



ST HELENA

REVISED EDITION OF THE LAWS, 2017

CORPORATE BODIES

MUTUAL ORGANISATIONS ORDINANCE, 2008¹

*Ordinance 3 of 2008
Not in force at 1 November 2017*

Amended by L.N. 26 of 2009

No subsidiary legislation to 1 November 2017

MUTUAL ORGANISATIONS ORDINANCE, 2008

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AN ORDINANCE to make provision for the registration of mutual organisations and for purposes connected therewith or incidental thereto.

**PART I
PRELIMINARY**

Citation and commencement

1. This Ordinance may be cited as the Mutual Organisations Ordinance, 2008, and must come into force on a date the Governor appoints by notice in the *Gazette*.

Interpretation

2. In this Ordinance, except where the context otherwise requires—
- “**Court**” means the St Helena Supreme Court;
- “**interested person**” in relation to a mutual organisation includes any member or creditor of such organisation or any supervisory authority under any law in relation to such organisation;
- “**member**” includes a person joining in the application for the registration of a mutual organisation, and a person admitted to membership after registration in accordance with the rules;
- “**mutual organisation**” means an organisation registered as such under this Ordinance;
- “**officer**” in relation to a mutual organisation, includes a chairman, secretary, member of the committee or other governing body of the organisation, or any other person empowered under this Ordinance or the rules to give directions in regard to the business of the organisation;
- “**Registrar**” means the Registrar of Mutual Organisations appointed under section 3;
- “**Regulations**” means the Regulations made under this Ordinance;
- “**rules**” means the registered rules made by a mutual organisation in the exercise of any power conferred by this Ordinance, and includes a registered amendment of the rules;

PART II

OFFICE OF REGISTRAR AND MAINTAINING OF REGISTER OF MUTUAL ORGANISATIONS

Office of Registrar

3. There is established the office of Registrar of Mutual Organisations as a public office to which appointments are to be made in accordance with section 95 of the Constitution of St Helena.

Registrar to administer Ordinance

4. (1) The Registrar is, under the general supervision of the Attorney General, responsible for the administration of this Ordinance.

(2) The Attorney General may in writing approve a seal for use by the Registrar in the performance of the duties of that office.

Register of mutual organisations

5. (1) The Registrar must maintain a Register of Mutual Organisations in which to keep the name of every mutual organisation that is registered under this Ordinance and the registration of which has not subsequently been cancelled by the Registrar.

(2) A duplicate of the register specified in subsection (1) may be kept in any place outside St. Helena.

PART III REGISTRATION OF MUTUAL ORGANISATIONS

Organisations which may be registered

6. Subject to this Ordinance, a body of persons may apply for registration under this Ordinance as a mutual organisation if that body is established to achieve its objects on a mutual basis for the benefit of its members.

Application for registration

7. (1) An application must be made to the Registrar for registration in terms of this Ordinance.

(2) The application must—

- (a) be signed by at least 7 persons qualified in accordance with section 16, the Regulations and the proposed rules of the organisation; and
- (b) be accompanied by copies of the proposed rules of the organisation.

(3) The persons by whom or on whose behalf an application for registration is made, must provide any information in regard to the organisation that the Registrar requires.

Registration of mutual organisation

8. (1) If the Registrar is satisfied that an organisation has complied with the provisions of this Ordinance and that its objects and proposed rules are not contrary to this Ordinance, the Registrar may register the organisation and its rules.

(2) Upon registering an organisation under subsection (1), the Registrar must issue to that organisation a certificate of registration.

(3) The certificate of registration is conclusive evidence that the mutual organisation mentioned in it is duly registered, unless it is proved that the registration of that organisation has been suspended or cancelled.

Refusal to register mutual organisation

9. (1) The Registrar must refuse to register an organisation if the Registrar is satisfied that—

- (a) the rules of the organisation are insufficient to provide for its proper management and control;
- (b) the organisation is likely to be used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in St Helena;
- (c) any officer or person managing or assisting in the management of the organisation is not a fit and proper person;
- (d) the total number of members of it or subscribers to it is less than 7; or

- (e) it would be contrary to the public interest for the organisation to be registered.
- (2) The Registrar may refuse to register a mutual organisation if—
 - (a) it appears to the Registrar that the name under which the organisation is to be registered is—
 - (i) identical with or so nearly resembles that of any other existing organisation as to be likely to deceive the members of the public as to its nature or identity; or
 - (ii) likely to mislead members of the public as to the true character and purpose of the organisation; or
 - (b) no satisfactory evidence has been produced of the good character of the officers or persons managing or assisting in the management of the organisation.

Appeal against refusal to register

10. Any person who is aggrieved by the refusal by the Registrar under section 9 to register any organisation may appeal to the Court in the manner prescribed and, if the Court is satisfied that it would be just for the organisation to be registered, the Court may direct the Registrar to register it upon such terms and conditions as the Court considers appropriate.

Juristic personality and powers of mutual organisation

11. The registration of a mutual organisation renders it a body corporate with juristic personality by the name under which it is registered, with the power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings in its own name and to do all things necessary for the purpose of achieving its objects.

Registered address of mutual organisation

12. (1) Every mutual organisation must at all times have an address in St Helena, registered in accordance with its rules, to which all notices and communications may be sent.

(2) A mutual organisation must send to the Registrar notice of every change of registered address.

PART IV RULES OF MUTUAL ORGANISATIONS

Rules

13. The rules of a mutual organisation must contain provision in respect of the following matters:

- (a) the name of the organisation and the registered address;
- (b) the objects for which the organisation is established;
- (c) the conditions under which persons may become members of the organisation;
- (d) the nature and extent of the liability of members;
- (e) prescribing the criteria for acquiring voting and other membership rights by

- members and the manner in which those rights may be exercised;
- (f) providing 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;
- (g) providing for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (h) providing for the appointment, suspension and removal of the members of the committee or governing body of the mutual organisation, and for the powers to be exercised and the duties to be performed by the committee and other officers;
- (i) the total number of members and quorum of the committee or governing body;
- (j) the election and removal of office bearers, including the secretary, treasurer and any other officers of the organisation;
- (k) the manner of raising funds;
- (l) the purposes for which the funds of the organisation may be applied;
- (m) the custody and investment of the funds of the organisation and the designation of the officers responsible for those matters;
- (n) the keeping of a register with particulars of the members of the organisation and the nominee (if any) of any member;
- (o) inspection of the books and register of names of members by any person who has an interest in the funds of the organisation;
- (p) the manner of making, altering, amending or rescinding the rules;
- (q) the entitlement of members to a copy of the rules of the organisation;
- (r) the manner of deciding any dispute between a member, previous member or person claiming to be a member, and the organisation or an officer of it; and
- (s) such other matters as the Governor in Council may prescribe.

Amendment of rules

14. (1) A mutual organisation may amend its rules.

(2) No amendment of the rules of a mutual organisation is valid until the amendment has been registered by the Registrar, for which purpose copies of the amendment must be sent to the Registrar.

(3) If the Registrar is satisfied that an amendment of the rule is not contrary to this Ordinance, the Registrar must register the amendment.

(4) When the Registrar registers an amendment of the rules of a mutual organisation, the Registrar must issue to the organisation a copy of the amendment certified by the Registrar, which is conclusive evidence of the fact that the amendment has been duly registered.

(5) A person who is aggrieved by any refusal by the Registrar to register an amendment of the rules under this section, may appeal to the Court in the manner prescribed and if the Court is satisfied that it would be just for the amendment of the rules to be registered, the Court may direct the Registrar to register it upon such terms and conditions as the Court considers appropriate.

(6) For purposes of this section, "**amendment**" includes the making of a new rule and the variation or rescission of a rule.

Copy of rules to be open to inspection

15. Every mutual organisation must keep a copy of its rules and a list of its members open to inspection, free of charge, at all reasonable times at the registered address of the organisation.

PART V MEMBERSHIP AND VOTING RIGHTS

Qualification for membership

16. (1) In order to be qualified for membership of a mutual organisation a person must—

- (a) have attained the age of 18 years; and
- (b) be domiciled or resident within, or own land or an interest in land in, St Helena, or be resident in Ascension.

(2) The Governor in Council may, by Order, add further categories of persons who qualify for membership under subsection (1).

Votes of members

17. A member of any mutual organisation is entitled to vote in the conduct of the affairs of the organisation as provided for in the rules under section 13.

Member's interest not liable to attachment or sale

18. The membership interest in a mutual organisation is not liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by a member, and a trustee in bankruptcy is not entitled to or have any claim on such interest.

PART VI AUDIT, INSPECTION AND INQUIRY

Audit

19. Every mutual organisation must, upon receipt of its annual or periodic audit report prepared in accordance with the Regulations made under section 40(h), submit a copy of it to the Registrar.

Power of Registrar to inspect books, accounts, etc.

20. (1) The Registrar, or any person authorised by the Registrar by order in writing, must at all times have access to all the books, accounts, papers and securities of a mutual organisation, and is entitled to inspect the cash in hand.

(2) Every officer of a mutual organisation must provide such information in regard to the transactions and working of the organisation as a person making an inspection under subsection (1) requires.

Inquiry and inspection

21. (1) The Registrar may on his or her own initiative, and must on the application of a majority of the committee or governing body of a mutual organisation, or of not less than 1/3rd of the members of a mutual organisation, hold an inquiry, or direct some person authorised by the Registrar in writing to hold an inquiry, into the constitution, working and financial condition of a mutual organisation.

(1A) On an inquiry under subsection (1), all officers and members of the organisation must provide such information in regard to the affairs of the organisation and produce the cash in hand and such books, accounts, papers and securities of the organisation as the Registrar or the person authorised by the Registrar requires.

(2) The Registrar must, on the application of a creditor of a mutual organisation, inspect, or direct some person authorised by the Registrar in writing for the purpose to inspect, the books of the organisation, if the applicant—

- (a) proves that an ascertained sum of money is due to the applicant and that the applicant has demanded payment of it and has not received satisfaction within a reasonable time; and
- (b) deposits with the Registrar a sum as security for the cost of the proposed inspection as the Registrar may require.

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

(4) If an inquiry is held under subsection (1) or an inspection is made under subsection (2), the Registrar may apportion the costs or such part of the costs, as the Registrar she thinks right, between the mutual organisation, the members demanding an inquiry, the officers or former officers of the organisation, and the creditor (if any) on whose application the inquiry was made.

(5) Any sum awarded by way of costs against any mutual organisation or person under this section may be recovered as a civil debt.

PART VII DISSOLUTION AND LIQUIDATION

Division A

Dissolution by Registrar

Registrar's dissolution

- 22.** (1) Subject to subsections (2) and (3), if—
- (a) a mutual organisation has not commenced business within 3 years after the date shown in its certificate of registration, or has not carried on its business for 3 consecutive years;
 - (b) the number of the members of a mutual organisation has been reduced to less than 7; or
 - (c) a mutual organisation does not have a registered address in St Helena,
- the Registrar may dissolve the organisation by issuing a certificate of dissolution under this section, unless it appears to the Registrar that the organisation is insolvent or unable to pay its debts.
- (2) The Registrar must before dissolving a mutual organisation under this section—
- (a) give to the organisation 120 days' notice of the intention to dissolve the organisation; and
 - (b) publish notice of that intention in the *Gazette*.
- (3) The Registrar may, after the expiration of the period referred to in subsection (2), issue a certificate of dissolution of the mutual organisation in the approved form, unless—
- (a) cause to the contrary has been shown; or
 - (b) an application for dissolution has been brought under section 23.
- (4) The mutual organisation ceases to exist on the date shown in the certificate of dissolution.

Division B *Dissolution by Court*

Application for Court dissolution

- 23.** (1) The Registrar or any interested person may apply to the Court for an order to liquidate and dissolve a mutual organisation, if—
- (a) the organisation wilfully fails to comply with section 19 or refuses to the Registrar or any person authorised by the Registrar access to all the books, accounts, papers, securities or cash of the organisation for purposes of any inspection or inquiry;
 - (b) the organisation has failed to comply with any Regulations made under section 40(d), (g) or (h);
 - (c) the organisation has failed to comply with the rules of the organisation on any matters referred to in section 13(b), (c), (l), (m), (n) or (o);
 - (d) the organisation has procured any certificate under this Ordinance by misrepresentation;
 - (e) any act or omission of the organisation effects a result that is oppressive or unfairly prejudicial to, or unfairly disregards the interest of, any member, creditor, director or

- officer;
- (f) the business or affairs of the organisation are or have been carried on or conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly disregards the interest of, any member, creditor, director or officer;
 - (g) the powers of the directors or managers of the organisation are or have been exercised in a manner referred to in paragraph (f);
 - (h) it is just and equitable that the organisation be liquidated and dissolved; or
 - (i) the organisation is insolvent or unable to pay its debts.

(2) An application to the court under subsection (1) must be supported by an affidavit by the applicant stating the reasons why the mutual organisation should be liquidated and dissolved.

- (3) An interested person applying for an order under subsection (1)—
- (a) must give the Registrar notice of the application; and
 - (b) may appear at the hearing of the application either in person or be represented by a legal representative.

(4) The Registrar may appear at the hearing of the application either in person or be represented by a legal representative.

Order of Court

24. (1) Upon hearing an application under section 23, the Court may—
- (a) order that the mutual organisation be dissolved;
 - (b) order that the organisation be liquidated and dissolved (whether or not under the supervision of the Court);
 - (c) make an order requiring the mutual organisation and any person having an interest in the organisation or a claim against it, to show cause, at a time and place specified in the order, which must not be less than 4 weeks after the date of the order, why the organisation should not be liquidated and dissolved; or
 - (d) make any other order it thinks fit.

- (2) A copy of an order made under subsection (1)(c) must—
- (a) be published in a newspaper distributed in St. Helena at least once in each week before the time appointed for the hearing; and
 - (b) be served upon the Registrar and each person named in the order.

(3) Publication and service of an order under this section must be effected by the mutual organisation or by some other person and in a manner the Court orders.

(4) On the return date specified in an order referred to in subsection (1)(c), the Court may make any order it thinks fit and, if it is satisfied that the mutual organisation is unable to pay or adequately provide for the discharge of all its obligations, may make an order liquidating the organisation.

- (5) The court may at any stage of the proceedings make an order—
- (a) appointing inspectors, or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
 - (b) determining the notice to be given to an interested person, or dispensing with notice to any person;
 - (c) determining the validity of any claim made against the organisation;
 - (d) determining and enforcing the duty or liability of any present or former director, manager, officer or member of the organisation—
 - (i) to the organisation; or
 - (ii) for an obligation of the organisation;
 - (e) restraining the directors, managers and officers of the organisation from—
 - (i) exercising any of their powers; or
 - (ii) collecting or receiving any debt or other property of the organisation and from paying out or transferring any property of the organisation except as permitted by the Court;
 - (f) approving the payment, satisfaction or compromise of claims against the organisation and the retention of amounts for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the organisation, whether liquidated, unliquidated, future or contingent;
 - (g) disposing of or destroying the documents and records of the organisation;
 - (h) upon the application of a creditor, the inspectors or the liquidator, giving directions on any matter arising in the liquidation;
 - (i) after notice has been given to all interested parties, relieving a liquidator from any omission or default on terms the Court thinks fit, and confirming any act of the liquidator;
 - (j) approving any proposed interim or final distribution to members in money or in property, subject to section 32;
 - (k) disposing of any property belonging to creditors or members who cannot be found;
 - (l) upon the application of any director, manager, officer, member, creditor or the liquidator—
 - (i) staying the liquidation on terms and conditions the Court thinks fit;
 - (ii) continuing or discontinuing the liquidation proceedings; or
 - (iii) requiring the liquidator to restore to the organisation all its remaining property; and
 - (m) after the liquidator has rendered final accounts to the Court, dissolving the organisation.

Certificate by Registrar

- 25.** (1) Upon receipt of an order under section 24, the Registrar must—
- (a) if the order is to dissolve the mutual organisation, issue a certificate of its dissolution; or
 - (b) if the order is to liquidate and dissolve the organisation, issue a certificate of intent to dissolve the organisation and publish a notice of that intent in the *Gazette*.
- (2) A mutual organisation ceases to exist on the date shown in the certificate of

dissolution issued under subsection (1)(a).

Cessation of business

26. (1) If a Court makes an order for the liquidation of a mutual organisation, then, from the date stated in the order—

- (a) the organisation must cease to carry on business, except any business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors, managers and members cease and are vested in the liquidator, except as specifically authorised by the Court.

(2) The liquidator may delegate any of the powers vested in the liquidator by subsection (1)(b) to the directors, managers or members of the organisation.

Supervised liquidation

27. (1) The Registrar or any interested person may, at any time during the liquidation of a mutual organisation, apply to the Court for an order that the liquidation be continued under the supervision of the Court, and upon such an application the Court may so order and make any further order it thinks fit.

(2) An application under subsection (1) must state the reasons why the Court should supervise the liquidation and dissolution and the reasons must be verified by the affidavit of the applicant.

(3) An interested party applying under subsection (1) must give the Registrar notice of the application and the Registrar may appear at the hearing of the application and be heard either in person or be represented by a legal representative.

(4) Upon hearing an application under subsection (1), the Court may order the directors, managers and officers of the mutual organisation to provide to the Court all material information known to, or reasonably ascertainable by, them, including—

- (a) the financial statements of the organisation;
- (b) the name and address of each member of the organisation; and
- (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the organisation has a contract.

Appointment of liquidator

28. (1) When making an order for the liquidation of a mutual organisation, or at any later time, the Court may appoint any person (including a director, manager, officer or member of the organisation) as liquidator of the organisation, with or without security, and may at any time replace a liquidator.

(2) The Court may fix the remuneration of the liquidator.

(3) If an order for the liquidation of a mutual organisation has been made and the office of liquidator is or becomes vacant, the property of the organisation is under the control of the Court until the office of liquidator is filled.

Duties of liquidator

29. (1) A liquidator must—

- (a) give notice of the appointment to the Registrar and to each claimant and creditor of the mutual organisation known to the liquidator;
- (b) give notice by publication in the *Gazette* and by insertion once a week for 2 consecutive weeks in a newspaper distributed in St. Helena, requiring—
 - (i) any person indebted to the organisation to render an account and pay to the liquidator at the time and place specified any amount owing;
 - (ii) any person possessing property of the organisation to deliver it to the liquidator at the time and place specified; and
 - (iii) any person having a claim against the organisation, whether liquidated, unliquidated, future or contingent, to present to the liquidator in writing particulars of the claim,
 - not later than 2 months after the first publication of the notice;
- (c) take into the custody and control of the liquidator the property of the organisation;
- (d) open and maintain a trust account for the moneys of the organisation received and paid out by the liquidator;
- (e) keep accounts of the moneys of the organisation received and paid out by the liquidator;
- (f) maintain separate lists of the members, creditors and other persons that have claims against the organisation;
- (g) apply to the Court for directions if at any time the liquidator decides that the organisation is unable to pay, or adequately provide for the discharge of, its obligations;
- (h) deliver to the Court and to the Registrar, at least once in every 12-month period after appointment as liquidator, or more often as the Court may require, financial statements of the organisation in the form prescribed by the Regulations under section 40(h), or in such other form as the liquidator thinks proper, or as the Court requires; and
- (i) after the liquidator's final accounts are approved by the Court, distribute any remaining property of the organisation among the members according to their respective rights.

(2) The liquidator must take reasonable steps to give notice of the appointment in every jurisdiction where the mutual organisation is registered or has a place of business and to require persons described in subsection (1)(b)(i) to (iii) to take similar action.

Powers of liquidator

- 30. (1)** A liquidator of a mutual organisation may—
- (a) retain legal practitioners, accountants, engineers, appraisers and other professional advisers;
 - (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the organisation;
 - (c) carry on the business of the organisation as required for an orderly liquidation;
 - (d) sell by public auction or private sale any property of the organisation;
 - (e) do all acts and execute any documents in the name and on behalf of the organisation;
 - (f) borrow money on the security of the property of the organisation;
 - (g) settle or compromise any claims by or against the organisation;
 - (h) make financial provision in respect of the custody of the documents and records of the organisation after its dissolution; and
 - (i) do all other things necessary for the liquidation of the organisation and the distribution of its property.

- (2)** A liquidator incurs no liability as such if the liquidator relies in good faith upon—
- (a) financial statements of the mutual organisation represented to the liquidator by an officer of the organisation or in a written report of the auditor of the organisation which purports to reflect fairly the financial condition of the organisation; or
 - (b) an opinion, a report or a statement of a legal practitioner, accountant, engineer, appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated, any property of the mutual organisation, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order, and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the mutual organisation, the Court may order that person to restore the property or pay compensation to the liquidator.

(5) A liquidator must pay the costs of liquidation out of the property of the mutual organisation and must pay or make adequate provision for all claims against the organisation.

Priority of debts

31. (1) Subject to this section and to any other enactment, in the liquidation of a mutual organisation there must be paid from the assets available for distribution, in priority to all other debts (whether or not judgment has been obtained in respect of it)—

- (a) wages or salary of any employee (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the organisation during 4 months before the date of the receiving order;
- (b) amounts owed by way of accrued holiday remuneration, in respect of any period of employment (not exceeding one year in total) before the date of the receiving order,

to a person whose employment by the debtor has been terminated, whether before, on or after that date;

- (c) any amount of taxes or duties due by the organisation to the Government of St Helena under any Ordinance.

(2) The debts specified in subsection (1) rank equally among themselves and must be paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(3) For purposes of this section, “**assets available for distribution**” means the assets of a mutual organisation remaining after—

- (a) in the case of a mutual organisation which is a financial institution referred to in section 41(1), repayment by that organisation to any member of such funds or monies deposited or paid in by that member as were held by that organisation on behalf of that member;
- (b) satisfying the claims of creditors in respect of any debt secured by an interest in or charge upon any property of the organisation by way of mortgage, bond, lien, pledge or other means that is created or taken to secure the payment of an obligation of the organisation; and
- (c) payment of all fees, costs, charges and expenses properly incurred in winding up, including the liquidator’s remuneration.

Final accounts

32. (1) Within one year after appointment as liquidator, and after paying or making adequate provision for all claims against the mutual organisation, the liquidator must apply to the Court—

- (a) for approval of final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the organisation to its members according to their respective rights; or
- (b) for an extension of time, setting out the reasons of it.

(2) If a liquidator fails to make the application required by subsection (1), a member of the mutual organisation may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made, and if the Court makes such an order, the liquidation and dissolution of the mutual organisation must be continued under supervision of the Court in accordance with this Ordinance.

(3) A liquidator must give notice of an intention to make application under subsection (1) to—

- (a) the Registrar;
- (b) each inspector appointed under section 24;
- (c) each member; and
- (d) any person who provided a security or fidelity bond for the liquidator,

and must publish a notice of the intention in a newspaper distributed in St. Helena, or as otherwise directed by the Court.

(4) If the Court approves the final accounts rendered by a liquidator, the Court must make an order—

- (a) directing the Registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the mutual organisation; and
- (c) discharging the liquidator, subject to subsection (5).

(5) The liquidator must forthwith send a certified copy of the order referred to in subsection (4) to the Registrar.

(6) Upon receipt of the order referred to in subsection (4), the Registrar must issue a certificate of dissolution.

(7) The mutual organisation ceases to exist on the date shown in its certificate of dissolution.

Record custody

33. A person who has been granted custody of the documents and records of a dissolved mutual organisation remains liable to produce those documents and records for 7 years following the date of the organisation's dissolution, or until the expiry of any shorter period ordered under section 32(4).

Continuation of actions

34. (1) When a mutual organisation is dissolved under this Ordinance—

- (a) a civil, criminal or administrative action or proceeding commenced by or against the organisation before its dissolution may be continued as if the organisation had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the organisation within 2 years after its dissolution as if the organisation had not been dissolved; and
- (c) any property that would have been available to satisfy any judgement or order if the organisation had not been dissolved remains available to satisfy the judgement or order.

(2) Service of a document on a mutual organisation after its dissolution may be effected by serving the document upon a person appointed under the rules as contemplated in section 13(h) as a member of the committee or governing body, or a director or manager.

(3) When a mutual organisation is dissolved, a member to whom any of its property has been distributed (other than by way of a repayment as referred to in section 31(3)) remains liable to any person claiming under subsection (1) to the extent of the amount received by that member upon such distribution, but an action to enforce that liability may not be brought after 2 years from the date of the dissolution of the organisation.

(4) A Court may order an action referred to in subsection (3) to be brought against the persons who were members as a class, subject to such conditions as the Court thinks fit and, if the plaintiff establishes a claim, the Court may refer the proceedings to a referee or other officer of the Court. The referee or other officer may—

- (a) add as a party to the proceedings each person found by the plaintiff to have been a member;
- (b) determine, subject to subsection (3), the amount that each person who was a member should contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

Unknown claimants

35. (1) Upon the dissolution of a mutual organisation, the portion of property distributable to a creditor or member who cannot be found must be converted into money and paid into Court.

(2) A payment under subsection (1) is in satisfaction of the debt or claim of the creditor or member.

(3) A person may establish the person's entitlement to money paid into Court pursuant to subsection (1) within 6 years after the date on which any money is so paid into Court.

Crown vested with property

36. Subject to sections 34(1) and 35, any property of a mutual organisation that has not been disposed of at the date of the organisation's dissolution vests in the Crown.

PART VIII DUTIES AND LIABILITY OF REGISTRAR

Inspection of register

37. (1) A person who has paid the prescribed fee is entitled during normal business hours to examine and to make copies of, or extracts from, any document required to be sent to the Registrar under this Ordinance.

(2) The Registrar must, upon request and payment of the prescribed fee, provide any person with a copy or certified copy of any document received by the Registrar under this Ordinance.

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form—

- (a) the Registrar must provide a copy required to be provided under this Ordinance in an intelligible written form; and
- (b) a report reproduced from those records, if it is certified by the Registrar, is admissible

in evidence to the same extent as the original written records would be.

Registrar's certificate

38. (1) The Registrar may provide any person with a certificate stating whether or not—

- (a) a mutual organisation has sent to the Registrar a document required to be sent to the Registrar pursuant to this Ordinance;
- (b) a name, whether that of a mutual organisation or not, is on the register; or
- (c) a name, whether that of a mutual organisation or not, was on the register on a stated date.

(2) If this Ordinance requires or authorises the Registrar to issue a certificate or to certify any fact, the certificate or the certification must be signed by the Registrar or by a person appointed under section 3 and acting under authority of the Registrar.

(3) A certificate or certification referred to in subsection (2) which is introduced as evidence in any civil, criminal or administrative action or proceeding, is sufficient proof of the facts so certified, without proof of the signature or official character of the person appearing to have signed it.

Immunity from liability for discharge of functions

39. No liability attaches to the Registrar or any person acting under the authority of the Registrar for any act done in good faith in the discharge of functions under this Ordinance.

PART IX REGULATIONS

Regulations

40. The Governor in Council may make regulations in respect of all or any of the following—

- (a) regulating or restricting the use of any name by a mutual organisation;
- (b) regulating or restricting changes of objects or the place of business or place of meetings of registered organisations;
- (c) prescribing the forms which may be used for carrying out the provisions of this Ordinance;
- (d) prescribing the returns and information to be submitted by mutual organisations to the Registrar, and the persons by whom and the form in which the returns and information are to be made;
- (e) prescribing the fees which may be charged under this Ordinance;
- (f) prescribing additional matters in respect of which a mutual organisation may or must make rules;
- (g) prescribing the accounts and books to be kept by a mutual organisation, and for the periodical publication of financial statements and a balance sheet showing the assets

- and liabilities of an organisation;
- (h) prescribing the requirements for the annual or periodical audit of a mutual organisation's accounts;
 - (i) providing for the levy of contributions from all or any mutual organisations to a fund to be used for the audit and supervision of existing organisations and for the administration of such a fund;
 - (j) providing for the persons by whom, and the form in which, copies of entries in books of mutual organisations may be certified;
 - (k) prescribing the mode of appointing an arbitrator and the procedure to be followed in proceedings before the Registrar or such arbitrator;
 - (l) the procedure to be observed and all other matters connected with or incidental to the presentation, hearing and disposal of appeals under this Ordinance;
 - (m) generally for carrying out or giving effect to the principles and provisions of this Ordinance.

PART X EXEMPTION FROM APPLICATION

Extent of application of Ordinance to financial institutions

41. (1) The provisions of this Ordinance do not apply to any financial institution supervised by any authority established under any legislation regulating financial services, to the extent that these provisions are inconsistent with the legislation applicable to that financial institution.

(2) Without limiting subsection (1), the provisions of sections 13(*p*), 15 (in so far as it relates to the list of members), 20 and 21 and any Regulations made under section 40(*g*) and (*h*) do not apply to any bank regulated under the Financial Services Ordinance, 2008.

(3) The Registrar must notify the Financial Services Supervisor referred to in the Financial Services Ordinance, 2008 of an intention—

- (a) to take any steps under Part VII in respect of any mutual organisation which is a bank (as defined in the Financial Services Ordinance, 2008); or
- (b) to register any proposed change in the rules of any such organisation under section 14.

PART XI CONVERSION TO MUTUAL ORGANISATION

Conversion of entity to mutual organisation

42. (1) An entity established by or under any Ordinance may, with the approval of the Registrar, convert to and be registered as a mutual organisation.

(2) The provisions of Part III relating to the registration of mutual organisations apply with necessary modifications to any application for approval to convert to and be registered as a

mutual organisation under subsection (1).

- (3) Upon conversion and registration of an entity as a mutual organisation—
- (a) all property and rights of that entity vest in and become the property and rights of the mutual organisation; and
 - (b) all liabilities and obligations of that entity existing immediately before being so converted and registered as a mutual organisation, become liabilities and obligations of the mutual organisation without further assignment, consent or notice and, accordingly, may be enforced against the mutual organisation and cease to be liabilities and obligations of that entity.

(4) The committee or governing body responsible for the management of the affairs of the entity prior to its conversion are deemed to be the governing body responsible for the affairs of the mutual organisation after conversion until a new governing body is elected under its rules.

(5) The entity and the mutual organisation are, for purposes of any laws relating to the imposition of any taxes or duties, and any law regulating employment and any rights and obligations of employees, deemed to be one and the same person.

PART XII OFFENCES

Offences

- 43. (1)** It is an offence for –
- (a) any person to obtain possession of any property of a mutual organisation by false representation;
 - (b) a person who has such property in the possession of the person to withhold or misapply the property, or wilfully apply any part of it to purposes other than those expressed or directed in the rules of the mutual organisation, and authorised by this Ordinance.

Penalty: A fine of £50,000 or imprisonment for 5 years, or both.

(1A) A person convicted of an offence under subsection (1) may be ordered to deliver up all property the subject of the offence or to repay all moneys applied improperly.

(2) A mutual organisation or an officer or a member of it who wilfully neglects or refuses to do any act or to provide any information required by this Ordinance or by the Registrar or other persons duly authorised by the Registrar commits an offence.

Penalty: A fine of £2,000.

- (3)** It is an offence for a person –
- (a) wilfully or without any reasonable excuse to disobey any summons, requisition or lawful written order issued under ~~the provisions of~~ this Ordinance; or

(b) to fail to provide any information lawfully required from the person by a person authorised to so require under this Ordinance.

Penalty: A fine of £2,000.

(4) *Omitted*
