

CHAPTER 42:03

CO-OPERATIVE SOCIETIES

ARRANGEMENT OF SECTIONS

PART I. *Preliminary*

SECTION

1. Short title
2. Interpretation

PART II. *Registration*

3. Appointment of Registrar and Assistant Registrars
4. Societies which may be registered
5. Conditions of registration
6. Application for registration
7. Registration
8. Societies to be bodies corporate
9. Evidence of registration

PART III. *Duties and Privileges of Societies*

10. Amendment of the by-laws of a registered society
11. Address of society
12. Copy of law, regulations, by-laws, etc., to be open to inspection
13. Disposal of produce to or through a registered society
14. Charge and set-off in respect of shares
15. Shares not liable to attachment or sale
16. Notice of intention to sue society
17. Transfer of interest on death of member
18. Register of members
19. Proof of entries in books of society

PART IV. *Rights and Liabilities of Members*

20. Qualification for membership
21. Members not to exercise rights until due payment made
22. Restriction of membership in society
23. Votes of members
24. Representation by proxy
25. Contracts with society of members who are minors

SECTION

26. Size of holding
27. Restrictions on transfer of share
28. Liability of past member and estate of deceased member for debts of society

PART V. Property and Funds of Registered Societies

29. Loans made by a registered society
30. Deposits and loans
31. Restrictions on transactions with non-members
32. Investment of funds
33. Disposal of profits

PART VI. Audit, Inspection and Inquiry

34. Audit
35. Power of Registrar to inspect societies' books
36. Enquiry and inspection
37. Penalties for failing to furnish information

PART VII. Liquidation

38. Liquidation
39. Liquidation due to lack of membership
40. Appointment of liquidator
41. Liquidator's powers
42. Power of Registrar to control liquidation
43. Appeal against orders
44. Enforcement of orders
45. Power of court to surcharge officers of a registered society
46. Limitation of the jurisdiction of a civil court
47. Closure of liquidation
48. Cancellation of registration

PART VIII. Disputes

49. Settlement of disputes
50. Cases stated on question of law

PART IX. Miscellaneous

51. Regulations
52. Prohibition of the use of the word "Co-operative"

An Act to provide for the registration, control and liquidation of co-operative societies, to prescribe certain rights and liabilities of such societies and their members, and to provide for matters incidental thereto

Law 41,
1962,
HMC Order
1, 1963,
L.N. 28,
1965,
L.N. 84,
1966.

[Date of Commencement: 9th April, 1964]

PART I. *Preliminary*

1. This Act may be cited as the Co-operative Societies Act. Short title
2. In this Act unless the context otherwise requires Inter-
pretation
- “bonus” means a share of the profits of a registered society divided among its members in proportion to the volume of business done with the society by them from which the profits of the society were derived;
- “by-laws” means the registered by-laws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of the by-laws;
- “committee” means the governing body of a registered society to whom the management of its affairs is entrusted;
- “dividend” means a share of the profits of a registered society divided among its members in proportion to the share capital held by them;
- “legal representative”, in relation to a person who is dead, means the person who in law or in customary law, whichever may be applicable, represents the estate of that person;
- “member” includes a person or registered society joining in the application for the registration of a society, and a person or registered society admitted to membership after registration in accordance with the by-laws;
- “officer” includes a chairman, secretary, treasurer, member of committee, or employee of the society empowered under the regulations or by-laws to give directions in regard to the business of a registered society;
- “prescribed” means prescribed by regulation;
- “registered society” means a co-operative society registered in terms of section 7;
- “Registrar” means the Registrar of Co-operative Societies appointed in terms of section 3 and includes any person when exercising such powers of the Registrar as may have been conferred on him under that section;
- “regulations” means regulations made in terms of section 51.
- (2) For the purpose of any provision in this Act which provides that an officer of a society which is in default shall be guilty of an

offence, the expression "officer in default" means any officer of the society who knowingly authorizes or permits the default.

PART II. *Registration*

Appointment
of Registrar
and Assistant
Registrars

3. The President, by notice in the Gazette, may appoint a Registrar of Co-operative Societies for Botswana and may appoint persons to assist such Registrar and confer on any such persons all or any of the powers of the Registrar in terms of this Act.

Societies
which may
be
registered

4. Subject to the provisions of this Act, a society which has as its object —

(a) the promotion of the economic interest of its members in accordance with co-operative principles; or

(b) the facilitating of the operations of such a society;

may be registered in terms of this Act 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.

Conditions
of
registration.

5. (1) No society other than a society of which a registered society is a member shall be registered under this Act unless it consists of at least ten persons each of whom is qualified in terms of section 20 for membership in terms of this Act.

(2) The word "co-operative" shall form part of the name of every society registered in terms of this Act.

(3) The word "limited" shall be the last word in the name of every society with limited liability registered in terms of this Act.

(4) When for the purposes of this section any question arises as to any qualification of any person for membership of any society, that question shall be decided by the Registrar whose decision shall be final.

Application
for
registration.

6. (1) All applications for registration in terms of this Act shall be made to the Registrar and shall be signed

(a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of section 20; and

(b) in the case of a society of which a member is a registered society, by a duly authorized person on behalf of every such registered society, and where all members of the society are not registered societies by ten other members, or, when there are less than ten other members, by all of them.

(2) The application shall be accompanied by a prescribed number of copies of the proposed by-laws of the society, and the person 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—

Registration

- (a) that a society has complied with the provisions of this Law and the regulations;
- (b) that the proposed by-laws of the society are adequate for the proper running of the society and are not contrary to this Act and the regulations;
- (c) that a society is *bona fide*;
- (d) that there is reasonable expectation of benefit to the members of the society; and
- (e) that the name of the society is not identical with that of a registered society, or does not so nearly resemble any such name as to be calculated to confuse or deceive;

he may, if he thinks fit, and on payment by the society of the prescribed fee, register the society and its by-laws and issue a certificate of registration.

(2) If the Registrar refuses to register a society an appeal shall lie to the Minister whose decision shall be final.

(3) Notice of appeal shall be given within one month from the date of such refusal.

8. The registration of a society shall render it a body corporate by the name under which it is registered with perpetual succession and with power to hold 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) Subject to the provisions of this Act and the regulations, any registered society may add to or amend its by-laws including any by-law which declares the name of the society.

Amendment of the by-laws of a registered society

(2) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered in terms of this Act for which purpose a prescribed number of copies of the amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that any such amendment of the by-laws of a registered society is not contrary to this Law and the regulations and that the effect of the amendment is such that the requirements of section 7 (1) (b), (c), (d) and (e) have been met he shall register the amendment.

(4) If the Registrar refuses to register any amendment an appeal shall lie to the Minister whose decision shall be final.

(5) Notice of appeal shall be given within one month of the date of such refusal.

(6) 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.

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

Address of
society

11. (1) Every registered society shall have an address registered in the prescribed manner to which all notices and communications may be sent and shall send to the Registrar notice of every change of that address.

(2) If a society fails to comply with the provisions of subsection (1) any officer in default shall be guilty of an offence and liable on conviction to a fine of R20 and in the case of a continuing offence to a further fine of R4 for each day during which the offence continues.

Copy of law,
regulations,
by-laws etc.
to be open
to
inspection

12. (1) Every registered society shall keep a copy of this Act and of the regulations and of its by-laws and a list of its members open to inspection by the public free of charge at all reasonable times at the registered address of the society.

(2) If a society fails to comply with the provisions of subsection (1) any officer in default shall be guilty of an offence and liable on conviction to a fine of R20 and in the case of a continuing offence to a further fine of R4 for each day during which the offence continues.

Disposal of
produce to
or through
a registered
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, handicrafts or otherwise, may provide in its by-laws or may otherwise contract with its members

(a) that every such member who produces or obtains 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 to be guilty of a breach of the by-law or contract shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed.

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

14. A registered society shall have a charge upon the share in the capital of the society and on the deposits therein of a member or past member or deceased member and upon any dividend, bonus or profits payable by the society 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 past member or estate of a deceased member in or towards payment of any such debt.

Charge and set-off in respect of shares

15. Subject to the provisions of section 14, the share of a member in the capital of a registered society shall not be liable to attachment or sale under decree or order of a court in respect of any debt or liability incurred by such member, and neither his trustee or assignee in insolvency nor a *curator bonis* duly appointed shall be entitled to, or have any claim on, such share or interest.

Shares not liable to attachment or sale

16. No civil summons shall be issued out of any court against any registered society unless the party suing out the summons has given written notice to the Registrar of his intention to do so.

Notice of intention to sue society

17. (1) On the death of a member a registered society may either

Transfer of interest on death of member

- (a) transfer the membership and share in the capital of the society of the deceased member to the person nominated in accordance with the regulations; or
- (b) pay to such nominee, or if there is no person so nominated, to the legal representative of such deceased member, a sum representing the value of such member's share in the capital of the society ascertained in accordance with the regulations or the by-laws of the society:

Provided that—

- (i) in the case of a society without limited liability such nominee or legal representative, as the case may be, may require payment by the society of the value of the share in the capital of the society of the deceased member ascertained as aforesaid; and
- (ii) in the case of a society with limited liability the society may transfer the membership and share in the capital of the society of the deceased member to such nominee being qualified in accordance with the regulations and the by-laws of the society 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 the legal representative.

(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.

Register of members

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

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

Proof of entries in books of society

19. (1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in the prescribed manner, 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 in terms of 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*

Qualification for membership

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

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

Members not to exercise rights until due payment made

21. No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such share in the capital of the society as may be prescribed or set out in the by-laws of the society.

Restriction of membership in society

22. Except with the sanction of the Registrar, no person shall be a member of more than one registered society which has as one of its objects the granting of loans to its members.

Votes of members

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

Provided that in the case of an equality of votes the chairman shall have a casting vote in addition to his original vote:

Further provided that in the case of societies of which a registered society is a member that registered society may have such voting powers as are prescribed.

24. A registered society which is a member of any other registered society may appoint any one of its members as its proxy for the purpose of voting in the conduct of the affairs of such other registered society. Representation by proxy

25. The minority of any person duly admitted as a member of any registered society shall not debar that person from executing any instrument or giving any acquittance necessary to be executed or given under this Act or the regulations, 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 Act against such person notwithstanding his minority. 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. Size of holding

27. (1) The transfer of the share of a member, past member or deceased member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed. Restrictions on transfer of share

(2) In the case of a society registered without limited liability a member shall not transfer any share held by him in the capital of the society or any part thereof unless—

- (a) he has held such share not less than one year; and
- (b) the transfer 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 society.

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 member 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 one year 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: Loans made by a registered society

Provided that with the consent of the Registrar, a registered society may make loans to another registered society.

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

(3) The Minister may by general or special notice in the Gazette prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

Deposits and
loans

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 or set out in the by-laws of the society.

Restrictions
on
transactions
with non-
members

31. Save as 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.

Investment
of funds

32. A registered society may invest or deposit its funds

- (a) in the Post Office Savings Bank of Botswana, or with any Bank approved for this purpose by the Registrar; or
- (b) with any other registered society approved for this purpose by the Registrar; or
- (c) in any security issued or guaranteed by the Government of any country approved from time to time for this purpose by the Minister; or
- (d) in any other mode approved by the Minister.

Disposal of
profits

33. (1) At least one-fourth of the net profits of every registered society as ascertained by the audit carried out in terms of section 34 shall be carried to a fund to be called the reserve fund which shall be employed in the manner prescribed. The remainder of such profits and any profits of past years available for distribution may be divided among the members by way of dividend or bonus or allocated to any fund constituted by the society to such extent or on such conditions as may be prescribed or set out in the by-laws of the society:

Provided that

- (a) the Registrar shall have power in the case of any society of limited liability to grant from time to time exemption from contribution to the reserve fund or to reduce the rate thereof, and shall also have power to revoke such exemption or reduction;
- (b) no society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been certified by the Registrar and the amount of the dividend, bonus or distribution as the case may be, has been approved by the Registrar;

- (c) no society shall pay a dividend to its members exceeding the maximum rate prescribed, which rate shall not in any case exceed ten *per centum per annum*; and
- (d) no society without limited liability which advances money or goods to any member in excess of money or goods deposited by him, shall pay a dividend before ten years from the date of its registration without the special sanction of the Registrar.

(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 exceeding ten *per centum* of the remaining net profits to any charitable purpose or to a common-good fund.

PART VI. *Audit, Inspection and Inquiry*

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

Audit

(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 person appointed to audit the accounts of a society shall have the power when necessary—

- (a) to summon at the time of his audit any officer, agent, servant or member of the society whom he has reason to believe can give material information in regard to any transaction of the society or the management of its affairs; or
- (b) to require the production of any book, or document relating to the affairs of or any cash or securities belonging to the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

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

Power of Registrar to inspect societies' books

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 authorized by him in writing in this behalf to hold an inquiry into the constitution, working and financial condition of any registered society and all officers and members of the society shall furnish such information in regard to the affairs of the society and

Inquiry and inspection

produce the cash in hand and such books, accounts, papers and securities of the society as the Registrar or the person authorized by him may require.

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

- (a) proves that a liquidated sum of money is then due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

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

(4) Where an inquiry is held in terms of subsection (1) or an inspection is made in terms of subsection (2), the Registrar may apportion the costs or such part of the costs as he may think right between the registered society, the members demanding an inquiry, the officers of former officers of the society and the creditor on whose application the inquiry or inspection was made.

(5) Any sum awarded by way of costs against any society or person under this section may be recovered on application to a subordinate court having jurisdiction in the place where the registered address 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.

Penalties for
failing to
furnish
information

37. Any registered society or an officer, agent, servant or member thereof who wilfully neglects or refuses to furnish any information required for the purposes of this Act by the Registrar or other persons duly authorized by him in this behalf or any person who wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Part or fails to furnish any information lawfully required from him by a person authorized to do so under the provisions of this Part, shall be guilty of an offence and liable on conviction to a fine of R400 or, in default of payment thereof, to imprisonment for one year, and to such imprisonment.

PART VII. *Liquidation*

Liquidation

38. (1) If the Registrar after holding an inquiry or making an inspection in terms of 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 liquidation of the society.

(2) Any member of a registered society may within six weeks from the date of an order under subsection (1) appeal from such order to the Minister, whose decision shall be final.

(3) Where no appeal is presented within six weeks from the making of an order for the liquidation of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within six weeks, the order shall not take effect until it is confirmed.

(4) No registered society shall be liquidated save by order of the Registrar in terms of this Part.

39. The Registrar may, in writing, order the liquidation 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 ten. Every such order shall take effect from the date thereof.

Liquidation
due to lack
of
membership

40. Where an order for the liquidation of a registered society is made in terms of section 38 or section 39 the Registrar may either before or after the said order takes effect also make an order appointing one or more persons to be, subject to his direction and control, liquidator or liquidators of the society. The movable and immovable property, rights and liabilities of the registered society shall vest in the liquidator or liquidators appointed under this section with effect from the date of such appointment:

Appointment
of liquidator

Provided that, if any appeal made in terms of section 38 (2) is upheld and the order for the liquidation of the society is set aside, then the appointment of any liquidator or liquidators shall cease forthwith and the property, rights and liabilities of the registered society shall forthwith vest in the registered society, but without prejudice to the validity of any acts lawfully performed by any such liquidator or liquidators in terms of this Law.

41. (1) A liquidator appointed in terms of section 40 shall, subject to the guidance and control and revision of the Registrar and to any limitations imposed by the Registrar by order made in terms of section 42 have power to

Liquidator's
powers

- (a) take possession of the books, documents and assets of the society;
- (b) appoint a day by notice in the Gazette 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) call such general meetings of members as may be necessary for the proper conduct of the liquidation;
- (d) 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 society to issue any loan;
- (e) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
- (f) sell the property of the society;
- (g) decide in accordance with the law relating to insolvency and subject to the provisions of section 47 any question of priority which arises between creditors;
- (h) refer disputes to arbitration and institute and defend suits and other legal proceedings on behalf of the society by his name or office;
- (i) compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
- (j) determine from time to time the contribution to be made by members and past members or by the estate of deceased members of the society to its assets;
- (k) decide by what persons and in what proportions the costs of liquidation are to be borne; and
- (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.

(2) Subject to such regulations as may be made in this behalf, any liquidator appointed under this Act shall in so far as such powers are necessary for carrying out the purpose of this section, have power to summon and enforce the attendance of parties and witnesses, to examine witnesses on oath and to compel the production of documents by the same means and (so far as may be) in the manner as is provided in the case of a subordinate court.

Power of
Registrar to
control
liquidation

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

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

- (g) make an order for the remuneration of the liquidator; and
- (h) refer any subject of dispute between the 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. An appeal to a subordinate court of the first class, having jurisdiction over the area in which the registered address of the society is situated, from any order made by a liquidator under the provisions of section 41 or by the Registrar under the provisions of section 42 (a) may be made in the prescribed manner.

Appeal
against
orders

44. Orders made in terms of sections 41, 42 or 43 may be enforced as follows—

Enforcement
of orders

- (a) when made by a liquidator or the Registrar, by any court having jurisdiction in the same manner as a judgment of such court;
- (b) when made by a subordinate court of the first class, on appeal, in the same manner as a judgment of such court.

45. (1) Where in the course of the winding up of a registered society it appears that any person who has taken part in the organization or management of 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 any misconduct or breach of trust in relation to such society, any court of competent jurisdiction may on the application of the liquidator or of 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 court thinks just or to contribute such sum to the estate of such society by way of compensation in regard to the misapplication, retention, misconduct or breach of trust as the court thinks just.

Power of
court to
surcharge
officers of a
registered
society

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

46. Save in so far as is expressly provided in this Act, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society.

Limitation
of the
jurisdiction
of a civil
court

47. (1) On the liquidation of a society 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 ten *per centum per annum* for any period for which no disposal of profits was made.

Closure of
liquidation

(2) When the 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 and the

liquidation shall be published in the Gazette and all claims against the funds of the society liquidated shall be prescribed when two years have elapsed from the date of the publication of the Gazette notice.

(3) Any surplus remaining after the application of the funds to the purposes specified in terms of subsection (1) and the payment of any claims for which an action is instituted in terms of subsection (2) shall not be divided among the members but shall be devoted to any object or objects described in the by-laws of the society whose registration has been cancelled, and where no object is so described, shall be available for use by the Registrar for any co-operative purpose at his discretion.

Cancellation
of registra-
tion

48. When the affairs of a society have been completely wound up in terms of this Part and the period referred to in section 47 (2) has elapsed, the Registrar shall cancel the registration of the society and publish notice thereof in the Gazette.

PART VIII. *Disputes*

Settlement
of disputes

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

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

such dispute 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 or legal representative of a deceased member, shall be deemed to be an internal dispute touching the business of the society within the meaning of this subsection.

(2) The Registrar may on receipt of a reference in terms of subsection (1)—

- (a) decide the dispute himself;
- (b) refer it for disposal to such person as he may appoint for the purpose; or
- (c) refer it to arbitration, whereupon the reference shall be deemed to be a submission within the meaning of the law relating to arbitration.

(3) Any party aggrieved by an award made by a person appointed in terms of subsection (2) (b) 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 civil court and shall be enforced by any court having jurisdiction in the same manner as an award on arbitration.

(5) An award made by a person appointed in terms of subsection (2) (b) 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 civil court and shall be enforced by any court having jurisdiction in the same manner as an award on arbitration.

50. (1) Notwithstanding anything contained in section 49, the Registrar, at any time after a dispute has been referred to him in terms of the said section, or the Minister at any time when an appeal has been preferred to him against any decision of the Registrar under this Law, may reserve any question of law arising out of such dispute or decision, as the case may be, for the opinion of the High Court. Cases 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 reserved question of Law referred to the High Court in terms of subsection (1) and the opinion given on such question shall be final.

PART IX. *Miscellaneous*

51. (1) The President may, by notice in the Gazette, make such regulations as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Law. Regulations.

(2) In particular and without prejudice to the generality of the power conferred by subsection (1) such regulations 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 applications;
- (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 payment to be made and interest to be acquired before exercising rights of membership;
- (c) subject to the provisions of section 26, 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 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 specified prior to such making, alteration or rescission;
 - (i) regulate the manner in which funds may be raised by means of shares, debentures or otherwise;
 - (j) prescribe the payments to be made, the conditions to be complied with and the forms of the bonds, instruments or other documents to be executed by members applying for loans or cash credits, the period for which loans may be made or credits granted and the maximum amount which may be lent and the maximum credit which may be allowed to individual members with or without the consent of the Registrar;
 - (k) 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;
 - (l) 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;
 - (m) provide for the formation and 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;
 - (n) prescribe the conditions under which profits may be distributed to the members of a society without limited liability and the maximum rate of dividend which may be paid by societies;
 - (o) prescribe the accounts and books to be kept by a registered society and for periodical publication of a balance sheet showing the assets and liabilities of a registered society;
 - (p) provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit, provide for the levy of contributions from all or any registered

societies to a fund to be used for audit and supervision of existing societies and co-operative propaganda and provide for the administration of such a fund;

- (q) 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;
- (r) provide for the persons by whom and the form in which copies of entries in books of registered societies may be certified;
- (s) provide for the formation and maintenance of a register of members and where the liabilities of members is limited by shares of a register of shares;
- (t) 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;
- (u) 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 such breach may be ascertained or assessed;
- (v) prescribe the procedure to be followed by a liquidator appointed in terms of section 40 and the cases in which appeals shall lie from the orders of such liquidator;
- (w) prescribe the forms to be used and fees to be paid, the procedure to be observed and all other matters connected with or incidental to the presentation herein and disposal of appeals under this Act or the regulations.

52. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" or any Tswana equivalent is part, without the approval of the Minister:

Prohibition
of the use of
the word
"co-
operative"

Provided that nothing in this subsection 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 9th April, 1964.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine of R20, and in the case of a continuing offence to a further fine of R4 for each day during which the offence continues.