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Co-operative Societies (Special Provisions) Act, No. 35 of 1970

Date of Assent : December 31, 1970

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Co-operative Societies (Special Provisions)

Act, No. 35 of 1970

L. D.—O. 38/70.

AN ACT TO MAKE SPECIAL PROVISIONS FOR THE IMPLEMENTATION OF A SCHEME TO REORGANIZE THE CO-OPERATIVE MOVEMENT, IN PARTICULAR FOR THE DISSOLUTION OF SOCIETIES AND THE AMALGAMATION OF SOCIETIES, AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: December 31, 1970]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Co-operative Societies (Special Provisions) Act, No. 35 of 1970.

Short title.

2. (1) Where, for the purpose of reorganizing the co-operative movement, the Registrar thinks it necessary to do so, he may by Order published in the *Gazette* amalgamate one or more societies (such a society is hereinafter referred to as an "amalgamating society") registered under the Co-operative Societies Ordinance with any other society (hereinafter referred to as a "principal society") registered under the aforesaid Ordinance.

Amalgamation
of registered
societies.

(2) An Order made under sub-section (1) shall have the effect of cancelling the registration of each amalgamating society.

(3) With effect from the date on which any amalgamating society is amalgamated with a principal society under sub-section (1)—

(a) all the property, movable or immovable, of each such amalgamating society on the day immediately preceding the date of such amalgamation shall be transferred to and vested in the principal society;

(b) all the rights, debts, liabilities and obligations of each amalgamating society on the day immediately preceding the date of such amalgamation shall be transferred to the principal society;

(c) all contracts, deeds, bonds, agreements and other instruments which subsist or have effect on the day immediately preceding the date of

such amalgamation and to which any amalgamating society is a party shall have effect against or in favour of the principal society, as the case may be, and may be enforced as fully and effectually as if, instead of such amalgamating society, the principal society had been a party thereto; and

- (d) all suits, appeals or other legal proceedings instituted by or against any amalgamating society and pending on the day immediately preceding the date of such amalgamation shall not abate or be discontinued or be in any way prejudicially affected by reason of the amalgamation of such amalgamating society, and may be continued and enforced by or against the principal society, as the case may be:

Provided that nothing in paragraph (c) of this sub-section shall be construed as curtailing in any manner the right of a principal society to terminate the services of, or to vary the conditions of service of, any employee of the principal society who, on the day immediately preceding the date of such amalgamation, was an employee of any amalgamating society.

Cancellation,
and effect of
cancellation, of
registration of
society.

3. (1) Where, for the purpose of reorganizing the co-operative movement, the Registrar is of opinion that any society registered under the Co-operative Societies Ordinance (hereinafter referred to as the "principal enactment") should be dissolved, he may, notwithstanding the provisions of the principal enactment, cancel the registration of such society.

(2) There shall be no appeal from an order made by the Registrar under sub-section (1).

(3) Where the registration of a society is cancelled under sub-section (1), such society shall, with effect from the date of such order, cease to be a corporate body.

Appointment of
liquidators of
dissolved
societies.

4. (1) Where the registration of any society is cancelled under section 3, the Registrar may appoint one or more persons to be the liquidator or liquidators of such society (hereinafter referred to as a "dissolved society").

(2) With effect from the date of the appointment of a liquidator or liquidators of a dissolved society all the property of such society and all privileges conferred on such society by or under the principal enactment shall vest in such liquidator or liquidators.

5. (1) A liquidator appointed under this Act shall, subject to the guidance and control of the Registrar and to any limitations imposed by the Registrar by order under section 6, have power to—

Powers of
liquidator.

- (a) determine from time to time the contributions to be made by members and past members or by the estates of deceased members of the society to its assets;
- (b) appoint a day by proclamation or notice before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
- (c) decide any question of priority which arises between creditors;
- (d) refer for arbitration under section 53 of the principal enactment any dispute of any description mentioned in that section (references therein to the society being construed as references to the liquidator), and 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) compromise any claim by or against the society provided the sanction of the Registrar has first been obtained;
- (h) call such general meetings of members as may be necessary for the proper conduct of the liquidation;

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- (i) take possession of the books, documents and other assets of the society;
- (j) sell the property of the society;
- (k) carry on the business of the society so far as may be necessary for winding it up beneficially:

Provided that nothing herein contained shall entitle the liquidator of a credit society to issue any loan; and

- (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar.

(2) Subject to such rules as may be made in that behalf, any liquidator appointed under this Act shall, in so far as such powers are necessary for carrying out the purposes of this section, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a District Court under the Civil Procedure Code.

(3) Where under paragraph (d) of sub-section (1), any dispute is referred by a liquidator for arbitration under section 53 of the principal enactment, the provisions of the aforesaid section 53 shall apply in respect of all matters relating to such reference and the provisions of section 53A of that enactment shall, in any appropriate case, apply to the enforcement of any decision or award made under the aforesaid section 53.

Power of
Registrar to
control
liquidations.

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

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents, and assets of the society;
- (d) by order in writing limit the powers of a liquidator under section 5;
- (e) require accounts to be rendered to him by the liquidator at his discretion;

(f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society;

(g) make order for the remuneration of the liquidator;

(h) refer for arbitration any dispute (not being a dispute so referable under section 5 (1) (d)) between the liquidator and any third party, if such party consents in writing to be bound by the decision of the arbitrator.

7. The decision of an arbitrator on any matter referred to him under section 6 shall be binding upon the parties, and shall be enforceable in like manner as an order made by the Registrar under that section.

Enforcement of orders.

8. No civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of any society under this Act.

Limitation of power of civil court.

9. (1) In the liquidation of any dissolved society, the funds, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, and then to the payment of the share capital.

Closure of liquidation.

(2) When the liquidation of a society has been closed and any creditor of that society has not claimed or received what is due to him under the scheme of distribution, notice of the closing of the liquidation shall be published in the *Gazette*; and, in respect of any claim against the funds of such society, no action shall be maintainable unless it is commenced within three months from the date of the publication of such notice in the *Gazette*.

(3) Any surplus remaining after the application of the funds to the purposes specified in sub-section (1) and the payment of any claims under sub-section (2), may be divided among registered societies according to any scheme prepared by the liquidator and approved by the Registrar.

10. (1) The Minister may by Order (in this Act referred to as a "requisitioning Order") published in the *Gazette*, requisition, with effect from such date as shall be specified in the Order, any immovable

Requisitioning of property for the purposes of a principal society.

property in order that it may be temporarily used by a principal society for the purposes of any business of such society.

(2) Before a requisitioning Order takes effect the Minister may from time to time, after consultation with the Registrar, alter, by Order published in the *Gazette*, the date on which such requisitioning Order takes effect.

(3) A requisitioning Order shall have the effect of authorizing the Registrar, with effect from the date specified in the Order, to take possession of the property specified in the Order and to use such property temporarily for the purposes of any business of such principal society.

(4) Where any property is requisitioned by a requisitioning Order, the Minister may, by Order (hereinafter in this Act referred to as "derequisitioning Order") published in the *Gazette*, derequisition such property with effect from such date as shall be specified in the derequisitioning Order.

(5) Before a derequisitioning Order takes effect, the Minister may from time to time, after consultation with the Registrar, alter, by Order published in the *Gazette*, the date on which such derequisitioning Order takes effect.

(6) Where, immediately before the date on which any property is requisitioned for any principal society, a person, other than the owner of such property, was entitled to possession of such property under the terms of a lease, that lease shall be deemed for all purposes to have expired on that date.

(7) Where any property is derequisitioned by a derequisitioning Order, such Order shall be deemed to have the effect of reviving any lease subsisting on the date on which the property was requisitioned, and any question which may arise as to any right, title or interest, in or over that property shall be determined accordingly.

11. (1) Any officer or employee of a principal society specially or generally authorized in that behalf by the Registrar may take possession of any property requisitioned for such society.

Taking
possession of
property
requisitioned
for a principal
society.

(2) Any officer or employee of a principal society authorized in that behalf by the Registrar shall, by notice given to the person in occupation or in possession of any property requisitioned for such society or exhibited in some conspicuous place on or in the vicinity of such property,—

(a) inform such person that such authorized officer or employee intends to take possession of such property for and on behalf of such society on such date and at such time and place as shall be specified in the notice; and

(b) require any person interested or his authorized agent to be present on the date and at the time and place so specified, and to allow and assist such authorized officer or employee to take possession of such property for and on behalf of such society.

12. (1) Every person who—

(a) prevents, obstructs, or resists, or

(b) directly or indirectly causes anyone to prevent, obstruct or resist,

Prevention of
or obstruction
to taking
possession of
property for
and on behalf
of a principal
society.

any person from or in taking possession, under section 11, of any property for and on behalf of a principal society shall be guilty of an offence under this Act.

(2) Where an officer or employee authorized by the Registrar under section 11 to take possession of any property for and on behalf of a principal society is unable or apprehends that he will be unable to take possession of such property because of any obstruction or resistance that has been or is likely to be offered, he shall, on his making an application in that behalf to the Magistrate's Court having jurisdiction over the place where that property is situated, be entitled to an order of the Court directing the Fiscal to deliver possession of that property to him for and on behalf of such society.

(3) Where an order under sub-section (2) is issued to the Fiscal by a Magistrate's Court, he shall forthwith execute that order and shall in writing report to the Court the manner in which that order was executed.

(4) Where an order under sub-section (2) is issued to the Fiscal by a Magistrate's Court, the execution of such order shall not be stayed in any manner by

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reason of any step taken or proposed to be commenced in any Court with a view to questioning, varying or setting aside such order.

(5) For the purpose of executing an order issued by a Magistrate's Court under sub-section (2), the Fiscal or any person acting under his direction may use such force as may be necessary to enter any land, building, structure or other immovable property to which that order relates and eject any person in occupation thereof, and to deliver possession of such land, building, structure or other immovable property to the person who is authorized to take possession thereof for and on behalf of the principal society.

Compensation
in respect of
property
requisitioned
for a principal
society.

13. In respect of any property requisitioned for a principal society, such society shall pay compensation equal to the amount which might reasonably be expected to be payable for the temporary use of such property.

Interest on
compensation.

14. Any compensation payable shall carry interest, as from the date on which it accrues due until payment, at such rate as may be determined by the Minister.

Date of
commencement
of accrue-
ment of
compensation.

15. The compensation payable in respect of any property shall be considered as accruing due from the date on which that property was requisitioned for the principal society.

Mode of
payment of
compensation.

16. The mode of payment of compensation shall be determined by the Minister.

Determination
of compensation.

17. (1) The Registrar shall refer to the Chief Valuer the determination of the compensation payable in respect of any property, and such Valuer shall submit his determination to the Registrar.

(2) The Chief Valuer shall, before making his determination of the compensation payable in respect of any property, give the person from whom that property was requisitioned for a principal society, as well as the Registrar, an opportunity to adduce before such Valuer, by himself or by a representative authorized by him in that behalf, evidence with regard to the value of that property.

(3) The Registrar shall communicate in writing to the person from whom any property was requisitioned for the principal society the determination of the compensation payable in respect of that property made by the Chief Valuer.

(4) The Registrar shall cause a notice to be published in the *Gazette* and in at least one Sinhala, one Tamil and one English newspaper, specifying the compensation that it proposes to pay in respect of any property, being the compensation determined by the Chief Valuer, and inviting any person who had any interest in that property, immediately before that property was requisitioned for the principal society and who claims any compensation in respect of that property, to communicate to such Registrar his claim in writing, stating the nature and the basis thereof, before such date as shall be specified in the notice.

18. (1) Where no claim to the compensation payable in respect of any property is received in response to the notice under section 17 from any person other than the person from whom that property was requisitioned for the principal society, the Registrar shall cause such compensation to be paid to the person from whom that property was so requisitioned.

Payment of
compensation.

(2) Where any claim to compensation payable in respect of any such property is received in response to the notice under section 17 from any person other than the person from whom that property was requisitioned for the principal society, then, if every such claimant and the person from whom that property was so requisitioned amicably agree in writing as to the person entitled to the compensation and the apportionment of the compensation among them, the Registrar shall cause the compensation to be apportioned and paid to such persons according to such agreement. If there is no such agreement, the Registrar shall cause the compensation to be paid to any District Court or Court of Requests according as the amount to be so paid exceeds or does not exceed seven hundred and fifty rupees to be drawn by the persons entitled thereto.

19. Where any compensation payable to any person under this Act is not accepted by him when it is tendered to him, or where such person is dead or is not in existence or is not known, it shall be paid

Provision for
cases where
compensation
is not
accepted, &c.

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to any District Court or Court of Requests, according as the amount of compensation exceeds or does not exceed seven hundred and fifty rupees, to be drawn by the person or persons entitled thereto.

Offences.

20. Every person who commits an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for any period not exceeding six months, or to both such fine and imprisonment.

Offences by
bodies of
persons.

21. Where an offence under this Act is committed by a body of persons, then—

(a) if that body of persons is a body corporate, every director and officer of that body corporate; or

(b) if that body of persons is a firm, every partner of that firm,

shall be deemed to be guilty of that offence:

Provided, however, that a director or an officer of such body corporate or a partner of such firm shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

No termination
of services of
employees of a
dissolved
society or an
amalgamating
society without
approval of
Registrar.

22. The services of any person who was—

(a) an employee of a dissolved society on the day immediately preceding the date on which such society was dissolved, shall not be terminated by the liquidator or liquidators of such society; and

(b) an employee of an amalgamating society on the day immediately preceding the date on which such society was amalgamated, shall not be terminated by the principal society,

except with the prior written approval of the Registrar.

No action to lie
in respect of
the termination
of services, &c.,
of employees of
dissolved
societies or
amalgamating
societies.

23. Notwithstanding the provisions of any other law to the contrary, no action shall lie against the Registrar or a liquidator or against a principal society, as the case may be, in respect of the termination of the services or the variation of the conditions of service of any person who was an employee of a

dissolved society or an amalgamating society on the day immediately preceding the date of its dissolution or amalgamation, made by such Registrar or liquidator or by such principal society.

24. (1) The Minister, the Registrar or any liquidator shall not be liable, either civilly or criminally, in respect of any act or thing done or order made by such Minister, Registrar or liquidator, in good faith under this Act.

Minister, Registrar or liquidator not to be liable civilly or criminally, and acts, &c., of Minister, Registrar or liquidator not to be questioned in any civil court.

(2) No act or thing done or order made by the Minister, the Registrar or any liquidator under this Act shall be called in question in any civil court by way of writ or otherwise.

25. This Act shall expire on such date as may be appointed by the Minister by Order published in the *Gazette*.

Duration of this Act.

26. In this Act, unless the context otherwise requires—

Interpretation.

“ officer ” has the same meaning as in the principal enactment;

“ registered society ” has the same meaning as in the principal enactment;

“ Registrar ” has the same meaning as in the principal enactment; and

“ rules ” has the same meaning as in the principal enactment.