

George V,
No. 50, 1932. CO-OPERATION (AMENDMENT)
ACT.

Act No. 50, 1932.

An Act to amend the Co-operation Act, 1923-1931, in certain respects; to amend the Companies Act, 1899, and the Stamp Duties Act, 1920-1931; and for purposes connected therewith. [Assented to, 21st December, 1932.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

short title.

- 1.** (1) This Act may be cited as the "Co-operation (Amendment) Act, 1932."
(2) The Co-operation Act, 1923-1931, is in this Act referred to as the Principal Act.
(3) The Principal Act, as amended by this Act, may be cited as the Co-operation Act, 1923-1932.

2.

2. The Principal Act is amended by omitting section No. 50, 1932.
 seventy and by inserting in lieu thereof the following Amendment
 new sections:— of Act No.
 1, 1924, s. 70.

70. (1) Any society may, by a special resolution Registration
 as defined in section eighty of this Act, determine of society
 that the society shall apply to be registered as a as company.
 company under the Companies Act, 1899.

(2) Before any such application is made pursuant to this section, the society shall, by special resolution—

- (a) determine under what name the society shall apply to be registered as a company, and may determine that such name shall be different from the name of the society;
- (b) adopt a memorandum of association for the said company and also articles of association where articles of association are necessary or deemed desirable.

(3) A society shall not be so registered under a name which includes the word "co-operative" or any other word importing a similar meaning.

(4) Every such memorandum of association—

- (a) shall contain the particulars prescribed by and otherwise be in accordance with the provisions of the Companies Act, 1899;
- (b) shall state as the objects of the company the objects of the society: Provided always that where the society immediately prior to its registration as a society under this Act had been a company registered or deemed to be registered under the Companies Act, 1899, such memorandum of association shall state as the objects of the company the objects which such company had before it became registered under this Act and before it made such alterations, if any, to its objects as were made for the purpose of becoming registered under this Act;
- (c) when delivered for registration shall have as signatories at least seven persons who are members of the society.

(5)

No. 50, 1932.

(5) The provisions of the Companies Act, 1899, shall apply with respect to—

- (a) the necessity for articles of association;
- (b) the applicability of the regulations contained in the table marked A in the Second Schedule;
- (c) any articles of association adopted for the said company.

(6) (a) In the case of a society the liability of whose members is limited by shares the memorandum of association and the articles of association (if any) as so adopted shall not impose upon the members of the company who were members of the society at the date of its registration as a company any greater or different liability to contribute to the assets of the company than the liability to which they were subject as members of the society, and in no case shall such memorandum of association or articles of association as so adopted deprive any member of the company of any preferential rights with respect to dividend or capital to which he was entitled as a member of the society at the date of its registration as a company.

(b) In the case of a society the liability of whose members is unlimited, the registration of the society, pursuant to this section, as a company limited by shares or by guarantee or partly by shares and partly by guarantee, shall not affect the liability of the members of the company who were members of the society at the date of such registration for all such debts and obligations of the society whether present, future or contingent existing at the date of such registration for which such members would have been liable if the society had not been so registered.

(7) A society may apply to be registered as a company under the Companies Act, 1899, in the manner following:—

- (a) the society shall register with the Registrar of Co-operative Societies a copy of the special resolutions passed by the society pursuant to subsections one and two of this section;

(b)

(b) the society shall deliver to the Registrar of Joint Stock Companies—

- (i) an application by the society under its common seal to be registered under the Companies Act, 1899;
- (ii) a copy of the said special resolutions verified under the hand of the Registrar;
- (iii) the memorandum of association adopted for the said company and the articles of association (if any);
- (iv) a list showing the names, addresses and occupations of all persons who, on a day named in such list (being not more than six clear days before the day of such delivery), were members of the society, and also showing with respect to each such person the number, nominal amount and amount credited as paid up of any shares held by such person in the society. The list shall be accompanied by a statutory declaration of a director of the society verifying the same.

(8) The Registrar of Joint Stock Companies shall retain and register such memorandum of association and articles of association (if any), and shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited, and such registration, certificate and memorandum of association and articles of association (if any) shall have the same operation and effect, and the provisions of the Companies Act, 1899, shall apply to the said company and the members, contributories and creditors thereof as if the said company had been registered in the manner prescribed by the said Act.

(9) When a society is so registered as a company it shall cease to be registered as a society under this Act. The Registrar of Joint Stock Companies shall give notice of every such registration to the Registrar of Co-operative Societies, who shall remove the name of the society from the register of societies under this Act.

(10)

(10) (a) Upon the registration of the society as a company all persons who were members of the society at the date of such registration shall be deemed to become members of the company, and their names shall be entered upon the register of members of the company.

(b) Every member of the society at the date of such registration who held shares in the said society shall be deemed to be the holder of shares in the capital of the company equal in number and nominal value to the shares whereof he was then registered as the holder in the register of members of the society, and entry shall be made in the register of members of the company accordingly, and he shall thereupon be liable for the amount, if any, unpaid on his shares, of which the register of the company shall be *prima facie* evidence.

(11) If no persons are named as directors of the company in the articles of association of the company when a society is registered as a company under this section the persons who were directors of the society at the date of such registration shall be the first directors of the company.

(12) A certificate of incorporation of a society as a company given by the registrar or by any assistant registrar of Joint Stock Companies shall be conclusive evidence that all the requirements of this section and of the Companies Act, 1899, in respect of registration under that Act have been complied with.

(13) (a) When a society is registered as a company pursuant to this section the corporation constituted by the company as so registered shall be deemed to be the same entity as the corporation constituted by the society for all purposes whatsoever.

(b) In particular and without restricting the generality of paragraph (a) of this subsection upon such registration all property and proprietary and other rights whatsoever of the society shall become vested in and exercisable and enforceable by the company, and all liabilities and obligations of the society, whether certain or contingent and whether then existing or capable of arising at a future time, and whether contractual or other, and all rights against

against the society and all penalties incurred by the society, shall be enforceable and recoverable against the company, and all persons who would incur any liability for anything if done or omitted by, or for any money if lent or credit if given to, or for any loss if incurred by, or for any transaction if had with the society, shall incur the same liability if such thing shall be done or omitted by, or money lent or credit given to, or loss incurred by, or transaction had with the company.

(14) Any reference in this section to the Companies Act, 1899, shall include any enactment amending, consolidating, or replacing the same.

70A. Where a society applying for registration pursuant to the provisions of section seventy was prior to its registration as a society under this Act registered or deemed to be registered as a company under the Companies Act, 1899, and where in such case stamp duty had been paid upon such prior registration in respect of the amount of the nominal capital of such company, or if subsequently increased upon the amount of its nominal capital as so increased, the duty so paid shall be taken into account and deducted in assessing the duty payable on its registration in pursuance of the said section.

3. (1) The Principal Act is further amended by inserting in subsection one of section sixty-five after the word "property" the words "or of its uncalled capital."

(2) This section shall be deemed to have commenced on the thirty-first day of December, one thousand nine hundred and twenty-three.