) An appeal under section 37(1)(b) must be lodged with the Tribunal within 21 days from the date the Registrar’s decision was notified to the party appealing the decision.

(4) If a question arises as to whether a dispute is to be heard before the Samoa Sports Disputes Tribunal or Tribunal, the determination shall be made by:

- (a) the Presiding Member if the matter is already before the relevant tribunal; or
- (b) the Court for a matter about to be referred by the Court; or
- (c) the Attorney General for a case other than that in paragraph (a) or (b).

38. Referral of dispute shall bar litigation-(1) Once a dispute has been referred to the Tribunal pursuant to this Act, no proceedings relating to the dispute may be commenced in any Court.

(2) This section does not prevent any action taken by way of judicial review in relation to a proceeding of the Tribunal.

39. Incorporated Societies Dispute Tribunal-(1) The Incorporated Societies Disputes Tribunal is established.

(2) The Tribunal shall comprise of a presiding member and two (2) other members appointed in accordance with this Act.

(3) The Ministry of Justice and Courts Administration shall provide all necessary administrative support to the Tribunal whenever it is convened under this Act.

40. Presiding member-(1) The Tribunal shall be presided over by the Chief Justice or a Judge appointed by the Chief Justice.

(2) In the event that the Chief Justice does not have a Judge available to preside at a proceeding, the Chief Justice may appoint a lawyer who is qualified to be a Judge of the Supreme Court of Samoa, to be the presiding officer for a proceeding of the Tribunal.

41. Other tribunal members-(1) Two (2) members of the Tribunal shall be appointed by the presiding member from the panel for each Tribunal proceeding convened under this Act.

(2) A person may be appointed to the panel by the Head of State, acting on the advice of Cabinet.

(3) Prior to the commencement of a Tribunal proceeding each member shall be required to make a declaration that he or she has:

- (a) no personal interest or involvement in the dispute; and
- (b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.

(4) A Tribunal member shall be paid from the funds of the Ministry, such remuneration and allowances as are approved by Cabinet.

(5) The Head of State, acting on the advice of Cabinet, may at any time revoke the appointment of any person to the panel if such member:

- (a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health; or
- (b) is convicted in any jurisdiction within the previous eight (8) years, of an offence punishable by death or by imprisonment for a term of four (4) years or more, or convicted or found guilty in Samoa of a corrupt practice and has not been removed from the Corrupt Practices List under section 32A;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this Act; or
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or
- (e) has an interest in the proceedings which the member has failed to disclose.

42. Convening Tribunal hearings-(1) The Tribunal shall be convened by the presiding member as soon as is practical for the Tribunal to hear and determine any dispute referred to the Tribunal.

(2) The Tribunal shall convene at such time and place, and conduct its proceedings, as determined by the presiding member.

43. Authority of the presiding member-(1) The presiding member of each Tribunal shall have the final decision in relation to:

- (a) a matter of law that arises during a Tribunal proceeding, or which affects any such proceeding; and
- (b) any matter of procedure arising during or applying to a Tribunal proceeding; and
- (c) the extent of the Tribunal's powers to make orders for the resolution of disputes; and
- (d) the application of a principle of a natural justice to a Tribunal proceeding; and
- (e) an action taken against any person for contempt, perjury or failure to give evidence or otherwise cooperate with a Tribunal; and
- (f) any preliminary matter before the hearing of the substantive matter by the Tribunal members.

(2) The presiding member of each Tribunal shall have the sole authority to make a decision relating to subsection (1)(f) in the absence of other members.

44. Tribunal proceedings-(1) Subject to this Act, a Tribunal shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections in accordance with sections 5 and 9 of that Act; and
- (b) powers as provided by section 6 of that Act; and
- (c) a power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act.

(2) A person, who after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writing or documents to a Tribunal,;

- (a) fails to appear according to the requirements of such a summon; or
- (b) refuses to be sworn or to give evidence or to answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or
- (c) fails to produce any such books, papers, writings or documents,

commits an offence and shall be liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding six (6) months, or both.

(3) Each Tribunal proceeding shall be conducted in accordance with the principles of natural justice having regard to the need in any given case to proceed expeditiously to determine the dispute.

(4) Nothing in subsection (3) shall affect the right of a Tribunal to direct that:

- (a) sworn statements be submitted by persons intending to provide evidence or make submissions to a Tribunal; and
- (b) the right to cross examine any witnesses shall be restricted only to matters which the Tribunal considers to be of such a highly probative nature that they need to be tested under cross examination; and
- (c) each party, and any interested person permitted to participate in a Tribunal proceeding, prepare and submit written submissions, and that these be provided to other parties and their representatives on terms determined by the Tribunal; and
- (d) any other things be done or order to be complied with to permit the timely determination of a dispute.

(5) The Tribunal may make final and binding determinations in relation to any matter of procedure, and make orders to that effect.

45. Other general powers of Tribunal in any proceedings - In any Tribunal proceedings, a Tribunal may:

- (a) subject to section 46(2), make any order as to costs against a party which may be made by the Supreme Court; and
- (b) permit any person with a direct interest in matter under dispute to become a party in the proceedings; and
- (c) require the strict application of the rules of evidence applying in the Supreme Court, or dispense with any such requirement in the interests of justice.

46. Government may be represented in any proceeding-(1) In all Tribunal proceedings, the Attorney General may elect to represent the Government, and in any such case, the Government shall be regarded as a party to the dispute.

(2) No order for the payment of any costs associated with any Tribunal proceedings may be made against the Government.

47. Tribunal decisions-(1) Subject to section 43, all decisions of a Tribunal shall be validly made if a majority of members resolve to make the decision.

(2) A decision of Tribunal shall be final and binding on all parties, and all persons named in any order made by a Tribunal.

48. Government ministries and agencies to assist Tribunals-(1) All government ministries and agencies shall cooperate with the Tribunal and shall make available, at no cost, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.

(2) This section applies notwithstanding any provision of any law to the contrary.

(3) The Attorney General may stop the disclosure or release of any document or record required by the Tribunal if the disclosure or release of such record affects, or is likely to affect, national security or is contrary to the national interest.

49. Orders for the resolution of disputes - For the purposes of resolving any dispute a Tribunal, during the course of any proceeding under this Act, may make the following orders:

- (a) that the name of a society be changed; or
- (b) that a meeting of members of the society be held and that a vote be taken to finally determine any matter under dispute; or
- (c) that the rules of the society or Constitution be amended so as to resolve any matter under dispute in the interests of the majority of its members; or
- (d) that certain persons be admitted to membership or removed from membership of the society on grounds that are legal and consistent with the constitutional right of freedom of association; or
- (e) that the register of members of the society be amended to reflect the true membership of that society, or to give effect to any order made by the Tribunal; or
- (f) that the society cease to carry on any operation which is -
 - (i) beyond the scope of its objects; or
 - (ii) against the interests of the majority of its members; or
 - (iii) against the national interest; or
- (g) that certain property is property belonging to the society and is to be returned to a nominated officer of the society; or
- (h) that any contract made by the society is validly or invalidly made; or

- (i) that the Registrar take action in accordance with the procedures provided for in section 27 of the Act to dissolve the society, if the Tribunal is satisfied that -
 - (i) the society is not being administered in accordance with its rules or constitution, or both; or
 - (ii) it is in the national interest that the society be wound up; or
- (j) any ancillary order to give better effect to the orders which may be made under this section; or
- (k) any other order in the interest of justice.

50. Orders binding any person causing any dispute - If a Tribunal finds that any person has unreasonably caused any dispute, or unreasonably delayed the resolution of any dispute, the Tribunal may order that:

- (a) the person be ineligible to hold any office, or any specific office, in the society or any specific society, for a period determined by the Tribunal; or
- (b) the person pay any costs incurred as a result of or arising from a dispute referred to the Tribunal; or
- (c) the person pay any compensation to recompense any person who has suffered loss or damage, or the loss of any opportunity, as a result of the person's conduct; or
- (d) any other order that the Tribunal considers may resolve the dispute, and prevent that dispute or any similar dispute arising in the future.

51. Orders to be given full effect-(1) All government ministries and agencies shall exercise any power vested in them so as to give effect to any order made by the Tribunal.

(2) All persons obliged to implement any order made by a Tribunal shall be deemed to have the lawful authority to

do any act necessary to give effect to the order notwithstanding that the power may not exist under any law, or may be contrary to the provision of any other law.

52. Enforcement of orders-(1) Any person who is directed by a Tribunal or under a legal obligation to implement an order made by a Tribunal under this Act, and who refuses or fails to implement the order, commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding six (6) months, or both.

(2) A fine may be imposed for every additional day that an order is not enforced.”.

**The Incorporated Societies Amendment Act 2012 is administered
by the Ministry of Commerce, Industry and Labour.**

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