REPUBLIC OF VANUATU

CONSOLIDATION OF THE FRENCH AND ENGLISH TEXTS OF THE LAWS OF VANUATU ACT [CAP 295]

Approval of the English Text of the Co-operative Societies Consolidation Edition 2022 Order No. 97 of 2022

In exercise of the powers conferred on me by subsection 9(1) of the Consolidation of the French and English Texts of the Laws of Vanuatu Act [CAP 295], I, the Honourable ESMON SIMON, Minister of Justice and Community Services, make the following Order:

1 Approval of the English Text of the Co-operative Societies Consolidation Edition 2022

The English Text of the Co-operative Societies Consolidation Edition 2022 is approved.

2 Appointed day

The appointed day for the coming into operation of the Co-operative Societies Consolidation Edition 2022 is the day on which this Order is made.

3 Commencement

This Order commences on the day on which it is made.

Made at Port Vila this 25th **day of** May**, 2022.**

REPUBLIC OF VANUATU
Ministry of Justice & Community Service
MINISTER
Ministère de la Justice et services du Communautée
RÉPUBLIQUE DE VANUATU

Honourable ESMON ESAI SIMON
Minister of Justice and Community Services

Commencement: 20 July 1987

CHAPTER 152

CO-OPERATIVE SOCIETIES

Act 24 of 1982
Act 10 of 2011
Act 34 of 2017
Act 19 of 2019

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY
1. Interpretation
1A. Meaning of beneficial owner
1B. Co-operative principles

PART 2 – REGISTRAR OF CO-OPERATIVE SOCIETIES
2. Registrar of co-operative societies
2A. Functions of the registrar
2B. Assistant registrar

PART 2A – REGISTRATION
3. Requirement for registration
3A. Types of societies which may be registered
4. Conditions of registration and name of registered society
5. Application for registration
6. Probationary societies
7. Registration
8. Societies to be bodies corporate
9. Evidence of registration
9A. Report
9B. Annual registration fee
9C. Prohibition of incorporation under another Act

PART 3 – DUTIES AND PRIVILEGES OF SOCIETIES
10. Amendment of by-laws
11. Address of society
11A. Registered society to give notice of certain changes to Registrar
12. Copy of Act, rules, by-laws, etc., to be open to inspection
13. Disposal of produce to or through a registered society
14. Creation of charges in favour of registered societies
15. Charge and set-off in respect of shares or interest of members
16. Shares or interest not liable to attachment or sale
17. Transfer of interest on death of member
18. Deposits by or on behalf of minors
19. Register of members
20. Proof of entries in books of society
21. Amalgamation or transfer of societies
22. Division of societies

PART 4 – QUALIFICATION AND RIGHTS OF MEMBERS
23. Qualification for membership
24. Members not to exercise rights until due payment made
25. Restriction of membership
26. Votes of members
27. Representation by proxy
28. No individual to hold more than one-fifth of share capital of any society
29. Restriction on transfer of share or interest

PART 4A – FORMATION OF CO-OPERATIVE SOCIETIES AND NATIONAL CO-OPERATIVE POLICY
29A. Structure of co-operative societies
29B. Formation and objectives of primary society
29C. Formation and objectives of secondary society
29D. Formation and objectives of multi-sectoral tertiary society
29E. Formation and objectives of sectoral tertiary society
29F. Formation and objectives of national apex society

PART 5 – PROPERTY AND FUNDS OF REGISTERED SOCIETIES
30. Loans made by a registered society
31. Deposits and loans received by a registered society
32. Restrictions on other transactions with non-members
33. Investment of funds
34. Statutory reserve fund
34A. Conditions for distribution of surplus
34B. Contribution to charitable purpose

PART 6 – ANNUAL RETURNS, AUDIT AND INQUIRY
35. Annual returns
36. Audit
36A. Keeping of accounts and records
37. Registrar may require information and documents relating to registered society
37A. On site inspections
37B. Registrar may request information and documents
38. Inquiry and Inspection

PART 6A – POWERS FOR GIVING DIRECTIONS AND BANNING ORDERS
38A. Power to give directions
38B. Conditions when giving directions
38C. Form of directions
38D. Representations to the registrar
38E. Person appointed to supervise
38F. Revocation or cessation of direction
38G. Power to make a banning order
38H. Consideration of good character
38I. Duration of banning order and publication

PART 7 – DISSOLUTION OF A REGISTERED SOCIETY
39. Cancellation of registration of society
40. (*Repealed*)
41. Effect of cancellation
42. Liquidation of society
43. Liquidator's powers
44. Power of registrar to control liquidation
45. Enforcement of order
46. Closure of liquidation
47. Liability of members on dissolution
47A. Revival of dissolved society

PART 8 – SURCHARGE AND ATTACHMENT
48. Registrar may order repayment or restoration of property due to a society
49. Attachment of property
50. Appeal against order under section 49

PART 9 – DETERMINATION OF DISPUTES
51. Determination of disputes
52. Case stated on question of law

PART 9A – SHARING OF INFORMATION
52A. Meaning of confidential information
52B. Disclosure of confidential information
52C. Disclosure to foreign government agency

PART 9B – VANUATU CO-OPERATIVE LEADERSHIP AND MANAGEMENT COUNCIL
52D. Establishment of the Council
52E. Functions of the Council
52F. Composition of the Council
52G. Term of office and conditions of service of members of the Council
52H. Funding for the Council
52I. Meetings of the Council

PART 10 – RULES
53. Rules
53A. By-laws

PART 11 – MISCELLANEOUS
54. Powers to exempt any society from requirements as to registration
55. Power to exempt societies from provisions of the Act
56. Power to exempt from stamp duty and registration fees
57. Provision for school co-operatives
58. Dissolution of committee
58A. Foreign investment
58B. Societies may form joint enterprise or enter into joint ventures
58C. Co-operative Development Fund
58D. Prohibition from interfering with management of a society
58E. Registrar may require financial institution to provide information
58F. Special provisions for certain types of registered societies
59. Special committee members of the national apex society and tertiary societies
59A. Indemnity from liability
60. General offences by societies, etc.
61. Offences by societies to be also offences by officers, etc.
62. Punishment of fraud or misappropriation
63. Restriction of the use of the word "co-operative"
64. Continuing offences

SCHEDULE 1 – Matters to be provided for in society's by-laws

SCHEDULE 2 – Special provisions relating to certain types of registered Societies

CO-OPERATIVE SOCIETIES

To make provision for the formation, registration and regulation of co-operative societies and for other matters connected therewith.

PART 1 – PRELIMINARY

1. Interpretation

in this Act, unless the context otherwise requires –

"agricultural society" means a registered society that produces, processes or markets agricultural products, and supplies agricultural inputs and provides services to its members;

"banning order" means a banning order under section 38G;

"by-laws" means the registered by-laws of a society;

"beneficial owner" has the meaning given by section 1A;

"committee" means the governing body, by whatever name called, of a registered society to whom the management of its affairs is entrusted and includes a board of directors;

"consumer and marketing society" means a registered society that procures and distributes goods or commodities to its members and non-members and provides services to its members;

"co-operative principles" means the internationally accepted principles of co-operation, exemplified by the principles adopted by the International Co-operative Alliance and includes the co-operative principles in section 1B;

"co-operative society" means an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise organized and operated on co-operative principles;

"Council" means the Vanuatu Co-operatives Leadership and Management Council established under section 52D;

"Court" means the Supreme Court of Vanuatu;

"Department" means the department responsible for co-operative societies;

"Director" means the Director of the Department responsible for co-operative societies;

"dividend" means a share of the profits of a registered society divided among its members in proportion to the share capital held by them;

"domestic investor" means an investor who is a citizen of Vanuatu or an entity wholly owned and controlled by one or more citizens of Vanuatu;

"domestic regulatory authority" means a body or agency established by or under a law of Vanuatu that:

(a) grants or issues under that law or any other law licences, permits, certificates, registrations or other equivalent permissions; and

(b) performs any other regulatory function related to a matter referred to in paragraph (a), including developing, monitoring or enforcing compliance with standards or obligations prescribed by or under that law or any other law;

"electricity society" means a non-profit registered society that engages in the delivery of electricity to its members;

"Financial Intelligence Unit" means the Financial Intelligence Unit established under section 4 of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

"fisheries society" means a registered society whose principal activities are fishing, processing and marketing of fish and sea products;

"foreign government agency" means:

(a) a body or agency established by or under a law of a foreign country; or

(b) an arm, ministry, department or instrumentality of the government of a foreign country; or

(c) a body or agency of a foreign country set up by administrative act for governmental purposes;

"foreign investor" has the same meaning as in the Vanuatu Foreign Investment Promotion Act [CAP 248];

"foreign serious offence" means:

(a) an offence against a law of another country that, if the relevant act or omission had occurred in Vanuatu, would be an offence against the laws of Vanuatu, for which the maximum penalty is imprisonment for at least 12 months; or

(b) an offence prescribed by the rules;

"foreign tax evasion offence" means conduct that:

(a) amounts to an offence against a law of a foreign country; and

(b) relates to a breach of a duty relating to a tax imposed under the law of the foreign country (whether or not that tax is imposed under a law of Vanuatu); and

(c) would be regarded by the courts of Vanuatu as an offence of fraudulent evasion of tax for which the maximum penalty is imprisonment for at least 12 months, had the conduct occurred in Vanuatu;

"housing society" means a registered society whose principal activities are the building and construction of houses and the promotion of housing programs for its members;

"key person" of a registered society or a society applying for registration under this Act means an officer of the society or a beneficial owner of an officer;

"law enforcement agency" means:

(a) the Vanuatu Police Force; or

(b) the Office of the Public Prosecutor; or

(c) the department responsible for customs and inland revenue; or

(d) the department responsible for immigration; or

(e) such other persons prescribed for the purposes of this definition;

"livestock society" means a registered society whose principal activities are animal husbandry, livestock keeping and dairy farming for its members;

"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;

"Minister" means the Minister responsible for co-operative societies;

"multi-purpose society" means a registered society that combines 2 or more of the business activities of different types of societies that may be registered under section 3A;

"multi-sectoral society" means a registered society other than a savings and credit co-operative society;

"multi-sectoral tertiary society" means a registered umbrella society whose members are primary and secondary societies (other than savings and credit co-operative societies) and whose objectives are to provide sectoral services to member societies, and to advocate, and engage with the Government, the private sector and stakeholders, on behalf of its members in line with its sectoral mandate;

"national apex society" means the national umbrella society established under section 29F;

"officer" includes a chairman, secretary, treasurer, member of committee, or other person empowered under the by-laws to give directions in regard to the business of a registered society or society applying for registration under this Act;

''primary society'' means a registered society formed by a minimum of 7 natural persons whose objectives are to provide employment or services to its members and to facilitate community development;

"producer society" means a registered society whose principal activities are the production of agricultural, forestry and other natural products;

"registered society" means a co-operative society registered under this Act;

"registrar" means the Registrar of Co-operative Societies;

"rules" means the rules made under section 53;

"Sanctions Secretariat" means the Sanctions Secretariat established under section 17 of the United Nations Financial Sanctions Act No. of 6 2017.

"savings and credit co-operative society" means a registered society whose principal objectives are to encourage thrift among its members and to create a source of credit for its members;

"school co-operative society" means a registered society established in a school whose membership may consist of the staffs of the school, the students of the school, and the parents of those students;

"secondary society" means a registered society formed by 2 or more primary societies to facilitate the operations of its member societies in accordance with the co-operative principles;

"sectoral tertiary society" means a registered umbrella society whose members are primary and secondary savings and credit co-operative societies and whose objectives are to provide sectoral services to member societies, and to advocate and engage with the Government, the private sector and stakeholders on behalf of its members in line with its sectoral mandate;

"tertiary society" means the sectoral tertiary society or the multi-sectoral tertiary society;

"water society" means a non-profit registered society that engages in the delivery of water to its members."

1A. Meaning of beneficial owner

(1) A "beneficial owner" of an officer is a natural person who ultimately controls the officer.

(2) For the purpose of subsection (1), "control" means exercising influence, authority or power over the officer, and includes circumstances where the officer is acting as a nominee or proxy on behalf of another person or entity.

(3) For the avoidance of doubt, if an officer is acting as a nominee or proxy on behalf of a legal person or legal arrangement, the natural person who ultimately controls the officer is the natural person who:

(a) has a legal entitlement to 25% or more of the legal person or legal arrangement by way of ownership of shares or otherwise, including ownership exercised through a chain of ownership; or

(b) otherwise exercises control, directly or indirectly, over the legal person or legal arrangement.

1B. Co-operative principles

(1) For the purposes of this Act, a co-operative society operates in accordance with co-operative principles if:

(a) its membership is open and available, without any restriction or any unlawful basis of discrimination for membership, to any person who can use its services and is willing to accept the responsibility of membership; and

(b) it is democratically controlled by the members who actively participate in setting the policies and in making decisions of the society; and

(c) in the case of a primary society, each member has only 1 vote; and

(d) its members contribute equitably and democratically control the capital of the co-operative society, and if it enters into an agreement with another organisation or raises capital from an external source, it does so on terms that ensure democratic control by its members and maintains its co-operative autonomy; and

(e) its business is carried on primarily as an economic activity for the benefit of its members; and

(f) it utilises any surplus or savings arising out of its operations:

(i) to strengthen its business; and

(ii) to provide or improve common services to its members; and

(iii) for the payment of dividends on permanent share capital purchased by its members; and

(iv) among its members in proportion to the business done by each member with the co-operative society; and

(v) to provide education and training for members, committee members, managers, and employees so that they can contribute effectively to the development of the co-operative society; and

(vi) to inform the general public, particularly, the young people and leaders about the nature and benefits of co-operation; and

(vii) for non-profit, charitable or cultural purposes; and

(g) it pursues co-operation with other co-operative societies; and

(h) it contributes to the social and economic development of its community.

(2) A registered society must operate in accordance with the co-operative principles as set out in subsection (1).

PART 2 – REGISTRAR OF CO-OPERATIVE SOCIETIES

2. Registrar of co-operative societies

The Director is to be the registrar of co-operative societies and is responsible for the efficient administration of this Act and the implementation of the National Co-operative Policy.

2A. Functions of the registrar

(1) The registrar has the following functions:

(a) to register all co-operative societies that the registrar consider to be viable; and

(b) to inspect and monitor all co-operative societies; and

(c) to supervise and regulate all co-operative societies; and

(d) to lead and manage the regulatory process; and

(e) to carry out such other functions as may be conferred on the registrar under this Act or any other Act.

(2) The registrar may in writing, delegate to an assistant registrar or a senior officer of the Department any of his or her powers or functions under this Act.

(3) The delegation may be made generally or in respect of a particular function or powers or class of functions or powers.

(4) The registrar may at any time revoke or vary a delegation.

(5) A delegation does not prevent the registrar from performing the function that he or she has delegated.

2B. Assistant registrar

(1) The manager compliance to the Department is to be the assistant registrar.

(2) In the case where there is a vacancy in the office of the assistant registrar, the registrar may appoint an assistant registrar as may be necessary to assist the registrar in performing his or her functions under this Act and for the efficient discharge of the functions of the Department.

PART 2A – REGISTRATION

3. Requirement for registration

(1) A person must not carry on the business of a co-operative society unless it is registered under this Act.

(2) If a person contravenes subsection (1), the person commits an offence and is punishable on conviction:

(a) in the case of an individual - to a fine not exceeding VT15,000,000 or to imprisonment for a term not exceeding 3 years or both; or

(b) in the case of a body corporate - to a fine not exceeding VT30,000,000.

3A. Types of societies which may be registered

(1) The following types of societies may be registered under this Act:

(a) a primary society; and

(b) a secondary society; and

(c) a tertiary society; and

(d) a national apex society.

(2) Without limiting the number and types of societies which may be registered under this Act, the following societies may be registered:

(a) an agricultural society; and

(b) a consumer and marketing society; and

(c) an electricity society; and

(d) a fisheries society; and

(e) a housing society; and

(f) a livestock society; and

(g) a multi-purpose society; and

(h) a producer society; and

(i) a savings and credit co-operative society; and

(j) a school society; and

(k) a water society.

4. Conditions of registration and name of registered society

(1) A society must not be registered under this Act unless it complies with the requirements for the formation of a primary society, a secondary society, a tertiary society or a national apex society in Part 4A.

(2) The word “co-operative” shall form part of the name of every registered society.

(3) The word “limited” shall be the last word in the name of a registered society.

(4) No society shall be registered under a name which in the opinion of the registrar is undesirable.

(5) When for the purposes of this Act a question arises as to the qualification of any person to be a member of a registered society, such question shall be decided by the registrar whose decision shall be final.

5. Application for registration

(1) For the purposes of registration an application shall be made to the registrar.

(2) The application must be made in the prescribed form and signed by:

(a) in the case of a primary society - a minimum of 7 individuals qualified to be members under section 23; and

(b) in the case of a secondary society - duly authorized persons representing at least 2 registered primary societies; and

(c) in the case of a tertiary society - duly authorized persons representing at least 7 registered secondary societies and primary societies; and

(d) in the case of the national apex society - duly authorized persons representing the multi-sectoral tertiary society and the sectoral tertiary society.

(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. The by-laws of a society shall contain provision in respect of the matters specified in Schedule 1 of this Act.

(4) In addition to subsections (2) and (3), an application must include the following information:

(a) details of each officer of the society; and

(b) details of any beneficial owner of an officer; and

(c) details as required by the registrar of the source of funds used to pay the capital of the society.

6. Probationary societies

(1) If the Registrar does not see fit to register a society he may, by notice in writing (hereinafter referred to as a notice of deferment), defer registration of that society subject to its compliance with such conditions as shall be specified by the registrar in that notice.

(2) The registrar shall transmit the notice of deferment to the persons by whom or on whose behalf application for registration is made.

(3) A notice of deferment shall, subject to this section and to any conditions specified in the notice, entitle the society in respect of which it is issued to operate as a registered society.

(4) A society entitled to operate as a registered society under subsection (3) above shall be termed a probationary society and shall, while entitled to operate as such, be deemed to be a body corporate 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 purposes of its constitution. The liability of a probationary society shall be limited.

(5) Upon the registration of a probationary society under section 7, its certificate of registration shall supersede its notice of deferment which thereafter shall cease to have effect and the society shall be deemed for all purposes to have been registered from the date on which its notice of deferment was issued by the registrar.

(6) The registrar may, in his discretion, cancel a notice of deferment in writing addressed to the probationary society concerned and shall so cancel a notice of deferment on the expiry of 2 years from the date thereof if the society is not by then qualified for registration; such cancellation shall, from the date thereof, operate as a refusal to register the society for the purposes of section 7:

Provided that such cancellation shall not affect the validity of any transaction entered into or with the society while its notice of deferment was in force.

(7) Where the notice of deferment of a probationary society is cancelled under subsection (6) the registrar may appoint a person to be liquidator of the society.

(8) Sections 10(3) and 10(5) and 39 to 42 (inclusive) shall not apply to a probationary society.

(9) Subject to subsection (8), any reference in any law, including this Act, to a registered society within the meaning of this Act shall, unless the context otherwise requires, include a reference to a probationary society.

(10) The last 4 words in the name of every probationary society shall be “probationary co-operative society limited.”

7. Registration

(1) The registrar may register a society if he or she is satisfied:

(a) that the application for registration complies with this Act; and

(b) that the proposed by-laws of the society are not contrary to this Act or any other law; and

(ba) that the proposed by-laws of the society comply with the co-operative principles; and

(c) of the source of funds used to pay the capital of the society; and

(d) that key persons of the society are fit and proper persons.

(2) In assessing whether or not a key person of the society satisfies fit and proper criteria, the registrar must take into consideration the following matters:

(a) whether the person has been convicted of an offence or is subject to any criminal proceedings;

(b) whether the person is listed on a United Nations Financial Sanctions list, or a financial sanctions list under the United Nations Financial Sanctions Act No. 6 of 2017 or a financial sanctions list under a law of any jurisdiction;

(ba) whether the person is in a good financial standing with the society;

(bb) whether the person has made an arrangement with his or her creditors which he or she is unable to honour;

(bc) whether the person was a member of the committee of a failed co-operative society of the same type;

(bd) whether the person is or becomes bankrupt;

(be) whether the person is already part of the management of another society of the same type;

(c) any other fit and proper criteria prescribed by the rules.

8. Societies to be bodies corporate

On registration a society shall become 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 purposes of its constitution.

9. Evidence of registration

A certificate of registration signed by the registrar shall be conclusive evidence that the society and its by-laws therein mentioned are duly registered, unless it is proved that the registration of the society has been cancelled.

9A. Report

The Registrar is to provide a report in writing to the Minister twice a year.

9B. Annual registration fee

(1) A registered society must pay an annual registration fee of such amount and within such time as may be prescribed by the rules made under this Act.

(2) A registered society that fails to pay the prescribed annual registration fee by the due date is liable to a surcharge equal to the amount of the annual registration fee payable within 7 days after the due date for payment of the annual registration fee.

(3) The rules made under this Act may prescribe different annual registration fees for different types of registered societies.

9C. Prohibition of incorporation under another Act

(1) The registrar must, prior to registering a society confirm with the Vanuatu Financial Services Commission that the society is not formed or incorporated under any law administered by the Vanuatu Financial Services Commission or any other law relating to the incorporation of entities.

(2) A society that is registered under section 7 must not apply for formation or incorporation under any other law, including incorporation as a company under the Companies Act No. 25 of 2012 or formation under any other law relating to the incorporation of entities.

(3) To avoid doubt, a registered society must conform to and operate in accordance with the co-operative principles, and must not have concurrent formation or incorporation as a different entity under any other law.

PART 3 – DUTIES AND PRIVILEGES OF SOCIETIES

10. Amendment of by-laws

(1) Subject to this Act any registered society may amend its by-laws, including the by-law which declares the name of the society.

(2) No amendment of the by-laws of a registered society shall be valid until the amendment has been registered under this Act.

(3) If the registrar is satisfied that any amendment of the by-laws is not contrary to this Act or any other law and he or she is satisfied that the amendment complies with the co-operative principles he or she, shall register the amendment. A registered society may appeal in a prescribed manner to the Minister against the refusal of the registrar to register any amendment of its by-laws.

(4) A change in the name of a society shall not affect any rights or obligations 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, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been registered.

(6) In this section “amendment” includes the making of a new by-law and the variation or repeal of a by-law.

11. Address of society

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.

11A. Registered society to give notice of certain changes to registrar

(1) A registered society must give the registrar written notice of a change in:

(a) a key person of the registered society; or

(b) the circumstances of a key person of the registered society that may affect whether he or she meets fit and proper criteria; or

(c) by-laws or policies relating to the source of funds used to pay the capital of the registered society,

within 14 days after the change occurs.

(2) If a registered society fails to comply with subsection (1), the registered society commits an offence punishable upon conviction by a fine not exceeding VT 125 million.

(3) If a registered society fails to comply with subsection (1), the registrar may by notice in writing to the registered society cancel the registration of the registered society.

(4) If a registered society does provide the information as required under subsection (1), but the registrar is not satisfied:

(a) that the key persons of the registered society are fit and proper persons having regard to the matters referred to in subsection 7(2); or

(b) of the by-laws or policies relating to the source of funds used to pay the capital of the registered society,

the registrar may by notice in writing to the registered society cancel the registration of the registered society.

(5) Subsections 39(2), (3) and (3A) apply to cancellation of registration of the registered society under this section.

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

Every registered society shall keep a copy of this Act and of the rules and of its by-laws and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the society.

13. Disposal of produce to or through a registered society

(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 member who produces any such article 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, in such manner as may be prescribed, to have committed a breach of the by-laws or contract shall pay to the society as liquidated damages a sum assessed in such manner as may be prescribed.

(2) No contract referred to in subsection (1) shall be contested in any court on the ground only that it constitutes a contract in restraint of trade.

14. Creation of charges in favour of registered societies

Subject to any prior claim of the Government on the property of the debtor and to the lien 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 –

(a) any debt payable to a registered society by a member or past member shall be a first charge on all agricultural produce, felled timber or other forest produce, marine produce, fish, livestock, 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 to him by the society:

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

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

(c) any outstanding demands not exceeding in the aggregate VT 10,000 per annum payable to a registered society for the purchase of shares in that society by a member or past member shall be a first charge on all produce and other articles mentioned in paragraph (a) of that member or past member:

Provided that any outstanding demand for the purchase of such shares shall be deemed to constitute a share of the member under section 15.

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

(1) A registered society shall have a charge upon the shares or interest in the capital and on the deposits, dividend, bonus or profits payable to any member in respect of any debt due from him to the society and may set-off any moneys credited or payable to a member in or towards payment of any such debt.

(2) In subsection (1) the reference to "member" includes a reference to a past member and the estate of a deceased member.

16. Shares or interest not liable to attachment or sale

Subject to 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 trustee in bankruptcy shall be entitled to, or have any claim on, such share or interest;

Provided that where a society is dissolved the share and interest of any member who has been adjudicated a bankrupt shall be vested in the trustee in bankruptcy.

17. Transfer of interest on death of member

(1) On the death of a member there shall be no transfer by inheritance of the shares or interest of the deceased member in a registered society; but the society may transfer his share or interest to a person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as shall appear to the committee to be the legal representative of the deceased, or may pay to such nominee 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:

Provided that the society may transfer the share or interest of the deceased member to such nominee or legal representative, as the case may be, being qualified in accordance with rules and by-laws for membership of the society, or on his application within 6 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 or legal representative as the case may be.

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

18. Deposits by or on behalf of minors

(1) A registered society may receive deposits from or for the benefit of minors. Any deposits made by a minor may, together with interest, be paid to that minor; and any deposit made on behalf of a minor may, together with interest be paid to the guardian of that minor for the use of the minor.

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

19. Register of members

Any register or list of members kept by a 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.

20. Proof of entries in books of society

(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in a prescribed manner, be received in any legal proceedings, civil or criminal, as *prima facie* evidence 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 is admissible.

(2) No officer of a registered 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.

21. Amalgamation or transfer of societies

(1) Any 2 or more registered societies may, with the approval of the registrar, by a resolution passed by a three-fourths majority of the members present at a special general meeting of each such society held for the purpose, amalgamate as a single society; provided that each member has had clear 15 days' written notice of the resolution and the date of the meeting. Such an amalgamation may be effected without a dissolution, or a division of the funds, of the amalgamating societies. The resolutions of the societies concerned shall on such amalgamation be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(2) Any registered society may by a resolution passed in accordance with the procedure laid down in subsection (1) transfer its assets and liabilities to any other registered society which is prepared to accept them:

Provided that –

(a) where any such amalgamation or transfer of assets and liabilities involves the transfer of the liabilities of a society to any other society, it will not be made without giving 3 months' notice in writing to the creditor of both or all such societies; and

(b) if a creditor of any of the societies concerned objects to such amalgamation or transfer, and gives written notice to that effect to the society concerned 1 month before the date fixed for such amalgamation or transfer, the amalgamation or transfer shall not be made until the dues of such creditor have been satisfied.

22. Division of societies

(1) Any registered society may, with the approval of the registrar, by a resolution passed by a three-fourths majority of the members present at a special general meeting of the society held for the purpose, divide itself into 2 or more societies, provided that each member has had clear 15 days' written notice of the resolution and the date of the meeting. The resolution (hereinafter in this section referred to as a preliminary resolution) shall contain proposals for the division of the assets and liabilities of the society among the new societies in which it is proposed to divide it and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of the society. A notice of the resolution shall also be given to all other persons whose interests will be affected by the division of the society.

(3) Any member of the society may, notwithstanding any by-law to the contrary, by notice given to the society within 3 months of his receipt of a copy of the resolution, intimate his intention not to become a member of any of the new societies.

(4) Any creditor of the society may, notwithstanding any agreement to the contrary, by notice given to the society within the said period intimate his intention to demand a return of any amount due to him.

(5) Any other person whose interest will be affected by the division may by notice given to the society object to the division unless his claim is satisfied.

(6) After the expiry of 3 months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice by other persons mentioned in subsection (2) another special general meeting of the society, of which at least clear 15 days' notice shall be given to members, shall be convened for considering the preliminary resolution. If, at such meeting the preliminary resolution is confirmed by a resolution passed by a majority of not less than two-thirds of the members present, either without changes or with such changes as in the opinion of the registrar are not material, the registrar may, subject to subsection (9) and to section 7 register the new societies and the by-laws thereof. On such registration the registration of the old society shall be deemed to have been cancelled and the society shall be deemed to be dissolved from the date of such cancellation.

(7) The opinion of the registrar as to whether the changes made in the preliminary resolution are or are not material shall be final and no appeal shall lie therefrom.

(8) At the special general meeting referred to in subsection (6) provision shall be made by another resolution for –

(a) repayment of the share capital of all the members who have given notice under subsection (3);

(b) satisfaction of the claims of all the creditors who have given notice under subsection (4);

(c) satisfaction of the claims of such of the other persons who have given notice mentioned in subsection (5) as the registrar decides or securing their claims in such manner as the registrar directs:

Provided that no such member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (6).

(9) If within such time as the registrar considers reasonable, the share capital of the members referred to in subsection (8) is not repaid or the claims of the creditors referred to in that subsection are not satisfied, or the claims of the other persons are not satisfied or secured as provided in subsection (8)(c), the registrar may refuse to register the new societies.

(10) The registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society in the new societies in the manner specified in the preliminary resolution as confirmed under subsection (6).

PART 4 – QUALIFICATION AND RIGHTS OF MEMBERS

23. Qualification for membership

A person must not be a member of a primary society unless he or she:

(a) is a citizen of Vanuatu; and

(b) subject to section 57, has attained the minimum age of 18 years; and

(c) undertakes a trade or occupation relevant to the primary society's objective as defined in its by-laws; and

(d) has a common need which the primary society seeks to satisfy; and

(e) is capable of paying fees and acquiring shares in the primary society.

24. Members not to exercise rights until due payment made

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 interest in the society, as may be prescribed by the rules or by-laws.

25. Restriction of membership

Except with the sanction of the registrar, no person shall be a member of more than one registered society whose principal object is to grant loans to its members.

26. Votes of members

A member of a registered society has 1 vote in the conduct of the affairs of the society, except that:

(a) if the votes taken are equal, the Chairperson has a casting vote; and

(b) in the case of a secondary society, a tertiary society, or the national apex society - the member societies are entitled to vote in the manner prescribed by the rules and by the by-laws of that registered society.

27. Representation by proxy

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.

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

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

29. Restriction on transfer of share or interest

The transfer or charge of the share or interest of a member or past or deceased member in the capital of a registered society shall be subject to section 28.

PART 4A – FORMATION OF CO-OPERATIVE SOCIETIES AND NATIONAL CO-OPERATIVE POLICY

29A. Structure of co-operative societies

The structure of co-operative societies in Vanuatu is made up of:

(a) primary societies; and

(b) secondary societies; and

(c) a multi-sectoral tertiary society; and

(d) a sectorial tertiary society, and

(e) a national apex society.

29B. Formation and objectives of primary society

(1) A primary society must be formed by a minimum of 7 individuals each of whom is qualified to be a member under section 23.

(2) The objectives of a primary society are:

(a) to raise the standard of living of its members; and

(b) to facilitate the operations of the individual members; and

(c) to provide services to its members, including supplying agricultural inputs, and collecting, processing and marketing of the products of its members; and

(d) to provide relevant information of its undertakings; and

(e) to do any other thing which is connected with or is necessary to the objectives set out in paragraphs (a) to (c).

29C. Formation and objectives of secondary society

(1) A secondary society must be formed by a minimum of 2 primary societies of the same type.

(2) The objectives of a secondary society are:

(a) to facilitate the operation of the member societies; and

(b) to provide services to the member societies as may be provided for in the by-laws of that secondary society; and

(c) to collect, process and sell products of member societies; and

(d) to provide consultancy services to member societies; and

(e) to provide relevant information of its undertakings; and

(f) to do any other thing which is connected with or is necessary to the objectives as set out in paragraphs (a) to (e).

29D. Formation and objectives of multi-sectoral tertiary society

(1) Multi-sectoral societies may establish a multi-sectoral tertiary society which is to be called the Vanuatu Co-operative Business Network.

(2) The multi-sectoral tertiary society must be formed by a minimum of 7 primary and secondary societies.

(3) Subject to subsection (2), the multi-sectoral tertiary society must be formed by the combination of primary and secondary societies.

(4) The multi-sectoral tertiary society must be a registered society under this Act and may provide, organize and supervise effective centralized services for the member societies.

(5) Without limiting subsection (4), the multi- sectoral tertiary society must:

(a) perform representational and other functions as may be determined by its constituent members, including:

(i) to ensure that there is a strong multi-sectoral co-operative movement in Vanuatu; and

(ii) to ensure that the farming interests of its agricultural society members are maintained; and

(iii) to identify national and export markets; and

(iv) to market local produce and processed products; and

(v) to import and supply necessary products; and

(vi) to establish a savings and loans mechanism that its members may borrow money from to improve their farms; and

(b) coordinate, assist and promote activities for the development, growth and expansion of multi-sectoral societies; and

(c) liaise with appropriate Government departments including departments responsible for agriculture, tourism and trade and the private sector for business development and to coordinate business development and planning; and

(d) coordinate the economic plans of the member societies and forward them to the registrar for incorporation in the national planning; and

(e) provide co-operative education and training and any other services as may be necessary or expedient for its members; and

(f) disseminate information on co-operative development, principles and practices; and

(g) represent its member societies in national and international forum relating to co-operative matters; and

(h) do any other thing which is connected with or is necessary to the objectives as set out in paragraphs (a) to (g).

(6) The multi-sectoral tertiary society may advise the registrar on co-operative education and operating methods including the establishment of a college or other tertiary level institute to provide education or training on co-operative society development, operation and management.

29E. Formation and objectives of sectoral tertiary society

(1) Registered societies may establish a sectoral tertiary society.

(2) The sectoral tertiary society must be formed by a minimum of 7 primary and secondary societies.

(3) The sectoral tertiary society must be a registered society under this Act and may provide, organize and supervise effective centralized services for the member societies.

(4) Without limiting subsection (3), the sectoral tertiary society may:

(a) provide, organize and supervise effective centralized services for the member societies and for co-operative education on savings and credit; and

(b) establish a national savings and credit mechanism for member societies for their savings and deposits and create a national savings and credit society; and

(c) provide training and any other services as may be necessary or expedient for its members; and

(d) coordinate the economic plans of the member societies and forward them to the registrar for incorporation in national planning; and

(e) carry on, encourage and assist educational and advisory work relating to co-operative enterprises; and

(f) represent its member societies in national and international forum relating to co-operative matters; and

(g) do any other thing which is connected with or is necessary to the objectives in paragraphs (a) to (f).

(5) The sectoral tertiary society may advise the registrar on co-operative education and operating methods including the establishment of a college or other tertiary level

institute to provide education or training on co-operative society development, operation and management.

29F. Formation and objectives of national apex society

(1) The multi-sectoral tertiary society and the sectoral tertiary society may establish a national apex society.

(2) The objectives of the national apex society must include the following:

(a) to advocate and engage with the Government, the private sector, and stakeholders on behalf of its members; and

(b) to organise and supervise effective centralized services for the tertiary societies, for co-operative education and training and any other services as may be necessary or expedient for the tertiary societies.

(3) Any other objectives of the national apex society must be determined by its member societies and must be included in the by-laws of the national apex society.

PART 5 – PROPERTY AND FUNDS OF REGISTERED SOCIETIES

30. Loans made by a registered society

(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.

(2) Except with the permission of the registrar, a 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 Minister may, by general or special order, prohibit or restrict the lending of money on mortgage of any description of immovable property by any registered society.

31. Deposits and loans received by a registered society

A registered society may receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed.

32. Restrictions on other transactions with non-members

Without prejudice to sections 30 and 31, the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions as may be prescribed.

33. Investment of funds

A registered society may invest or deposit its funds –

(a) with any bank or person carrying on the business of banking approved for this purpose by the registrar; or

(b) in any securities issued or guaranteed by the Government; or

(c) with any other registered society approved for this purpose by the registrar; or

(d) in any other mode approved by the registrar.

34. Statutory reserve fund

(1) A registered society must establish a statutory reserve fund and must deposit to the fund not less than 25% or such other percentage as the registrar may approve of the net profits of the registered society during a financial year.

(2) A registered society must use the statutory fund established under subsection (1) only in the manner and for the purpose for which it was established, and subject to any conditions, as may be prescribed by the rules.

(3) The registrar or any person authorized by the registrar must monitor the statutory reserve fund of a registered society through the annual audited accounts under section 36.

34A. Conditions for distribution of surplus

A registered society may make payments out of any surplus remaining after section 34 has been complied with and from any surplus of past years available for distribution as:

(a) dividends or bonus on member's equity shares in the manner set out in the by-laws of the registered society; and

(b) allocation towards any funds of the registered society to the extent or under the conditions as may be prescribed by the rules or as provided for by the by-laws of the registered society.

34B. Contribution to charitable purpose

A registered society may out of any surplus remaining after section 34A has been complied with contribute an amount not exceeding 10% of the remainder of the surplus for any charitable purpose.

PART 6 – ANNUAL RETURNS, AUDIT AND INQUIRY

35. Annual returns

(1) Every registered society shall, within 3 months of the end of its financial year, send to the registrar a return in a prescribed form containing such particulars relating to its affairs for that year as may be prescribed together with a copy of its balance sheet and profit and loss account for that year.

(2) Every registered society shall supply free of charge to every member or other person having interest in the funds of the society who applies for it a copy of the latest return together with a copy of its balance sheet and profit and loss account.

36. Audit

(1) The registrar shall audit or cause to be audited by a person authorised by him in writing the accounts of every registered society at least once in every year.

(2) The audit 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 power when necessary –

(a) to summon in the course of the audit any officer, agent, servant or member of the society who he has reason to believe can give material information concerning any transaction of the society or the management of its affairs; and

(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 security.

36A. Keeping of accounts and records

(1) A registered society must keep proper books of accounts and other books for the purpose of all transactions relating to its undertaking, funds, activities and property.

(2) A registered society must:

(a) ensure that all payments are authorized and correctly made and that adequate control is maintained over its income, assets and liabilities; and

(b) keep all accounts and records in a manner that reflects the true financial situation of the registered society so that an auditor can have access to them at all reasonable times; and

(c) ensure that all accounts in respect of a financial year are drawn up and audited under section 36.

37. Registrar may require information and documents relating to registered society

(1) Subject to subsection (2), the registrar may, by notice in writing to a registered society, require the registered society to provide the registrar with information or documents, or both, specified in the notice within the period set out in the notice.

(2) The information or documents must relate to:

(a) the registered society's integrity, competence, financial standing or organisation; or

(b) the registered society's compliance with this Act or the rules; or

(c) the registered society's compliance with co-operative principles.

(3) If the registered society:

(a) refuses or fails to give the registrar the information or documents required by the registrar; or

(b) knowingly or recklessly gives the registrar information or documents that are false or misleading,

the registered society commits an offence punishable upon conviction by a fine not exceeding VT 75 million.

37A. On site inspections

(1) The registrar may conduct on-site inspections at the business premises occupied by a registered society at any time during normal business hours.

(2) The registrar may for the purposes of subsection (1):

(a) enter the business premises of the registered society during ordinary business hours; and

(b) inspect and take copies of any books, accounts and documents of the registered society that relate to:

(i) the registered society's integrity, competence, financial standing or organisation; or

(ii) the registered society's compliance with this Act or the rules.

(3) The registered society must cooperate fully with the registrar by:

(a) giving the registrar all the information, and making available the documents the registrar requires; and

(b) if necessary, giving the registrar appropriate workspace and reasonable access to office services, during the inspection.

(4) If a person intentionally obstructs the registrar in the exercise of the registrar's powers under this section, the person commits an offence punishable upon conviction by:

(a) if the person is a natural person - a fine not exceeding VT 15 million or imprisonment not exceeding 5 years, or both; or

(b) in any other case - a fine not exceeding VT 75 million.

(5) In this section, a reference to the registrar includes assistant registrar.

(6) An assistant registrar must produce written evidence of his or her appointment if required to do so while carrying out on-site inspections.

37B. Registrar may request information and documents

For the purpose of performing a function or exercising a power under this Act, the registrar may request information or documents, or both, from any or all of the following:

(a) the Financial Intelligence Unit;

(b) a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014;

(c) the Sanctions Secretariat;

(d) a law enforcement agency;

(e) a domestic regulatory authority;

(f) a foreign government agency that carries out functions corresponding or similar to the functions carried out by a body or agency referred to in paragraph (a), (b), (c), (d) or (e).

38. Inquiry and inspection

(1) The registrar may, when he thinks fit to do so, hold an inquiry or direct some person authorised by him in writing 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 concerning 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 holding the inquiry may require.

(2) The registrar shall hold or direct to be held the inquiry mentioned in subsection (1) whenever he is requested to do so by a majority of the members of the committee or by not less than one-third of the members of the registered society.

(3) The registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorised by him in writing to inspect the books of the society, if the applicant–

(a) proves that an ascertained 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.

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

(5) Where an inquiry is held under subsection (1) or an inspection is made under subsection (3) the registrar may apportion the costs or such part of the costs as he shall 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 held.

(6) Any sum awarded by way of costs against any society or person under this section may be recovered, on application to the Magistrates' 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 6A – POWERS FOR GIVING DIRECTIONS AND BANNING ORDERS

38A. Power to give directions

Subject to this Part, the registrar may at any time give directions in writing to a registered society.

38B. Conditions when giving directions

The registrar may give directions under section 38A, if:

(a) after an inquiry or inspection of a registered society under section 38, or on the receipt of any information, the registrar is of the opinion that the funds of the registered society are not being properly managed or protected; or

(b) the registrar has reason to believe that a registered society is likely to take any action that would affect the financial situation of the registered society; or

(c) it appears to the registrar that a requirement in this Act, the rules or the by-laws of a registered society is being contravened, but the circumstances are not such as to justify the taking of action under section 39 or 58.

38C. Form of directions

(1) If the registrar exercises his or her power under section 38A, the registrar may:

(a) by notice in writing direct the committee of the registered society within a period as the registrar may specify, to cease an action or a practice as the registrar may specify or to take any measures as the registrar considers necessary to protect the funds of the registered society or the interests of the registered society's members; and

(b) place the registered society under administrative supervision and appoint a person who in the registrar's opinion, has the necessary experience and training to supervise the registered society on the action to be taken to remedy the situation.

(2) A direction under paragraph (1)(a) may include a direction for the registered society to deposit and maintain the funds of the registered society in an account with a financial institution licensed under the Financial Institutions Act [CAP 254] if the registered society is operating in a municipality or area council where such a financial institution is operating.

(3) The board of directors, an employee or agent of a registered society must at all times give all information required by a person appointed under paragraph (1)(b), for the full and satisfactory performance of his or her duties and for this purpose section 38 applies as if any reference to the registrar includes a reference to a person appointed under paragraph (1)(b).

(4) If a registered society fails to comply with the notice referred to in paragraph (1)(a), after giving the committee the opportunity to be heard in a general meeting called by the registrar for that purpose, the registrar may dissolve the committee and section 58 applies.

(5) For the purpose of this section:

"municipality" means a municipality established under the Municipalities Act [CAP. 126];

"area council" means an area council established under the Decentralization Act [CAP 230];

38D. Representations to the registrar

(1) A registered society or a person who is required to take any action under section 38C, may within 21 days of the service of the notice by the registrar, make representations in writing to the registrar as to why the action required should not be taken.

(2) After taking into account any representations made under subsection (1), the registrar must decide whether to:

(a) proceed with the action proposed in the notice; or

(b) take no further action.

38E. Person appointed to supervise

A person appointed to supervise a registered society under paragraph 38C(1)(b):

(a) may hold office for a period not exceeding 12 months and on such terms and conditions as the registrar may specify; and

(b) may be paid such remuneration as the registrar may determine, and the remuneration, and any other expenses of and incidental to the appointment, must be paid out of the funds of the registered society; and

(c) must report to the registrar, in a manner and with a frequency as the registrar may direct, on the affairs of the registered society.

38F. Revocation or cessation of direction

(1) The registrar may, by notice in writing to the registered society, revoke a direction under paragraph 38C(1)(a) if, at the time of the revocation, he or she considers that the direction is no longer necessary or appropriate.

(2) A direction ceases to have effect if:

(a) the registrar revokes it under subsection (1); or

(b) the registration of the registered society is cancelled under section 39.

38G. Power to make a banning order

(1) The Minister may, on the recommendation of the registrar make a banning order against a person if:

(a) the person has not complied with the requirements under this Act; or

(b) the registrar has reason to believe that the person is likely to breach a provision of this Act; or

(c) the person is convicted of fraud; or

(d) the registrar has reason to believe that the person is not of good character; or

(e) the person has been involved in a contravention of this Act by another person; or

(f) the registrar has reason to believe that the person is likely to be involved in breaching a provision of this Act by another person.

(2) The Minister may by a banning order prohibit a person permanently or for a specific period from:

(a) applying for or retaining membership of a registered society; or

(b) being an officer of a registered society.

(3) Before making a banning order, the Minister must give the person an opportunity to make written submissions to the Minister stating reasons why the Minister should not make a banning order.

(4) After taking into account any written submissions, the Minister must decide whether to:

(a) proceed with the banning order; or

(b) take no further action.

38H. Consideration of good character

For the purpose of paragraph 38G(1)(d), the Minister may have regard to the following in considering whether, at a particular time, there is reason to believe that a person is not of good character:

(a) any conviction of the person, within 10 years before that time, for an offence that involves dishonesty and is punishable on conviction to imprisonment for at least 3 months; or

(b) whether the person has been a member of a society whose registration was suspended or cancelled; or

(c) any other matter that the Minister considers relevant.

38I. Duration of banning order and publication

(1) If the Minister has reason to believe that a person is not of a good character, the Minister may make the banning order permanent.

(2) In any other case, the Minister must specify the period of the banning order.

PART 7 – DISSOLUTION OF A REGISTERED SOCIETY

39. Cancellation of registration of society

(1) The registrar may by order in writing cancel the registration of any registered society–

(a) if at any time it is proved to his satisfaction that the number of members of the society has been reduced, in the case of a society for the time being consisting solely of registered societies, to less than 2 or, in any other case, to less than 7; or

(b) if the registrar is satisfied that the registration was obtained by fraud or mistake; or

(c) if the registered society has ceased to exist; or

(ca) if the registered society has contravened a provision of the Anti–Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 and that contravention has resulted in the use of an enforcement measure under Part 10AA of that Act; or

(cb) if the fit and proper criteria are not met as required under this Act or as prescribed by the rules; or

(cc) if the registrar is not satisfied of the by-laws or policies relating to the source of funds used to pay the capital of the registered society; or

(d) at the request of not less than three-fourths of the members of the society; or

(e) with the approval of the Minister –

(i) if after an inquiry or inspection under section 38 he is satisfied that the society ought to be dissolved; or

(ii) on proof to his satisfaction that the society exists for an illegal purpose, or has wilfully and after notice from the registrar violated any provisions of this Act.

(2) Before cancelling the registration of a registered society, other than under paragraph (1)(d), the registrar must give written notice to the registered society that it proposes to cancel the registration and the reasons for the cancellation.

(3) A registered society may within 14 days after receiving a notice under subsection (2) give the registrar written reasons why the registration of the registered society should not be cancelled.

(3A) The registrar may by order cancel the registration of a registered society if:

(a) the registered society does not give the registrar reasons under subsection (3); or

(b) having taken in to account the registered society's reasons, the registrar is of the opinion that the registered society has failed to show good cause why the registration should not be cancelled.

(4) Where the registrar makes an order for the cancellation of the registration of a society under this section 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.

40. *(Repealed)*

41. Effect of cancellation

Where the registration of a society is cancelled by an order under section 39 the society shall cease to exist as a corporate body from the date on which the order takes effect:

Provided that where a liquidator of a registered society has been appointed under section 42–

(a) the society shall continue in existence as a corporate body until there has been lodged with the registrar a certificate signed by the liquidator that the affairs of the society have been completely wound-up and that all the property of the society has been duly conveyed or transferred to the persons entitled thereto; and

(b) any rights conferred on the society by or under section 14, 15 or 16 shall be vested in the liquidator.

42. Liquidation of society

Where the registrar makes an order for the cancellation of the registration under section 39 he may appoint a person to be the liquidator of the society.

43. Liquidator's powers

(1) A liquidator appointed under section 42 shall, subject to any limitations imposed by the registrar under section 44, have power to –

(a) determine from time to time the contribution 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 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;

(d) institute and defend suits and other legal proceedings on behalf of the society by his name or office;

(e) decide by what persons and in what proportions the costs of liquidation are to be borne;

(f) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding-up the society;

(g) subject to the approval of the registrar compromise any claim by or against the society;

(h) call such general meetings of members as may be necessary for the proper conduct of the liquidation;

(i) take possession of the books, documents and assets of the society;

(j) sell the property of the society;

(k) decide any question concerning the liability of the present or past members or the estates of the deceased members to contribute for the payment of debts and liabilities of the society and the expenses of winding-up as provided in section 47;

(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 to make 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) Subject to such rules as may be made in this behalf, a liquidator appointed under this Act shall, in so far as it may be necessary for carrying out his functions, 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 provided in the case of the Magistrates' Court.

44. Power of registrar to control liquidation

A liquidator shall exercise his powers subject to the guidance and control 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 books, documents and assets of the society;

(d) by order in writing limit the powers of a liquidator under section 43;

(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.

45. Enforcement of order

An order made by a liquidator or by the registrar under section 43 or 44 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.

46. Closure of liquidation

(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 dividend at a rate not exceeding 10 per cent per annum for any period for which no disposal of profits was made.

(2) When the liquidation of a society has been closed and any creditor of that society has not claimed or has 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 shall lapse after 2 years from the date of the publication of the notice.

(3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1) shall not be divided among the members but shall be devoted to any object described in the by-laws of the society whose registration has been cancelled, and, where no such object is so described, shall be deposited by the registrar in a bank or with a registered society, until such time as another society operating in the same area shall have been registered when such surplus shall be transferred to such new society for the purpose of forming its reserve fund:

Provided that if no society operating in the same area is registered within a period of 3 years from the date of the publication of the notice under subsection (2), the said surplus may be used by the registrar for any co-operative purpose at his discretion.

47. Liability of members on dissolution

(1) Where a registered society is wound-up in pursuance of section 39 the liability of a present or past member to contribute for payment of the debts and liabilities of the society, the expenses of winding-up, and the adjustment of the rights of the contributories among themselves, shall be qualified as follows –

(a) no person who has ceased to be a member 2 or more years before the date of the order of the registrar under section 39 shall be liable to contribute;

(b) no person shall be liable to contribute in respect of any debt or liability contracted after he ceased to be a member;

(c) no person who is not a member shall be liable to contribute unless it appears to the registrar that the contributions of the present members are insufficient to satisfy the just demands on the society;

(d) no contribution shall be required from any person exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a past or present member.

(2) Subsection (1) shall apply in relation to the estate of a deceased member or of a person who at the time of his death was a past member as it applies to a present or past member as the case may be.

47A. Revival of dissolved society

(1) If a co-operative society has been dissolved under this Part, any interested person may apply to the registrar to have the co-operative society revived by submitting to the registrar:

(a) an application for revival in such form as the registrar may prescribe; and

(b) any other information as the registrar may require.

(2) If the registrar receives an application for revival under subsection (1) and the registrar is satisfied that the co-operative society is in compliance with this Act, the registrar may:

(a) issue a certificate of revival to the co-operative society; and

(b) impose any conditions on the co-operative society that he or she considers necessary with respect to the society.

(3) A co-operative society is revived on the date shown in the certificate of revival.

(4) If a co-operative society is revived under this section, it:

(a) has all the rights and privileges of a registered society and is taken to be a registered society; and

(b) is liable for the obligations, that it would have had if it had not been dissolved, subject to any terms that may be imposed by the registrar and to any rights acquired by any person after its dissolution.

PART 8 – SURCHARGE AND ATTACHMENT

48. Registrar may order repayment or restoration of property due to a society

(1) Where, in the course of an audit, inquiry or inspection or the winding-up of a registered society, it appears that any money or other property is due to the society from any person who has taken part in the setting up or management of the society or from any past or present officer of the society, the registrar may, of his own motion or upon the application of the committee or the liquidator or any creditor or contributory of the society, examine the conduct of any such person and make an order requiring him –

(a) to repay such money or part thereof with such interest as the registrar thinks just;

(b) to restore such other property or part thereof; or

(c) to pay to the society such sum as the registrar thinks just by way of compensation.

Before making any such order against any person the registrar shall give that person an opportunity of being heard and of showing cause why such order should not be made.

(2) Where an order under subsection (1) has not been complied with, any money or property mentioned therein may be recovered by the society on application to the Magistrates' Court having jurisdiction in the area in which the registered office of the society is situated or in which the person against whom the order was made resides or carries on business, as though it were a fine imposed by such court.

(3) Nothing done in pursuance of subsections (1) or (2) shall bar the institution or maintenance of a prosecution of any person in respect of any offence.

49. Attachment of property

Where the registrar is satisfied that any person, with intent to avoid or delay the execution of any order made against him under section 43 or 48 or of any decision given in a dispute referred to the registrar or to any arbitrators under this Act, is about to dispose of the whole or any part of his property, the registrar may, unless adequate security is furnished, order the conditional attachment of such property, and such attachment shall have the same effect as if made by the court.

50. Appeal against order under section 49

Any person aggrieved by any order of the registrar made under section 49 may appeal within 21 days from the date of such order to the court of competent jurisdiction:

Provided that, unless the court otherwise decides, the making of such appeal shall not prevent the enforcement of the order pending the determination of the appeal by the court.

PART 9 – DETERMINATION OF DISPUTES

51. Determination of disputes

(1) If any dispute touching the business of a registered society arises –

(a) among members, past members and persons claiming through members, past members and deceased members;

(b) between any person mentioned in paragraph (a) and the society, its committee, or any officer of the society;

(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.

(2) 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 a dispute touching the business of the society within the meaning of this subsection.

(3) A decision of the registrar under subsection (1), shall be final, and shall be enforceable in like manner as a judgment of the court.

52. Case stated on question of law

Notwithstanding anything contained in section 51, the registrar, at any time when proceeding to a decision under this Act, or the Minister, at any time when an appeal is made to him against any decision of the registrar under this Act, may refer any question of law arising out of such decision for the opinion of the Supreme Court. The opinion of the Supreme Court given on such question shall be final.

PART 9A – SHARING OF INFORMATION

52A. Meaning of confidential information

For the purposes of this Part, "confidential information" is information supplied to or obtained by the registrar in the performance of the registrar's functions or the exercise of the registrar's powers under this Act, but does not include information that:

(a) can be disclosed under any provision of this Act; or

(b) is already in the public domain; or

(c) consists of aggregate data from which no information about a specific person or business can be identified.

52B. Disclosure of confidential information

(1) The registrar may disclose confidential information if the disclosure:

(a) is required or authorised by the Court; or

(b) is made for the purpose of performing a function or exercising a power under this Act; or

(c) is made to the Financial Intelligence Unit for the purpose of performing a function or exercising a power under the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014; or

(d) is made to a supervisor within the meaning of the Anti-Money Laundering and Counter-Terrorism Financing Act No. 13 of 2014 for the purpose of performing a function or exercising a power under that Act; or

(e) is made to a law enforcement agency for the purpose of investigating or prosecuting an offence against a law of Vanuatu for which the maximum penalty is a fine of at least VT 1 million or imprisonment for at least 12 months; or

(f) is made to a law enforcement agency for the purpose of investigating or taking action under the Proceeds of Crime Act [CAP 284]; or

(g) is made to a domestic regulatory authority for the purpose of carrying out its regulatory functions; or

(h) is made to the Sanctions Secretariat for the purpose of performing a function or exercising a power under the United Nations Financial Sanctions Act No. 6 of 2017; or

(i) is made to a foreign government agency in accordance with section 52C.

(2) A person who contravenes subsection (1) commits an offence punishable upon conviction by:

(a) for an individual-a fine not exceeding VT 15 million or imprisonment for a term of 5 years, or both; and

(b) for a body corporate- a fine not exceeding VT 75 million.

52C. Disclosure to foreign government agency

The registrar may disclose confidential information to a foreign government agency if:

(a) the registrar is satisfied that the disclosure is for the purpose of:

(i) performing a function or exercising a power under the foreign government agency's own regulatory legislation, including investigating a breach of that legislation; or

(ii) performing a function or exercising a power under the foreign jurisdiction's anti-money laundering and counter-terrorism financing regulation and supervision laws; or

(iii) performing a function or exercising a power under the foreign jurisdiction's financial sanctions laws; or

(iv) investigating or prosecuting a foreign serious offence or a foreign tax evasion offence; or

(v) investigating or taking action under the foreign jurisdiction's proceeds of crime laws; and

(b) the registrar is satisfied that:

(i) the information will be used for a proper regulatory, supervisory or law enforcement purpose; and

(ii) the agency is subject to adequate restrictions on further disclosure.

PART 9B – VANUATU CO-OPERATIVE LEADERSHIP AND MANAGEMENT COUNCIL

52D. Establishment of the Council

The Vanuatu Co-operative Leadership and Management Council is established.

52E. Functions of the Council

(1) The functions of the Council are to advise the Minister generally, and to make recommendations, with regards to:

(a) the policy for the development of co-operative societies in Vanuatu; and

(b) the application of any of the provisions of this Act or any other law on matters affecting co-operative societies; and

(c) the rules made under this Act; and

(d) any matter concerning the Co-operative Development Fund; and

(e) any matter referred to the Council by a registered society, a registered probationary society or member of a registered society that relates to promoting the development of co-operative societies; and

(f) any decision the Minister is required to take under this Act.

(2) The Council may also engage with the Government, the private sector and stakeholders, and engage in advocacy on behalf of co-operative societies.

52F. Composition of the Council

(1) The Council consists of 8 persons to be appointed by the Minister as follows:

(a) 6 persons representing each province nominated by the registered societies in each province; and

(b) 1 person nominated by the Minister; and

(c) the registrar or his or her representative.

(2) The meetings to elect the persons under paragraph (1)(a) must be organised by the tertiary societies acting jointly except:

(a) if only 1 tertiary society has been formed and registered under this Act, the elections must be organized by that tertiary society and the Department; or

(b) if no tertiary society has been formed and registered under this Act, the elections must be organized by the Department.

(3) The members of the Council are to elect amongst themselves the Chairperson and the Deputy Chairperson.

52G. Term of office and conditions of service of members of the Council

(1) Subject to section 52F, the members of the Council are to be appointed for a period of 2 years.

(2) A member of the Council is eligible for re-appointment and must not hold office for more than 2 consecutive terms.

(3) A member of the Council may resign by notice in writing to the Minister.

(4) The Minister may, by notice in writing, remove a member of the Council from office for:

(a) serious misconduct; or

(b) permanent incapacity; or

(c) engaging in any activity that may undermine the integrity of the Council.

(5) The Minister is to prescribe, on the recommendation of the registrar, the sitting allowances for the members of the Council.

52H. Funding for the Council

The expenses of the Council must be paid out of the budget of the Department.

52I. Meetings of the Council

(1) The Council is to meet at least 2 times a year and is to hold any other meetings as are necessary for the proper performance of its functions.

(1A) However, the Council must not meet more than 4 times a year.

(2) The Chairperson is to preside over all meetings of the Council. If the Chairperson is absent the Deputy Chairperson is to preside over that meeting.

(3) At a meeting of the Council a quorum consist of the Chairperson or Deputy Chairperson and 5 other members present at that meeting.

(4) The decisions of the Council are made by a majority vote of members present and voting.

(5) If there is a tie vote at a meeting of the Council, the Chairperson has a casting vote.

(6) Despite subsection (4), a decision of the Council may be made by letter, fax, or electronic message by the majority of the members of the Council.

(7) The decision made under subsection (6) is valid and effective as if it had been made at a meeting of the Council duly constituted.

(8) A decision of the Council is valid and effective as if it had been made at a meeting of the Council duly constituted if:

(a) a telephone or video meeting is held and a majority of the members of the Council are present; and

(b) a decision is made by a majority votes of the members present and voting.

(9) The Department must meet the reasonable travel expenses of members attending meetings of the Council.

PART 10 – RULES

53. Rules

(1) The Minister may by order make such rules as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(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, the fees to be paid and 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 payment to be made and interest to be acquired before exercising rights of membership;

(c) prescribe the extent to which a registered society may limit the number of its members;

(d) 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;

(e) provide for general meetings of members and for the procedure at such meetings and the powers to be exercised by such meetings;

(f) 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;

(g) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(h) prescribe the conditions to be observed by a registered society applying for financial assistance from the Government;

(i) prescribe the payments to be made, the conditions to be complied with, 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;

(j) provide for the mode in which the value of the interest of a deceased member or a member who has become of unsound mind and incapable of managing his affairs shall be ascertained and for the nomination of a person to whom such interest may be paid or transferred;

(k) 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 a registered society;

(l) prescribe the conditions under which profits may be distributed to the members of the society and the maximum rate of dividend which may be paid by societies;

(m) prescribe the accounts and books to be kept by a registered society, and for the periodical publication of a balance sheet of a registered society;

(n) provide for the audit of accounts of registered societies and for the charges, if any, to be made for such audit and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of societies and for the promotion of the co-operative movement and provide for the administration of such a fund;

(o) provide for the formation and maintenance of a register of members and of a register of shares;

(p) provide for the inspection of documents and registers at the registrar's office and the issue of copies of such documents or registers and the fees therefor;

(q) prescribe a model agreement to guide the formulation of a joint venture partnership between a registered society and a foreign investor;

(r) prescribe the fees to be paid in respect of:

(i) the issue of a registration certificate and registration of by-laws; and

(ii) the registration of amendments to by-laws; and

(iii) a search in the registration register; and

(iv) the issuing of certified or uncertified copies of documents; and

(v) the registration of charges; and

(vi) the inspection of the register of charges; and

(vii) the provision of training by the Department to members, committee members and employees of registered societies; and

(viii) any other matter in respect of which a fee is payable under this Act.

(3) The Judicial Committee shall by order 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 Act.

(4) The Minister may, in the case of a primary society, vary or waive any of the fees under paragraph 53(2)(r).

(5) The Minister may, under subsection (2), prescribe different fees for the different types of societies.

53A. By-laws

A registered society must ensure that its by-laws are consistent with the provisions of this Act.

PART 11 – MISCELLANEOUS

54. Powers to exempt any society from requirements as to registration

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

55. Power to exempt societies from provisions of the Act

The Minister may by general or special order exempt any registered society or class of societies from any of the provisions of this Act, or may direct that such provisions shall apply to any society or class of societies with effect from such date or with such modifications as may be specified in the order.

56. Power to exempt from stamp duty and registration fees

The Minister may by order exempt any registered society or class of registered societies –

(a) from any stamp duty with which 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 chargeable;

(b) from any fee payable on the registration under this Act.

57. Provision for school co-operatives

(1) Despite anything contained in this Act, the registrar must not register a school co-operative society except with the written consent of the Minister after consultation with the Minister responsible for education.

(1A) Despite section 23, a student must have attained the age of 13 years in order to qualify for membership of a school co-operative society.

(2) In subsection (1) the expression "school co-operative society" means a society trading in accordance with co-operative principles established within a school for general education or similar educational institution whose membership is restricted to pupils and members of the staff of such school or institution.

58. Dissolution of committee

(1) If the registrar is satisfied that the committee of a registered society is not performing its functions in a proper and businesslike manner and, that in the circumstances of the case, it is fit for him to do so he may by order in writing –

(a) dissolve the committee; and

(b) direct that the affairs of the society shall be administered by a person appointed by him for that purpose.

(2) Before the making of an order under subsection (1) the registrar shall –

(a) notify the committee of his intention to make such an order and give the committee an adequate opportunity to state its case; and

(b) if not satisfied with any objections made by the committee to the making of such order, summon a general meeting of the members of the society to hear any views expressed thereat concerning the making of such order.

(3) Any member of the committee aggrieved by the order made under subsection (1) may appeal within 21 days from the date of that order to the Minister whose decision shall be final.

(4) Every direction referred to in subsection (1)(b) shall have effect for such period not exceeding 2 years as shall be specified in the order containing such direction:

Provided that the registrar may from time to time by order extend that period, so however, that the aggregate period during which the direction shall have effect shall not exceed 4 years.

(5) Subject to the general supervision of the registrar the person appointed to administer the affairs of the society shall have all the powers and functions conferred on the committee under this Act and under the by-laws of the society, and shall, in so far as it shall be practicable, arrange for the election or appointment of a new committee of the society before the expiry of the order referred to in subsection (1).

(6) The registrar may fix the remuneration payable to the person appointed as aforesaid and such remuneration together with any expenses properly incurred by such person in the management of the affairs of the society shall be paid out of the funds of the society.

(7) If a registered society is indebted to a bank no order under this section shall be made by the registrar without the bank being consulted on all particulars of the intended order.

(8) Nothing in this section shall affect the power of the registrar to cancel the registration of the society under section 11A or 39, or conduct an on-site inspection under section 37A or hold an inquiry under section 38.

58A. Foreign investment

(1) This section applies to a registered society other than a savings and credit co-operative society.

(2) Despite the provisions of the Vanuatu Foreign Investment Promotion Act [CAP 248], an investment agreement between a registered society and a foreign investor may only be in the form of a joint venture agreement.

(3) A joint venture agreement between a registered society and a foreign investor:

(a) must not be in a reserved investment area under the Vanuatu Foreign Investment Promotion Act [CAP 248]; and

(b) must be in accordance with the co-operative principles.

(4) A joint venture agreement under this section is subject to the approval of the registrar and any limitations that the registrar may impose, for the purpose of operating and carrying on the joint venture enterprise created under the joint venture agreement.

(5) The rules may prescribe an agreement to guide the formulation of a joint venture agreement between a registered society and a foreign investor.

58B. Societies may form joint enterprise or enter into joint ventures

(1) Registered societies may form a joint enterprise to operate a business if it is necessary or desirable for the efficient operation of the business.

(2) A joint enterprise formed under subsection (1) is subject to the approval of the registrar and any limitations as the registrar may impose.

(3) Registered societies which form a joint enterprise under subsection (1), may form a joint committee for the purpose of managing the joint enterprise.

(4) The joint committee must not have separate representation either in a tertiary society or the national apex society.

(5) A registered society may join with private or public company to form a joint venture enterprise, subject to the written approval of the registrar.

58C. Co-operative Development Fund

(1) The Minister may establish a fund to be known as the Co-operative Development Fund ("the Fund") to promote and facilitate the social and economic development of Vanuatu by providing financial and other assistance to registered societies.

(2) The Fund may receive money from:

(a) monies appropriated by Parliament; and

(b) international donor funds; and

(c) any other organisation or body in or outside Vanuatu.

58D. Prohibition from interfering with management of a society

(1) A member of a registered society who is appointed or elected to a political position is deemed to have conflict of interest and is not eligible for election as a member of the committee of a registered society.

(2) If:

(a) a person through his or her position unreasonably interferes with the management or affairs of a registered society; and

(b) as a result of the interference, the registered society suffers loss or fails to perform its functions;

the person commits an offence punishable on conviction to a fine not exceeding VT 75,000,000.

(3) For the purpose of this section:

(a) "political position" means a position of provincial councillor, municipal councillor, mayor, member of parliament or any other person serving in a leadership position in a political party;

(b) "interfere" means any act of interfering, hindering, obstructing, disturbing, blocking or impeding a registered society from properly performing its duties under this Act or the rules.

58E. Registrar may require financial institution to provide information

Despite any other Act, the registrar may, if the registrar considers it necessary to do so require any financial institution licensed under the Financial Institutions Act [CAP 254] to:

(a) furnish any information regarding the transactions of any registered society with the financial institution; and

(b) provide a copy showing the accounts of the registered society with the financial institution from the ledger kept by the financial institution; and

(c) produce any cheques paid to the credit of the registered society or endorsed by the registered society.

58F. Special provisions for certain types of registered societies

Schedule 2 provides for certain matters for certain types of registered societies.

59. Special committee members of the national apex society and tertiary societies

(1) The Minister may appoint a person to be a special member of the committee of the national apex society or of a tertiary society if such society is in receipt of financial assistance from the Government or if the Minister considers such appointment to be justified in the interest of the national economy.

(2) For the purpose of subsection (1) a society shall be deemed to be in receipt of financial assistance from the Government –

(a) if within the 3 years immediately preceding the making of such appointment the society has received any grant of money from the Government;

(b) if any money has been lent to the society by the Government and has not been repaid;

(c) if any loan made to the society has been guaranteed by the Government and either the guarantee is still outstanding or the guarantee has been honoured by the Government and the society has not paid to the Government all sums, including any interest thereon, paid by the Government under the terms of the guarantee.

(3) The number of special members appointed under subsection (1) shall not exceed one-third of the number of other members (including the chairman and vice chairman, if any) of the committee; where the number of the members is not divisible by 3 "one-third" shall mean the nearest integer below one-third.

(4) An appointment made under subsection (1) shall continue in force until it is determined by the Minister.

(5) A special member appointed under subsection (1) may require that any decision taken by the committee of which he is a member or by the general meeting of the national apex society or tertiary society concerned shall not have effect until it has been approved by the Minister and any decision in respect of which such requirement has been made shall be of no force or effect and shall not be acted upon until the Minister has signified his approval thereof.

(6) In addition to the power referred to in subsection (5) a special member shall have the same powers, rights and functions as any other member of the committee to which he has been appointed.

59A. Indemnity from liability

No person is subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Act.

60. General offences by societies, etc.

If any registered society, or any officer or member thereof, or any other person –

(a) fails to give any notice, send any return or other document, do anything or allow anything to be done which that society, officer, member or other person is by this Act required to give, send, do or allow to be done, as the case may be; or

(b) wilfully neglects or refuses to do any act, or to furnish any information, required for the purposes of this Act by the registrar or by any other person authorised under this Act, or does anything forbidden by this Act; or

(c) makes a return required for the purposes of this Act, or wilfully furnishes information so required which is in any respect false or insufficient,

that society, officer, member or other person, as the case may be, shall be liable to a fine not exceeding VT 15,000,000.

61. Offences by societies to be also offences by officers, etc.

Every offence committed by a registered society under this Act shall be deemed to have been also committed by every officer of that society bound by the society's by-laws to fulfil the duty of which that offence is a breach or if there is no such officer, by every member of the committee who is not proved to have been ignorant, or to have attempted to prevent, the commission of that offence.

62. Punishment of fraud or misappropriation

(1) Subject to subsection (2), any person who obtains possession by false representation of any property of a registered society or, having any such property in his possession, withholds or misapplies it to purposes which are not authorised by the society's by-laws or which are not in accordance with this Act, shall be liable –

(a) to a fine not exceeding VT 30,000,000; and

(b) to be ordered to deliver up that property or to repay all moneys improperly applied;

and, in default of such delivery or repayment or of the payment of any such fine, to imprisonment for a term not exceeding 12 months.

(2) If on proceedings under subsection (1) it is not proved that the person charged acted with any fraudulent intent, he may be ordered to deliver up any property belonging to the society or to repay any money improperly applied but shall not be liable to conviction under that subsection.

63. Restriction of the use of the word "co-operative"

(1) A person must not in doing business in Vanuatu:

(a) use the word "co-operative" or any abbreviation or derivation as part of the name of the business or with respect to goods, wares, merchandise or services or the person's method of conducting business; or

(b) hold himself or herself or his or her business to be a registered society unless the person or his or her business is registered under this Act.

(2) If a person contravenes subsection (1), the person commits an offence and is liable on conviction:

(a) in the case of a natural person - to a fine not exceeding VT 10,000,000 or imprisonment for a term not exceeding 3 years or both; or

(b) in the case of a body corporate - to a fine not exceeding VT 50,000,000.

64. Continuing offences

Every act or default under this Act constituting an offence shall constitute a new offence in every week during which it continues.

SCHEDULE 1

(section 5(3))

MATTERS TO BE PROVIDED FOR IN SOCIETY'S BY-LAWS

1. The name of the society which shall comply with the requirements of section 4.
2. The objects of the society.
3. The place which is to be the registered office of the society to which all communications and notices to the society may be addressed.
4. The terms of admission of members that should be in accordance with the co-operative principles..
5. The mode of holding meetings, the right of voting and the mode of amending the by-laws.
6. The appointment and removal of the committee and of managers and other officers and their respective powers and remuneration.

7. Determination whether the society may contract loans or receive moneys on deposit subject to sections 30 and 31; and, if so, under what conditions, under what security, and to what limits of amount.

8. Determination whether the shares or any of them shall be transferable, and provision for the form of transfer and registration of the shares, and for the consent of the committee thereto; determination whether the shares or any of them shall be withdrawable, and provision for the mode of withdrawal and for payment of the balance due thereon on withdrawing from the society.

9. Determination whether and, if so, how members may withdraw from the society.

10. The mode of application of the profits of the society.

11. Determination whether and, if so, by what authority, and in what manner, any part of the society's funds may be invested.

SCHEDULE 2

(Section 58F)

SPECIAL PROVISIONS RELATING TO CERTAIN TYPES OF REGISTERED SOCIETIES

PART 1 – SAVINGS AND CREDIT CO-OPERATIVE SOCIETIES

1. Application of this Part

This Part applies to a registered savings and credit co-operative society.

2. Objective of a savings and credit co-operative society

A registered savings and credit co-operative society is solely dedicated to the promotion of thrift and saving among its members by receiving and investing their savings and creating of a source of credit for necessary or productive purposes for members at competitive rates of interest through financial intermediation.

3. Name and common bond of a savings and credit co-operative society

(1) The words "Savings and Credit" must form part of the name of a registered savings and credit co-operative society.

(2) The by-laws of a registered savings and credit co-operative society must prescribe the common bond of occupation, association or residence to which the membership of the registered savings and credit co-operative society is limited, and the common bond must be clearly defined.

4. By-laws of a savings and credit co-operative society

In addition to the requirements in Schedule 1, the by-laws of a registered savings and credit co-operative society must provide for the following:

(a) the appointment of a credit committee; and

(b) the determination of the rate of interest for loans; and

(c) the maximum period which can be granted for the repayment of a loan; and

(d) the purpose of loans; and

(e) the consequences of default in payment of any sum due on account of shares or deposits or loans and the consequences of failure to use a loan for the purpose for which it was granted; and

(f) any other matters consistent with the rules relating to a registered savings and credit co-operative society .

PART 2 – CONSUMER AND MARKETING SOCIETIES

1. Application of this Part

This Part applies to a registered consumer and marketing society.

2. Restriction on membership of committee

(1) An employee of a registered consumer and marketing society must not be a member of the committee of the society.

(2) A registered consumer and marketing society must provide in its by-laws that an elected member of the committee must not be an employee of the registered consumer and marketing society.

Table of Amendments (since the Revised Edition 1988)

1	*Amended by Acts 10 of 2011; 34 of 2017 and 19 of 2019*
1A	*Inserted by Act 34 of 2017*
1B	*Inserted by Act 19 of 2019*
Part 2(heading)	*Amended by Act 19 of 2019*
2	*Substituted by Acts 10 of 2011; 19 of 2019*
2A and 2B	*Inserted by Act 19 of 2019*
Part 2A	*Inserted by Act 19 of 2019*
3	*Substituted by Act 19 of 2019*
3A	*Inserted by Act 19 of 2019*
4(1)	*Substituted by Act 19 of 2019*
5(2)	*Substituted by Act 19 of 2019*
5(3)	*Amended by Act 19 of 2019*
5(4)	*Inserted by Act 34 of 2017*
7	*Substituted by Act 34 of 2017*
7(1)(ba)	*Inserted by Act 19 of 2019*
7(2)(ba) – (be)	*Inserted by Act 19 of 2019*
9A	*Inserted by Act 10 of 2011*
9B and 9C	*Inserted by Act 19 of 2019*
10(3)	*Substituted by Act 19 of 2019*
11A	*Inserted by Act 34 of 2017*
23	*Substituted by Act 19 of 2019*
26	*Substituted by Act 19 of 2019*
Part 4A	*Inserted by Act 19 of 2019*
34	*Substituted by Act 19 of 2019*
34A and 34B	*Inserted by Act 19 of 2019*
36A	*Inserted by Act 19 of 2019*
37	*Substituted by Act 34 of 2017*
37(2)(c)	*Inserted by Act 19 of 2019*
37A	*Inserted by Act 34 of 2017*
37B	*Inserted by Act 34 of 2017*
Part 6A	*Inserted by Act 19 of 2019*
39(1)(b) and (c)	*Substituted by Act 34 of 2017*
39(1)(ca),(cb) and (cc)	*Inserted by Act 34 of 2017*
39(2) and (3)	*Substituted by Act 34 of 2017*
39(3A)	*Inserted by Act 34 of 2017*
40	*Repealed by Act 34 of 2017*
47A	*Inserted by Act 19 of 2019*
Part 9A (s52A to s52C)	*Inserted by Act 34 of 2017*
Part 9B	*Inserted by Act 19 of 2019*
53(2)(q) and (r)	*Inserted by Act 19 of 2019*
53(4) and (5)	*Inserted by Act 19 of 2019*
53A	*Inserted by Act 19 of 2019*
57(1)	*Substituted by Act 19 of 2019*
58(8)	*Amended by Act 34 of 2017*
58A – 58F	*Inserted by Act 19 of 2019*
59(heading)	*Amended by Act 19 of 2019*
59(1)	*Amended by Act 19 of 2019*
59(5)	*Amended by Act 19 of 2019*
59(7)	*Repealed by Act 19 of 2019*
59A	*Inserted by Act 34 of 2017*
60	*Amended by Act 19 of 2019*
62(1)	*Amended by Act 19 of 2019*
62(1)(a)	*Amended by Act 19 of 2019*
63	*Substituted by Act 19 of 2019*
Schedule (Heading)	*Amended by Act 19 of 2019*
Schedule 1	*Amended by Act 19 of 2019*
Schedule 2	*Inserted by Act 19 of 2019*