



SAMOA

INCORPORATED SOCIETIES ORDINANCE 1952

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AN ORDINANCE to make provisions for the incorporation of societies which are not established for the purpose of pecuniary gain.

[Assent date: 9 September 1952]

**PART 1
PRELIMINARY**

1. Short title and commencement – This Ordinance may be cited as the Incorporated Societies Ordinance 1952, and comes into operation on a date to be appointed for the commencement thereof by the High Commissioner by a notice published in the *Gazette*.

2. Interpretation – In this Ordinance, unless the context otherwise requires:

“audited statement” means a document in written or electronic form that contains formal periodic examination and checking of accounts or financial records to verify correctness which have been audited by a chartered accountant under the Samoa Institute of Accountants Act 2006;

“charge” means any form of security for payment or security for performance of obligation and includes:

- (a) a charge on debentures;
- (b) a charge created or evidenced by a document that, if executed by an individual, would require registration under the Chattels Transfer Act 1975;
- (c) a charge on any motor vehicle of the society;
- (d) a charge on any property of the society;
- (e) a charge or mortgage on land, or leasehold interest in land wherever situated; or
- (f) a charge on goodwill, on a patent or a licence under a patent, on a trademark or a licence under a trademark, or on a copyright or a licence under a copyright;

“Court” means the Supreme Court;

“dispute” means any dispute within an incorporated society or between incorporated societies (whether or not it

is the subject of court proceedings), which has been, or is eligible to be, referred to the Tribunal under this Ordinance;

“Judge” means a Judge of the Supreme Court;

“member” includes a person or a corporate body joining in the application for the incorporation of a society, and a person or corporate body admitted to membership after incorporation in accordance with the rules of a society;

“Ministry” means the Ministry of Commerce, Industry and Labour;

“Panel” means the list of persons appointed under section 41 from which the presiding member of a tribunal appoints 2 other members of the tribunal;

“Register” means a Register kept by the Registrar pursuant to section 32;

“Registrar” means the Registrar of Incorporated Societies under this Ordinance;

“regulation” means a regulation made by the Head of State, acting on the advice of Cabinet, under the authority of this Ordinance and gazetted in the *Gazette*;

“Samoa Sports Disputes Tribunal” means the Tribunal established under section 11 of the Sports Disputes Resolution Act 2008;

“society” means a society incorporated under this Ordinance;

“Tribunal” means the Incorporated Societies Disputes Tribunal established under section 39.

PART 2 INCORPORATION AND REGISTRATION OF SOCIETIES

3. Incorporated societies – (1) A society consisting of not less than 15 persons associated for any lawful purposes but not for pecuniary gain may on application being made to the Registrar in accordance with this Ordinance become incorporated as a society under this Ordinance.

(2) No such application shall be made except with the consent of a majority of the members of the society.

(3) No society shall be registered without the consent of the Head of State under a name which contains the words “standard” or “Samoa standard” or any abbreviation thereof.

4. Pecuniary gain – Persons are taken not to be associated for pecuniary gain merely by reason of any of the following circumstances:

- (a) that the society itself makes a pecuniary gain unless that gain or some part thereof is divided among or received by the members or some of them;
- (b) that the members of the society are entitled to divide between them the property of the society on its dissolution;
- (c) that the society is established for the protection or regulation of some trade, business, industry or calling in which the members are engaged or interested, if the society itself does not engage or take part in any such trade, business, industry or calling or any part or branch thereof;
- (d) that any member of the society derives pecuniary gain from the society by way of salary as the servant or officer of the society;
- (e) that any member of the society derives from the society any pecuniary gain to which he or she would be equally entitled if he were not a member of the society;
- (f) that the members of the society compete with each other for trophies or prizes other than money prizes.

5. Rules of incorporated societies – (1) The rules of a society shall state or provide for the following matters:

- (a) the name of the society with the addition of the word “Incorporated” as the last word of that name;
- (b) the objects for which the society is established;
- (c) the modes in which persons become members of the society;
- (d) the modes in which persons cease to be members of the society;

- (e) the mode in which the rules of the society may be altered, added to, or rescinded;
- (f) the mode of summoning and holding general meetings of the society or of voting thereat;
- (g) the appointment of officers of the society;
- (h) the control and use of the Common Seal of the Society;
- (i) the control and investments of funds of the society;
- (j) the powers (if any) of the society to borrow money;
- (k) the disposition of the property of the society in the event of the winding up of the society;
- (l) such other matters as the Registrar may require to be provided for in any particular instance.

(2) The rules of the society may make provision for the imposition on any member of reasonable fines and forfeitures, and for the consequences of non-payment of any subscription or fine.

(3) The rules of the society may contain any other provisions which are not inconsistent with this Ordinance or with law.

(4) The rules of the society and any amendments of those rules shall be printed or typewritten.

5A. Society may make regulations or bylaws – (1) In addition to the matters specified in section 5, the rules of any society may make provision empowering the society by resolution in general meeting to make, amend, or rescind regulations or bylaws, not inconsistent with this Ordinance or with the rules of the society, for such purposes as may be specified in that behalf in the rules.

(2) The making, amendment or rescission of any regulations or bylaws pursuant to any rules in accordance with this section shall not be taken as an alteration of the rules within the meaning of section 20.

5B. Penalty for improper use of the word “Incorporated” – If a person or persons carry on business or activity under the name or title of which “Incorporated”, or any contraction or imitation of that word, is the last word, that person or those persons actively carrying on business activities commit an offence and is, unless duly incorporated pursuant to this

Ordinance, liable upon conviction to a fine of 1 penalty unit for every day upon which that name or title is used.

6. Application for incorporation – An application for the incorporation of a society shall be made to the Registrar in manner following:

- (a) two copies of the rules of the society having written thereon an application for incorporation in the form of Schedule 1 hereto or to the like effect shall be signed by not less than 15 persons being members of the society and each subscriber to the application shall add to his or her signature, his or her occupation and address, and his or her signature shall be attested by a witness who is not a subscriber. When a body corporate is a subscriber its seal shall be affixed to the application;
- (b) the 2 copies of the rules signed or sealed are to be delivered to the Registrar with the fees prescribed in regulations, and together with a statutory declaration made by a solicitor to the effect that a majority of the members of the society have consented to the application and that the rules so signed or sealed are the rules of the society.

7. Registrar to register society if in order – The Registrar, on being satisfied that the requirements of this Ordinance have been observed, shall thereupon do the following things:

- (a) enter the name of the society in the register kept by the Registrar under this Ordinance, together with such other particulars with respect to the society as the Registrar thinks fit;
- (b) issue under the Registrar's seal a certificate that the society is incorporated under this Ordinance in the form in Schedule 3;
- (c) register the rules of the society by sealing with the Registrar's seal the copies of the rules;
- (d) return a copy to the subscribers and retain the other copy.

PART 3
RENEWAL, REMOVAL AND RESTORATION

7A. Renewal of registration – (1) A society must apply for renewal of registration on or before 30 June of every financial year:

- (a) in the form approved by the Registrar, and made available from time to time; and
- (b) accompanied by the fee prescribed in regulations; and
- (c) by submission of audited annual financial statements as required under section 22.

(2) If a society fails to renew registration pursuant to subsection (1), every member of the society is upon conviction liable to a fine not exceeding 2 penalty units each.

(3) Upon fulfilment of the requirements in subsection (1) and satisfaction of the Registrar with such, the Registrar shall issue a notice of renewal under the seal of the Registrar.

7B. Removal from Register – If a society fails to comply with any statutory obligations under this Ordinance the Registrar may:

- (a) remove that society off the Register if after 3 months that society has not complied with a notice to conform issued by the Registrar; or
- (b) publish a public notice in the Savali and any newspaper circulating in Samoa or communicate through any other medium the name of the society to the effect that the society will be removed from the Register unless cause is shown to the contrary.

7C. Restoration of removed society to Register – (1) A society that has been removed from the Register under section 7B may be restored to the Register, where:

- (a) an application for restoration is made by a person who was a member of the society and this section is complied; or
- (b) a court order is issued to this effect pursuant to section 7D.

(2) The Registrar upon receipt of the fee prescribed in regulations and the application in subsection (1):

- (a) may require any of the provisions of this Ordinance or any other Act or any regulations made under this Ordinance or any other Act, being provisions with which the society had failed to comply, before it was removed from the Register, to be complied with; and
 - (b) must give a public notice setting out—
 - (i) the name of the society; and
 - (ii) the name and address of the applicant; and
 - (iii) the date by which an objection to restoring the society to the Register must be delivered to the Registrar, not being less than 20 working days after the date of the notice.
- (3) The Registrar must not restore a society to the Register if:
- (a) he or she receives and accepts an objection to be validly made to the restoration within the period stated in the notice; or
 - (b) the applicant has failed to comply with the requirement in subsection (2)(a); or
 - (c) the restoration of the society to the Register is viewed by the Registrar to be contrary to public interest.

(4) A society that is restored to the Register pursuant to this section is taken to have continued in existence as if it had not been removed from the Register.

7D. Court may give directions or make orders – (1) The Court may, on the application of the Registrar or any person applying to restore a society to the Register, give any directions or make any orders that may be necessary or desirable for the purpose of placing a society restored to the Register under section 7C in as near as possible to the same position as if the society had not been removed from the Register.

(2) The Court may order that a society that has been removed from the Register be restored to the Register if for any reason it is just and equitable to do so.

PART 4

CERTIFICATE OF INCORPORATION, APPEALS AND RIGHTS OF MEMBERS

8. Certificate of incorporation to be conclusive evidence of registration – A certificate of incorporation issued under the seal of the Registrar is conclusive evidence that all statutory requirements in respect of the registration and all matters precedent and incidental thereto have been complied with and that the society is authorised to be registered, and has been duly registered and incorporated under this Ordinance.

9. Upon issue of certificate members to be a body corporate – Upon the issue of the certificate of incorporation the subscribers to the rules of the society, together with all other persons who are then members of the society or who afterwards become members of the society in accordance with its rules, shall as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the rules having perpetual succession and a common seal, and capable forthwith, subject to this Ordinance and to the rules, of exercising all the functions of a body corporate and of holding land.

10. Separate name of each society – No society shall be registered under a name identical with that of any other society or body corporate already registered under this Ordinance, or so nearly resembling the same as to be calculated to deceive except where that existing society is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires.

11. Appeal from Registrar to Head of State – An appeal lies to the Court from any refusal of the Registrar to register a society or any amendment of the rules of a society, and the decision of the Court on the appeal is final.

12. No liability on members for obligation of society – Except when otherwise expressly provided in this Ordinance, membership of a society shall not of itself impose on the members any liability in respect of any contract, debt or other obligation made or incurred by the society.

13. Members have no right to property of society – Except when otherwise expressly provided by this Ordinance or by the rules of a society, membership of a society shall not be deemed to confer upon the members any right, title, or interest, either legal or equitable, in the property of the society.

14. Contracts by society – (1) A contract which, if made between private persons, must be by deed, shall when made by a society, be in writing under the common seal of the society.

(2) A contract which, if made between private persons must be in writing signed by the parties to be charged therewith, may, when made by a society, be in writing signed by any person acting on behalf of and under the express or implied authority of the society.

(3) A contract which, if made between private persons, might be made without writing, may, when made by a society, be made without writing by any person acting on behalf of or under the express or implied authority of the society.

15. Service of summons, etc., on society – Any summons, notice, order, or other document required to be served upon a society may be served by leaving the same at the society's registered office or by sending it through the post in a registered letter addressed to the society at that office.

16. Security for costs when society is plaintiff – When a society is the plaintiff in any action or other legal proceeding, and there appears by any credible testimony to be reason to believe that if the defendant is successful in the defence the assets of the society will be insufficient to pay his or her costs, the Court or Judge having jurisdiction in the matter may require sufficient security to be given for those costs, and may stay proceedings until that security is given.

17. Registered office – (1) A society shall have a registered office to which all communications may be addressed.

(2) Notice of the situation of that office and of any change therein, shall be given to the Registrar and recorded by the Registrar.

(3) Until that notice is given, the society is taken not to have complied with the provisions of this section as to having a registered office.

(4) If any society carries on its operations without having a registered office every officer of the society and every member of the committee or other governing body of the society is liable to a fine not exceeding 1 penalty unit for every day during which those operations are carried on.

17A. Registrar to call meetings of society – (1) The Registrar may call a meeting of a society at the signed request of not less than one-third of financial members of that society.

(2) All costs associated with the calling and convening of the meeting shall be borne by the society.

18. Restriction of operations of society – (1) If any society carries on or proposes to carry on any operation which is beyond the scope of the objects of the society as defined in its rules, the Registrar may give notice in writing to the society not to carry on that operation.

(2) If after the receipt of that notice the society fails or refuses to conform thereto, every officer of the society and every member of the committee or other governing body of the society are liable to a fine not exceeding 1 penalty for every day during which that failure or refusal continues, unless the officer or member or other governing body proves that the failure or refusal has taken place without their authority or consent.

19. Society not to engage in operation involving pecuniary gain – (1) No society shall do any act of such nature that if the doing thereof were one of the objects for which the society was established the members of the society would be deemed to be associated for pecuniary gain within the meaning of sections 3 and 4.

(2) A society which does any such act is liable to a fine not exceeding 2 penalty units.

(3) A member who aids, abets, procures, assists or takes part in the doing of any such act by a society is liable to a fine not exceeding 1 penalty unit and all members are jointly and severally

liable to any creditor for all debts or obligations incurred by the society in or in consequence of the doing of that act.

(4) A member who derives any pecuniary gain from any act done by the society in breach of this section, is taken to have received the same to the use of the society, and the same may be recovered by the society accordingly.

19A. Appointment of Investigator – (1) The Registrar may investigate complaints that are lodged with the Ministry.

(2) In his or her absence, the Registrar may appoint any of the following to carry out the investigation:

- (a) the Assistant Registrar of Incorporated Societies; or
- (b) a senior officer of the Office responsible for Registry of Incorporated Societies.

(3) The appointed Investigator shall be authorised to act according to the warrant or letter of appointment.

19B. Investigation of complaints – (1) The Registrar or any person appointed under section 19A(2) may in the public interest investigate any written complaint against a society lodged by:

- (a) a member or members of a different society; or
- (b) one-third of the members of the society that is the subject of the complaint; or
- (c) any other person.

(2) All records or any other documentation of the society considered by the Registrar to be relevant to the investigation must be provided upon the request of the Registrar or person appointed under section 19A(2) to investigate the complaint.

(3) Any person who obstructs or delays the investigation of a complaint commits an offence and is liable upon conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months, or both.

(4) The Registrar in conducting an investigation or completing an investigation may:

- (a) refer to any possible breach of law to the Police for further investigation; or
- (b) determine that a society is in breach of statutory obligations; or
- (c) require that a society comply with any statutory obligations that have not been complied with; or

- (d) make recommendations to the society where appropriate; or
- (e) refer a dispute to the Tribunal for resolution, upon consultation with the Attorney General; or
- (f) take any action necessary or required by law.

20. Alteration of rules – (1) A society may alter its rules in manner provided by the rules, but subject to the provisions of this Ordinance.

(2) The alteration shall be in writing signed or sealed in duplicate by at least 3 members of the society, and the documents so signed or sealed shall be delivered to the Registrar accompanied by a statutory declaration made by a solicitor or at least one member to the effect that the said alteration has been made in accordance with the rules of the society.

(3) The Registrar, if satisfied that the alteration has been duly made, and that the rules as so altered conform in all respects to this Ordinance, shall register the alteration in like manner as in the case of the original rules, and the alteration shall thereupon take effect according to the tenor thereof. The registration is conclusive evidence that all conditions precedent to the making of the alteration, or the registration thereof, have been duly fulfilled.

(4) No alteration in the objects of a society shall be registered unless the Registrar is satisfied either that the alteration is not of such a nature as to prejudicially affect any existing creditor of the society, or that all creditors who may be so affected consent to the alteration.

(5) For any alteration of the name of a society:

- (a) an application must be—
 - (i) made in a form approved by the Registrar, and made available from time to time; and
 - (ii) accompanied by the fee prescribed in regulations; and
- (b) the Registrar—
 - (i) may approve or refuse the application based on satisfaction with matters referred to in section 20(5)(a); and
 - (ii) shall enter the change of name into the register if application is approved for

registration, and issue a certificate of change of name of the society; and

- (iii) shall publicly advertise the change of name of the society in such manner as the Registrar thinks fit.

21. Register of members – (1) A society shall keep a register of its members.

(2) The register shall contain the names, addresses and occupations of those members, and the date at which they become members.

(3) A society shall, when required by the Registrar so to do, send to the Registrar a list of the names, addresses and occupations of its members accompanied by a statutory declaration verifying that and made by some officer of the society.

21A. Registration of charges – (1) A charge created over any asset of the society:

- (a) must be registered with the Registrar under subsection (2); and
- (b) is subject to an fee prescribed in regulations.

(2) The copy of the instrument by which the charge is created must be submitted to the Registrar for registration within 20 working days from the date of execution of that instrument or within any extended period granted by the Registrar.

(3) The Registrar upon registration of a charge will issue a certificate of registration of charge.

21B. Satisfying a registered charge – (1) If a charge has been satisfied, a society must submit to the Registrar in a form approved by the Registrar and signed by the secured party that the:

- (a) charge has been satisfied in whole or partially; or
- (b) the secured property has been released.

(2) Upon receipt of the form in subsection (1), the Registrar shall enter in the Register:

- (a) a memorandum of full or partial satisfaction of the charge; or
- (b) a memorandum that part or all of the secured property has been released from the charge.

(3) The Court may order that a memorandum of satisfaction of charge under subsection (2) be entered in the Register.

(4) If the Court makes order under subsection (3), the Registrar must enter the memorandum in the Register accordingly.

22. Annual financial statement – (1) A society shall deliver annually to the Registrar in such form and at such times as the Registrar requires an audited statement containing the following particulars:

- (a) the income and expenditure of the society during the society's last financial year;
- (b) the assets and liabilities of the society at the close of that year;
- (c) all mortgages, charges and securities of any description affecting any of the property of the society at the close of that year.

(2) The statement shall be accompanied by a certificate signed by some officer of the society to the effect that the statement has been submitted to and approved by the members of the society at a general meeting.

(3) If any default is made by a society in the observance of the provisions of this section, every officer of the society is liable to a fine not exceeding 1 penalty unit for every day during which the default continues.

22A. Other annual documents – A society shall deliver annually to the Registrar resolutions of its previous annual general meeting and an updated list of its executive committee and members of the society not later than 20 working days after its annual general meeting.

PART 5 WINDING-UP

23. Voluntary winding up of society – (1) A society may be wound up voluntarily if the society, at a general meeting of its members, passes a resolution requiring the society so to be wound up, and the resolution is confirmed at a subsequent general meeting called together for that purpose and held not earlier than 30 days

after the date on which the resolution so to be confirmed was passed.

(2) Subject to this Ordinance and to any regulation made under it, the voluntary winding-up of a society is governed by the same rules as the voluntary winding up of a company under the Companies Act 2001.

24. Winding up of society by Supreme Court – A society may be wound up by the Supreme Court under the following circumstances:

- (a) if the society suspends its operations for the space of a whole year;
- (b) if the members of the society are reduced in number to less than 15;
- (c) if the society is unable to pay its debts;
- (d) if the society carries on any operation whereby any member thereof makes any pecuniary gain contrary to the provisions of this Ordinance;
- (e) if a Judge of the Supreme Court is of the opinion that it is just and equitable that the society should be wound up.

25. Petition to Court for winding-up – (1) An application to the Supreme Court for the winding-up of a society shall be by petition presented either by the society, or by a member thereof, or by a creditor thereof or by the Registrar.

(2) All costs incurred by the Registrar in making application for the winding-up of a society shall, unless the Court or a Judge thereof otherwise orders, be a first charge on the assets of the society.

(3) Subject to this Ordinance and to any regulation made under the authority thereof, every application to the Supreme Court for the winding up of a society, and every winding up of a society by the Court shall be governed by the same rules as in the case of winding-up of a company by the Court under the Companies Act 2001.

26. Division of surplus assets – (1) On the winding-up of a society or on its dissolution or upon removal from the Register by the Registrar, all surplus assets after the payment of all costs, debts

and liabilities shall, subject to any trust affecting the same, be disposed of in manner provided by the rules of the society or if such assets cannot be disposed of in accordance with the rules, then as the Registrar directs.

(2) If the surplus assets are subject to any trust they shall be disposed of as the Supreme Court or a Judge thereof directs in the case of winding-up by the Court, or as the Registrar directs in the case of a voluntary winding-up or in the case of dissolution by the Registrar, but an appeal shall lie from the decision of the Registrar to the Court at the suit of any person interested. The decision of the Registrar under this subsection or subsection (1) is final unless notice of appeal therefrom is delivered to the Registrar within one month after the decision had been given.

27. Dissolution by Registrar – (1) If the Registrar is satisfied that a society is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, the Registrar:

- (a) may make under his or her seal a declaration that the society is dissolved as from the date of declaration; and
- (b) shall thereupon publish the declaration in the *Gazette* and make in the Register an entry of the dissolution of the society.

(2) On the making of that entry the society shall be dissolved as from the date of the declaration.

(3) At anytime thereafter the Registrar, on being satisfied that the declaration was made in error or ought to be revoked:

- (a) may revoke the same by declaration published in the *Gazette*; and
- (b) shall thereupon make an entry of that revocation in the Register, –

and the society shall thereupon be revived from the date of the dissolution thereof as if no such dissolution had taken place.

28. Corporate body may become member of society – A corporate body, whether incorporated under this Ordinance or in any other manner, may be a member of a society incorporated under this Ordinance, unless the purposes for which the society is established are *ultra virus* of the corporate body.

29. Pecuniary gain received by members of such corporate body – When any corporate body is a member of a society incorporated under this Ordinance, any pecuniary gain received by any member of that corporate body is taken for the purpose of this Ordinance to be pecuniary gain received by a member of the society, and in respect of the pecuniary gain every member of that corporate body is taken to be a member of the society.

30. Such corporate body to be equivalent to 3 members – In estimating the number of subscribers to the rules of a society under section 3 or 6, or the number of members of a society under section 3 or 24, a corporate body which is a subscriber or member shall be taken as the equivalent of 3 subscribers or 3 members, as the case may be.

PART 6 REGISTRARS

31. Registrar and Assistant Registrars – (1) The Public Service Commission may appoint a person to be the Registrar of Incorporated Societies.

(2) There may be appointed such Assistant Registrars of Incorporated Societies as may be required.

(3) The Registrar and Assistant Registrars so appointed may hold such office in conjunction with any other office which the Public Service Commission deems not incompatible therewith.

(4) Subject to the direction of the Registrar, or to any regulations under this Ordinance prescribing the duties of Assistant Registrars, every Assistant Registrar has and may exercise all the powers, duties, and functions of the Registrar. The fact of any Assistant Registrar exercising any power, duty or functions as aforesaid is conclusive evidence of the Assistant Registrar's authority so to do.

32. Registrar to keep register of incorporated societies – (1) The Registrar shall keep a register in which there shall be recorded all matters required by this Ordinance or by any regulations to be recorded by the Registrar.

(2) The Registrar shall keep a seal for the authentication of any documents required for the purposes of this Ordinance.

(3) Fees prescribed in regulations are to be paid to the Registrar.

(4) All fees so paid to the Registrar shall be paid by the Registrar into the Treasury and shall be part of the funds of the Government of Samoa.

(5) All expenses incurred in the administration of this Ordinance shall be paid out of money appropriated by the Legislative Assembly of Samoa.

33. Inspection of documents – (1) A person may on payment of the prescribed fee inspect the register or any documents lodged with the Registrar.

(2) A person may, on payment of the prescribed fee, require a copy of the certificate of the incorporation of any society, or a copy of or extract from the register or any document lodged with the Registrar, to be certified by the Registrar under his or her seal.

(3) The copy or extract purporting to be under the seal of the Registrar is to be received in evidence in all proceedings, civil or criminal.

34. Exemptions from stamp duty – No document required by this Ordinance to be delivered to the Registrar is liable to any stamp duty.

PART 7 MISCELLANEOUS

34A. Repealed.

35. Regulations – (1) The Head of State, acting on the advice of Cabinet, may by notice published in the *Gazette* make regulations for carrying into full effect the provisions of this Ordinance.

(2) Without limiting subsection (1), regulations may be made to prescribe fees for the purposes of this Act.

(3) The amount of a fee prescribed under subsection (2):

(a) shall be proposed by the Ministry; and

(b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

36. Savings – A Society shall be deemed not to be a Company for the purposes of the Companies Act 1955 (NZ) and save as herein otherwise expressly provided the provisions of the Companies Act 1955 (NZ) shall not apply to a society.

PART 8 DISPUTES

37. Referral of dispute – (1) A dispute may be referred to the Tribunal by:

- (a) the Registrar in accordance with section 19B; or
- (b) a person who wishes to lodge an appeal against a decision of the Registrar; or
- (c) a Court that is hearing the dispute.

(2) A referral must:

- (a) identify the nature of the dispute being referred to the Tribunal; and
- (b) identify the parties to the dispute insofar as they are known at the date of referral; and
- (c) by copy, be provided to the Attorney General and the Registrar where appropriate.

(3) An appeal under section 37(1)(b) must be lodged with the Tribunal within 21 days from the date the Registrar's decision was notified to the party appealing the decision.

(4) If a question arises as to whether a dispute is to be heard before the Samoa Sports Disputes Tribunal or Tribunal, the determination shall be made by:

- (a) the Presiding Member if the matter is already before the relevant tribunal; or
- (b) the Court for a matter about to be referred by the Court; or
- (c) the Attorney General for a case other than that in paragraph (a) or (b).

38. Referral of dispute bars litigation – (1) Once a dispute has been referred to the Tribunal pursuant to this Ordinance, no

proceedings relating to the dispute may be commenced in any Court.

(2) This section does not prevent any action taken by way of judicial review in relation to a proceeding of the Tribunal.

39. Incorporated Societies Dispute Tribunal – (1) The Incorporated Societies Disputes Tribunal is established.

(2) The Tribunal shall comprise of a presiding member and 2 other members appointed in accordance with this Ordinance.

(3) The Ministry of Justice and Courts Administration shall provide all necessary administrative support to the Tribunal whenever it is convened under this Ordinance.

40. Presiding member – (1) The Tribunal shall be presided over by the Chief Justice or a Judge appointed by the Chief Justice.

(2) If the Chief Justice does not have a Judge available to preside at a proceeding, the Chief Justice may appoint a lawyer who is qualified to be a Judge of the Supreme Court of Samoa, to be the presiding officer for a proceeding of the Tribunal.

41. Other tribunal members – (1) Two members of the Tribunal shall be appointed by the presiding member from the panel for each Tribunal proceeding convened under this Ordinance.

(2) A person may be appointed to the panel by the Head of State, acting on the advice of Cabinet.

(3) Prior to the commencement of a Tribunal proceeding, each member shall be required to make a declaration that he or she has:

- (a) no personal interest or involvement in the dispute;
and
- (b) no association of any nature with any of the disputing parties which may be perceived as affecting the impartiality of the member.

(4) A Tribunal member shall be paid from the funds of the Ministry, such remuneration and allowances as are approved by Cabinet.

(5) The Head of State, acting on the advice of Cabinet, may at any time revoke the appointment of any person to the panel if such member:

- (a) becomes of unsound mind or otherwise becomes permanently unable to perform his or her functions by way of health; or
- (b) is convicted in any jurisdiction within the previous 8 years, of an offence punishable by death or by imprisonment for a term of 4 years or more, or convicted or found guilty in Samoa of a corrupt practice and has not been removed from the Corrupt Practices List under section 32A;
- (c) fails without reasonable excuse to carry out any of the functions conferred or imposed on him or her under this Ordinance; or
- (d) engages in such activities as are reasonably considered prejudicial to the interest of the Tribunal; or
- (e) has an interest in the proceedings which the member has failed to disclose.

42. Convening Tribunal hearings – (1) The Tribunal shall be convened by the presiding member as soon as is practical for the Tribunal to hear and determine any dispute referred to the Tribunal.

(2) The Tribunal shall convene at such time and place, and conduct its proceedings, as determined by the presiding member.

43. Authority of the presiding member – (1) The presiding member of each Tribunal shall have the final decision in relation to:

- (a) a matter of law that arises during a Tribunal proceeding, or which affects any such proceeding; and
- (b) any matter of procedure arising during or applying to a Tribunal proceeding; and
- (c) the extent of the Tribunal's powers to make orders for the resolution of disputes; and
- (d) the application of a principle of a natural justice to a Tribunal proceeding; and

- (e) an action taken against any person for contempt, perjury or failure to give evidence or otherwise cooperate with a Tribunal; and
- (f) any preliminary matter before the hearing of the substantive matter by the Tribunal members.

(2) The presiding member of each Tribunal shall have the sole authority to make a decision relating to subsection (1)(f) in the absence of other members.

44. Tribunal proceedings – (1) Subject to this Ordinance, a Tribunal shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including:

- (a) protections under sections 5 and 9 of that Act; and
- (b) powers as provided by section 6 of that Act; and
- (c) a power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act.

(2) A person, who after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writing or documents to a Tribunal,:

- (a) fails to appear according to the requirements of such a summon; or
- (b) refuses to be sworn or to give evidence or to answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or
- (c) fails to produce any such books, papers, writings or documents, –

commits an offence and is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) A Tribunal proceeding shall be conducted in accordance with the principles of natural justice having regard to the need in any given case to proceed expeditiously to determine the dispute.

(4) Nothing in subsection (3) affects the right of a Tribunal to direct that:

- (a) sworn statements be submitted by persons intending to provide evidence or make submissions to a Tribunal; and

- (b) the right to cross examine any witnesses shall be restricted only to matters which the Tribunal considers to be of such a highly probative nature that they need to be tested under cross examination; and
 - (c) each party, and any interested person permitted to participate in a Tribunal proceeding, prepare and submit written submissions, and that these be provided to other parties and their representatives on terms determined by the Tribunal; and
 - (d) any other things be done or order to be complied with to permit the timely determination of a dispute.
- (5) The Tribunal may make final and binding determinations in relation to any matter of procedure, and make orders to that effect.

45. Other general powers of Tribunal in any proceedings

– In any Tribunal proceedings, a Tribunal may:

- (a) subject to section 46(2), make any order as to costs against a party which may be made by the Supreme Court; and
- (b) permit any person with a direct interest in matter under dispute to become a party in the proceedings; and
- (c) require the strict application of the rules of evidence applying in the Supreme Court, or dispense with any such requirement in the interests of justice.

46. Government may be represented in any proceeding –

(1) In all Tribunal proceedings, the Attorney General may elect to represent the Government, and in any such case, the Government shall be regarded as a party to the dispute.

(2) No order for the payment of any costs associated with any Tribunal proceedings may be made against the Government.

47. Tribunal decisions – (1) Subject to section 43, all decisions of a Tribunal shall be validly made if a majority of members resolve to make the decision.

(2) A decision of Tribunal shall be final and binding on all parties, and all persons named in any order made by a Tribunal.

48. Government ministries and agencies to assist Tribunal

– (1) All government ministries and agencies shall cooperate with the Tribunal and shall make available, at no cost, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.

(2) This section applies despite any provision of any law to the contrary.

(3) The Attorney General may stop the disclosure or release of any document or record required by the Tribunal if the disclosure or release of such record affects, or is likely to affect, national security or is contrary to the national interest.

49. Orders for the resolution of disputes – For the purposes of resolving any dispute a Tribunal, during the course of any proceeding under this Ordinance, may make the following orders:

- (a) that the name of a society be changed; or
- (b) that a meeting of members of the society be held and that a vote be taken to finally determine any matter under dispute; or
- (c) that the rules of the society or Constitution be amended so as to resolve any matter under dispute in the interests of the majority of its members; or
- (d) that certain persons be admitted to membership or removed from membership of the society on grounds that are legal and consistent with the constitutional right of freedom of association; or
- (e) that the register of members of the society be amended to reflect the true membership of that society, or to give effect to any order made by the Tribunal; or
- (f) that the society cease to carry on any operation which is—
 - (i) beyond the scope of its objects; or
 - (ii) against the interests of the majority of its members; or
 - (iii) against the national interest; or

- (g) that certain property is property belonging to the society and is to be returned to a nominated officer of the society; or
- (h) that any contract made by the society is validly or invalidly made; or
- (i) that the Registrar take action in accordance with the procedures under section 27 to dissolve the society, if the Tribunal is satisfied that—
 - (i) the society is not being administered in accordance with its rules or constitution, or both; or
 - (ii) it is in the national interest that the society be wound up; or
- (j) any ancillary order to give better effect to the orders which may be made under this section; or
- (k) any other order in the interest of justice.

50. Orders binding any person causing any dispute -If a Tribunal finds that any person has unreasonably caused any dispute, or unreasonable delayed the resolution of any dispute, the Tribunal may order that:

- (a) the person be ineligible to hold any office, or any specific office, in the society or any specific society, for a period determined by the Tribunal; or
- (b) the person pay any costs incurred as a result of or arising from a dispute referred to the Tribunal; or
- (c) the person pay any compensation to recompense any person who has suffered loss or damage, or the loss of any opportunity, as a result of the person's conduct; or
- (d) any other order that the Tribunal considers may resolve the dispute, and prevent that dispute or any similar dispute arising in the future.

51. Orders to be given full effect – (1) All government ministries and agencies shall exercise any power vested in them so as to give effect to any order made by the Tribunal.

(2) All persons obliges to implement any order made by a Tribunal is taken to have the lawful authority to do any act

necessary to give effect to the order even if the power may not exist under any law, or may be contrary to the provision of any other law.

52. Enforcement of orders – (1) A person who is directed by a Tribunal or under a legal obligation to implement an order made by a Tribunal under this Ordinance, and who refuses or fails to implement the order, commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding 6 months, or both.

(2) A fine may be imposed for every additional day that an order is not enforced.

SCHEDULES

SCHEDULE 1 (Section 6(a))

APPLICATION FOR INCORPORATION

We, the several persons whose names are subscribed hereto being members of the above-mentioned society, hereby make application for the Incorporation of the Society under the foregoing rules in accordance with the Incorporated Societies Ordinance 1952.

SCHEDULE 2 (Section 6 (b))

TABLE OF FEES PAYABLE TO THE REGISTRAR

Fee on application for registration	-	\$ 45.00
Fee for certificate of incorporation	-	45.00
Fee for alteration of rules	-	24.00
Fee for certified copy or extract	-	24.00
(if the copy or extract exceeds 3 folios of 72 words each an additional fee for each additional folio or part thereof)	-	3.00
Fee for any other document required to be registered		24.00
Fee for inspection of Register	-	12.00
Fee for inspection of any document	-	12.00

**SCHEDULE 3
(Section 7 (b))
CERTIFICATE OF INCORPORATION**

Certificate of Incorporation No....

I hereby certify that the society under the name of has been incorporated as a society under the Incorporated Societies Ordinance 1952, this day of 19

(Seal of Registrar)
REGISTRAR.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Ordinance as at 3 March 2021.

This Ordinance has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date.
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to ‘is’ and ‘shall be deemed’ changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to ‘shall’
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Parts created.

The following amendments were made to this Ordinance since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017 No. 13*:

- Section 2 - definition of “prescribed” repealed;
- Section 6(b), 7A(1)(b), 7C(2), 20(5)(a)(ii) - replaced “approved fee” with “fee prescribed in regulations”;
- Section 21A(1)(b) – replaced “an approved fee” with “the fee prescribed in regulations.”.
- Section 32(3) - substituted;
- Section 34A - repealed;
- Schedule 2 - repealed;
- Section 35 - new subsections (2) and (3) inserted.

*This Ordinance is administered by
the Ministry of Justice and Courts Administration*