

**Co-operatives and Private Security Acts
Amendment Act 2008
No. 13 of 2008**

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Victoria

Co-operatives and Private Security Acts Amendment Act 2008[†]

No. 13 of 2008

[Assented to 23 April 2008]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to amend the **Co-operatives Act 1996** to enable co-operatives to issue co-operative capital units, provide for mutual recognition of foreign co-operatives and for other purposes; and

Co-operatives and Private Security Acts Amendment Act 2008
No. 13 of 2008

Part 1—Preliminary

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- (b) to amend the **Private Security Act 2004** to extend the deadline for the tabling of a report on the statutory review of that Act to 1 June 2009.

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

**PART 2—AMENDMENTS TO THE CO-OPERATIVES
ACT 1996**

3 Definition of CCU inserted

In section 4(1) of the **Co-operatives Act 1996** insert the following definition—

"*CCU* means a co-operative capital unit as provided for by Division 1A of Part 10;"

See:
Act No.
84/1996.
Reprint No. 3
as at
9 November
2006.
LawToday:
www.
legislation.
vic.gov.au

4 Excluded matter

- (1) In section 9(2)(g) of the **Co-operatives Act 1996**, after "debentures of" insert ", CCUs issued by".
- (2) In section 9(3) of the **Co-operatives Act 1996**, after "debentures of" insert ", CCUs issued by".

5 Repayment of amounts due in respect of cancelled membership

In section 138(2)(b) of the **Co-operatives Act 1996**, after "allot or issue debentures" insert "or CCUs".

6 Interest on deposit and debentures

- (1) Insert the following heading to section 139 of the **Co-operatives Act 1996**—
"**Interest on deposits, debentures and CCUs**".
 - (2) In section 139(1) of the **Co-operatives Act 1996**, after "allots or issues debentures" insert "or CCUs".
 - (3) In section 139(2) of the **Co-operatives Act 1996**, for "The deposit or debenture" substitute "The deposit, debenture or CCU".
 - (4) In section 139(4) of the **Co-operatives Act 1996**, after "debentures" insert "or CCUs".
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7 Repayment of deposits, debentures and CCUs

- (1) **Insert** the following heading to section 140 of the **Co-operatives Act 1996**—

"Repayment of deposits, debentures and CCUs".

- (2) In section 140(1) of the **Co-operatives Act 1996**, for "A deposit or debenture" **substitute** "A deposit, debenture or CCU".

- (3) In section 140(2) of the **Co-operatives Act 1996**, for "deposit or debenture" **substitute** "deposit, debenture or CCU".

8 Set-off of amounts repaid etc. on forfeited shares

In section 145(1)(b) of the **Co-operatives Act 1996**, after "or debentures" **insert** "or CCUs".

9 Issue of shares at a premium

In section 153(4)(e) of the **Co-operatives Act 1996**, for "shares or debentures" **substitute** "shares, debentures or CCUs".

10 Deposit, debentures or CCUs in lieu of payment when share repurchased

- (1) **Insert** the following heading to section 177 of the **Co-operatives Act 1996**—

"Deposits, debentures or CCUs in lieu of payment when share repurchased".

- (2) In section 177(1)(b) of the **Co-operatives Act 1996**, after "allot or issue debentures" **insert** "or CCUs".

- (3) In sections 177(3), (4) and (5) of the **Co-operatives Act 1996**, for "The deposit or debenture" **substitute** "The deposit, debenture or CCU".

11 Requirements for financial records, statements and reports

- (1) In section 238(1)(d) of the **Co-operatives Act 1996**, after "to debentures" insert "or CCUs".
- (2) In section 238(1)(g) of the **Co-operatives Act 1996**, for "300(9), 301(2), 340, 341 and 342" substitute "300(9) and 301(2)".

12 Registers to be kept by co-operatives

After section 244(1)(f) of the **Co-operatives Act 1996** insert—

"(fa) a register of CCUs issued by the co-operative;"

13 New Division 1A of Part 10 inserted

After Division 1 of Part 10 of the **Co-operatives Act 1996** insert—

"Division 1A—Co-operative capital units

268A General nature of CCUs

- (1) A co-operative capital unit (*CCU*) is an interest issued by a co-operative conferring an interest in the capital (but not the share capital) of the co-operative.
 - (2) A CCU—
 - (a) is personal property; and
 - (b) is transferable or transmissible as provided by this Act and the rules of the co-operative, subject to the terms of issue of the CCU; and
 - (c) is, subject to the rules of the co-operative, capable of devolution by will or by operation of law.
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- (3) Subject to subsection (2)—
- (a) the laws applicable to ownership of and dealing with personal property apply to a CCU as they apply to other property; and
 - (b) equitable interests in respect of a CCU may be created, dealt with and enforced as in the case of other personal property.
- (4) A transferor of a CCU remains the holder of the CCU until the transfer is registered and the name of the transferee is entered in the register of CCU holders in respect of the CCU.
- (5) Despite any rule of law or equity to the contrary, a condition subject to which a CCU is issued is not invalid merely because the CCU is, by the condition, made irredeemable or redeemable only on the happening of a contingency however remote or at the end of a period however long.

268B Priority of CCUs on winding up

- (1) On a winding up of a co-operative, a debt owed to a person as the holder or former holder of a CCU issued by the co-operative is to rank for priority of payment in accordance with the terms of issue of the CCU.
 - (2) Such a debt may rank as a secured debt if it is secured but if it is unsecured may not rank in priority to other unsecured debts. It may rank equally with or behind unsecured debts and (if the debt ranks behind unsecured debts) may rank in priority to, equally with or behind debts due to contributories.
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268C Financial accommodation provisions apply to issue of CCUs

- (1) The issuing of CCUs is to be considered to be the obtaining of financial accommodation and accordingly Division 1 applies to the issue of CCUs.
- (2) For the purpose of Division 1, a CCU is to be considered to be a debenture.

268D CCUs can be issued to non-members

CCUs may be issued to persons whether or not they are members of the co-operative.

268E Minimum requirements for rules concerning CCUs

The rules of a co-operative that permit the co-operative to issue CCUs must contain provisions to the effect of the following provisions and must not contain provisions that are inconsistent with the following provisions—

- (a) at a meeting of the holders of CCUs the holders of CCUs are entitled to voting rights in proportion to their holding;
- (b) the rights of the holders of CCUs may be varied only in the manner and to the extent provided by their terms of issue and only with the consent of at least 75% of the holders of CCUs given in writing or at a meeting;
- (c) the holder of a CCU has, in the person's capacity as such a holder, none of the rights or entitlements of a member of the co-operative;

- (d) the holder of a CCU is entitled to receive notice of all meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

268F CCUs not to be issued unless terms of issue approved by Registrar

- (1) A co-operative is not to issue CCUs unless—
 - (a) the terms of issue have been approved by a special resolution of the co-operative; and
 - (b) the issue is made pursuant to an offer accompanied by a copy of a statement approved by the Registrar for the purposes of the issue; and
 - (c) the Registrar approves of the terms of issue.
 - (2) The terms of issue must specify the following matters, without otherwise limiting the contents of the terms of issue—
 - (a) details of entitlement to repayment of capital;
 - (b) details of entitlement to participate in surplus assets and profits;
 - (c) details of entitlement to interest on capital (whether cumulative or non-cumulative interest);
 - (d) details of how capital and interest on capital are to rank for priority of payment on a winding up;
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- (e) whether there is a limit on the total holding of CCUs that may be acquired by persons who are not members of the co-operative and, if there is a limit, what the limit is.
- (3) The statement approved by the Registrar for the purposes of the issue is to set out the terms of issue, the rights of the holders of CCUs, the terms of redemption and the manner of transferability of CCUs.
- (4) The Registrar is not to approve of the terms of issue unless satisfied that they will not result in a failure to comply with co-operative principles and are not contrary to the rules of the co-operative or this Act.

268G Directors' duties concerning CCUs

In discharging their duties, it is proper for the directors of a co-operative to take into account that the holders of CCUs have none of the rights and entitlements of, and are not entitled to be regarded as, members of the co-operative.

268H Redemption of CCUs

- (1) The redemption of CCUs is not to be considered to be a reduction in the share capital of the co-operative.
- (2) A co-operative may redeem CCUs but only on the terms and in the manner that is provided by the terms of their issue and only if they are fully paid up.
- (3) CCUs may not be redeemed except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares, or an approved issue of CCUs, made for the purpose of the redemption.
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- (4) For the purposes of subsection (3), an issue of CCUs is an approved issue if there is the same entitlement to priority of payment of capital and dividend in relation to shares in the co-operative as there was for the redeemed CCUs.
- (5) Any premium payable on redemption is to be provided for out of profits or out of the share premium account or an account created for that purpose.

268I Capital redemption reserve

- (1) This section applies if CCUs are redeemed out of profits that would otherwise be available for dividends.
- (2) Out of profits that would otherwise have been available for dividends there is to be transferred to a reserve called the capital redemption reserve a sum equal to the nominal amount of the CCUs redeemed.
- (3) The provisions of this Act relating to the reduction of share capital of a co-operative apply as if the capital redemption reserve were paid-up share capital of the co-operative.
- (4) The capital redemption reserve may be applied in paying up unissued shares of the co-operative to be issued to members of the co-operative as fully-paid bonus shares.

268J Issue of shares in substitution for redemption

- (1) If a co-operative has redeemed or is about to redeem CCUs held by an active member of the co-operative, it may—

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- (a) issue shares to the member up to the sum of the nominal value of the CCUs redeemed or to be redeemed, as if those CCUs had never been issued; or
- (b) pay up amounts unpaid on shares held by the member up to the sum of the nominal value of the CCUs redeemed or to be redeemed, as if those CCUs had never been issued.
- (2) This section applies only if the terms of issue of the CCUs provide for the conversion of CCUs held by an active member of the co-operative into shares of the co-operative."

14 New Part 14 substituted

For Part 14 of the **Co-operatives Act 1996** substitute—

"PART 14—FOREIGN CO-OPERATIVES

Division 1—Introductory

365 Definitions

In this Part—

authorisation notice means a written notice issued by the Registrar under this Part to a foreign co-operative certifying that the co-operative is authorised to carry on business in this State;

co-operatives law means a law of another State that, under section 367, is certified to be a co-operatives law for the purposes of this Part;

non participating co-operative means a foreign co-operative other than a participating co-operative;

participating co-operative means a foreign co-operative that is registered, incorporated or formed under, or subject to, a co-operatives law;

participating Registrar means a person exercising the functions of a Registrar under a co-operatives law;

participating State means any State in which a co-operatives law is in force;

State means any State in Australia, the Australian Capital Territory and the Northern Territory.

366 What constitutes carrying on business

- (1) For the purposes of this Part, a foreign co-operative carries on business in this State if it—
 - (a) solicits for members in this State; or
 - (b) seeks share capital in this State, takes deposits in this State or offers other securities in the co-operative in this State (including the issue of CCUs and debentures); or
 - (c) provides any goods or services within this State.
 - (2) A foreign co-operative is not to be regarded as carrying on business in this State merely because in this State it—
 - (a) is or becomes a party to any action or suit or arbitration proceeding; or
 - (b) effects settlement of an action, suit or proceeding or of any claim or dispute; or
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- (c) holds meetings of its directors or members or carries on other activities concerning its internal affairs; or
 - (d) maintains any account with an authorised deposit-taking institution; or
 - (e) effects any sale through an independent contractor; or
 - (f) solicits or procures any offer that becomes a binding contract only if the offer is accepted outside this State; or
 - (g) creates evidence of any debt or creates a charge on real or personal property; or
 - (h) secures or collects any of its debts or enforces its rights in regard to any securities relating to the debts; or
 - (i) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time.

367 Co-operatives law

- (1) A law of another State is a co-operatives law for the purposes of this Part if the Minister certifies in writing that the law substantially corresponds to the provisions of this Act (including this Part).
- (2) If the Minister certifies a law of another State as a co-operatives law under subsection (1), the Minister must—
 - (a) notify the Minister administering the co-operatives law in that State; and
 - (b) publish a copy of the certification in the Government Gazette.

368 Excluded matter

- (1) A foreign co-operative authorised under this Part to carry on business in this State is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified in this section.

Note

This section ensures that neither the Corporations Act nor Part 3 of the Australian Securities and Investments Commission Act 2001 of the Commonwealth will apply to a foreign co-operative, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

- (2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to foreign co-operatives to the extent that those provisions would otherwise be applicable to them—
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations Act; and
 - (b) provisions that relate to the role of a co-operative in the formation of a company; and
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- (c) provisions that relate to substantial holdings of shares, by or involving a co-operative, in a company; and
 - (d) provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation; and
 - (e) provisions that relate to dealings by a co-operative in securities of a body corporate, other than securities of the co-operative itself; and
 - (f) provisions that confer or impose functions on a co-operative in its dealings with a corporation, not being dealings in securities of the co-operative; and
 - (g) provisions that relate to securities of a co-operative, other than shares in, CCUs issued by, debentures of or deposits with a co-operative; and
 - (h) provisions relating to derivatives; and
 - (i) provisions relating to—
 - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or
 - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and
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- (j) provisions relating to the carrying on of a financial services business (as defined in section 761A of the Corporations Act) relating to securities; and
 - (k) provisions relating to financial statements, and audits of financial statements, of—
 - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or
 - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and
 - (l) provisions relating to money and scrip of clients of—
 - (i) financial services licensees (as defined in section 761A of the Corporations Act) whose licence covers dealing in, or providing advice about, securities; or
 - (ii) regulated principals (as defined in section 1430 of the Corporations Act) when dealing in, or providing advice about, securities as authorised by Subdivision D of Division 1 of Part 10.2 of that Act; and
 - (m) provisions relating to registers of interests in securities; and
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- (n) provisions relating to powers of a Court to cure procedural irregularities and to make other orders.
 - (3) Subsection (1) does not operate to exclude the operation of the following provisions of the Corporations Act except in relation to shares in, CCUs issued by, debentures of or deposits with a foreign co-operative—
 - (a) Part 1.2A (Disclosing entities); and
 - (b) Chapter 2L (Debentures); and
 - (c) Chapter 6D (Fundraising); and
 - (d) Part 7.10 (Market misconduct and other prohibited conduct relating to financial products and financial services).

Division 2—Mutual recognition of foreign co-operatives

369 Operation of foreign co-operatives in this State

A foreign co-operative must not carry on business in this State as a co-operative unless it is authorised under this Part to carry on business in this State.

Penalty: 240 penalty units.

370 Authorisation to carry on business

- (1) A participating co-operative is, by this Act, authorised to carry on business in this State after notifying the Registrar in accordance with section 371 and section 437 (Lodgment of documents) that the participating co-operative intends to carry on business in this State.

- (2) The authorisation of a participating co-operative is subject to the same conditions or restrictions that apply to the carrying on of its business under its registration in the participating State.
- (3) A non-participating co-operative is, by this Act, authorised to carry on business in this State if the Registrar issues the co-operative an authorisation notice.

371 Notification to Registrar

- (1) A foreign co-operative that proposes to carry on business in this State must lodge with the Registrar a written notice in the form approved by the Registrar.
- (2) The notice must be accompanied by the following—
 - (a) a statement, signed by 2 directors, or a director and the secretary of the co-operative, as to the following matters—
 - (i) that the co-operative is able to pay its debts as and when they become due and payable; and
 - (ii) that the co-operative complies and will continue to comply with the provisions of applicable laws of another State or other place under which the co-operative is registered, incorporated or formed; and
 - (iii) that no legal proceedings have been commenced or are pending against the co-operative in respect of a failure to comply, in its capacity as a co-operative, with a law of another State or any other

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- place in which the co-operative carries on business under which the co-operative is registered, incorporated, formed or authorised to carry on business; and
- (iv) the full name and address of each person who is to act as agent of the co-operative in this State; and
 - (v) the address of the proposed principal office of the co-operative in this State (if any); and
 - (vi) the name under which the co-operative proposes to carry on business in this State; and
- (b) a copy of the certificate of registration, incorporation or formation of the co-operative and particulars of any condition or restriction to which the registration, incorporation or formation is subject; and
- (c) any other documents or information that the Registrar may require or that are prescribed by the regulations; and
- (d) the fee, if any, prescribed by the regulations.
- (3) In the case of a non-participating co-operative, the notice must also be accompanied by the following—
- (a) a copy of the current rules of the co-operative; and
 - (b) a copy of the latest financial report, directors' report and auditor's report for the co-operative; and
 - (c) the full name, date of birth and address of each director of the co-operative; and
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- (d) details of the proposed business activities to be carried on in this State; and
- (e) details of any charges required to be registered pursuant to this Act.

372 Authorisation notices for participating co-operatives

- (1) The Registrar must, on a notice and documents being lodged in accordance with section 371 by a participating co-operative, issue to the co-operative a written notice certifying that the co-operative is authorised to carry on business in this State.
- (2) A failure to issue any such notice to a participating co-operative does not affect the authority of the co-operative to carry on business in this State.

373 Authorisation notices for non-participating co-operatives

The Registrar may issue to a non-participating co-operative a written notice certifying that the co-operative is authorised to carry on business in this State if a notice and documents are lodged by the co-operative in accordance with section 371 and the Registrar is satisfied that the rules of the co-operative—

- (a) comply with co-operative principles; and
 - (b) include acceptable active membership provisions; and
 - (c) provide procedures acceptable to the Registrar for disclosure of information; and
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- (d) provide that a member has one vote only; and
 - (e) make adequate provision for the duties of directors; and
 - (f) provide for acceptable accounting standards for the co-operative.

374 Name of foreign co-operative

A foreign co-operative that is authorised to carry on business in this State must do so under a name that is not likely to be confused with the name of a body corporate or a registered business name.

375 When foreign co-operative not authorised to carry on business

A foreign co-operative ceases to be authorised to carry on business in this State if—

- (a) it is deregistered or otherwise ceases to exist as a co-operative under the laws of the place in which it is registered, incorporated or formed; or
 - (b) its authority to carry on business in this State is withdrawn under section 376; or
 - (c) the Registrar notifies it under section 382 that it is not authorised to carry on business as a co-operative in this State.
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376 Withdrawal of authority to carry on business

- (1) The Registrar may give written notice to a foreign co-operative requiring it to show cause (a *show cause notice*), within the period specified in the notice, why its authority to carry on business in this State should not be withdrawn on any one or more of the following grounds—
 - (a) that the name under which the co-operative carries on business or proposes to carry on business in this State does not comply with this Division;
 - (b) that any of the statements, documents or information notified or lodged by the co-operative under this Division are materially false or misleading;
 - (c) that the circumstances of the co-operative have materially changed since the date the notice under section 371 was lodged by the co-operative;
 - (d) that the co-operative has, after notice from the Registrar, failed to comply with provisions of this Act applicable to the co-operative or provisions of the rules of the co-operative.
- (2) A show cause notice may be given if the Registrar is of the opinion that there are reasonable grounds to do so.
- (3) The show cause notice must specify the period, being at least 14 days, within which it must be complied with.

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- (4) The foreign co-operative may, within the period specified in the show cause notice, make oral or written submissions to the Registrar and provide evidence with respect to any of the matters to which the notice relates.
 - (5) The Registrar must consider any submissions made, or evidence adduced, within the period required by the show cause notice and may, if the Registrar is satisfied that any of the grounds referred to in subsection (1) has been established in relation to the foreign co-operative, give the co-operative a written notice withdrawing its authority to carry on business in this State.
 - (6) The Registrar may withdraw a show cause notice or other notice given under this section.

377 Appeals

- (1) A foreign co-operative may appeal to the Supreme Court against the following decisions—
 - (a) a decision not to issue an authorisation notice to the co-operative; and
 - (b) a decision of the Registrar to give written notice to the co-operative that it is not authorised to carry on business in this State.
 - (2) The Registrar must comply with an order of the Supreme Court on an appeal under this section.
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378 Application of Act and regulations to foreign co-operatives

The provisions of this Act that are specified in Schedule 7 apply with all necessary modifications and any modifications prescribed by the regulations, to a foreign co-operative that is authorised to carry on business in this State under this Part.

Division 3—General

379 Name and place of origin to appear on seal and in business and other documents

- (1) The name and place of origin of a foreign co-operative must appear in legible characters—
 - (a) on its seal; and
 - (b) in all notices, advertisements and other official publications of the co-operative; and
 - (c) in all its business documents.
- (2) A foreign co-operative must not contravene subsection (1).

Penalty: 20 penalty units.
- (3) An officer of a foreign co-operative or a person on its behalf must not—
 - (a) use any seal of the co-operative; or
 - (b) issue or authorise the issue of any notice, advertisement or other official publication of the co-operative; or

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- (c) sign or authorise to be signed on behalf of the co-operative any business document of the co-operative—
on or in which the co-operative's name or place of origin does not appear in legible characters.
Penalty: 20 penalty units.
- (4) A director of a foreign co-operative must not knowingly authorise or permit a contravention of this section.
Penalty: 20 penalty units.
- (5) In this section—
business document, in relation to a foreign co-operative, means a document that is issued, signed or endorsed by or on behalf of the co-operative and is—
- (a) a business letter, statement of account, invoice or order for goods or services; or
 - (b) a bill of exchange, promissory note, cheque or other negotiable instrument; or
 - (c) a receipt or letter of credit issued by the co-operative; or
 - (d) a document of a class prescribed by the regulations as a class of business documents.

380 Supply of information to participating Registrars

The Registrar must, if requested to do so by a participating Registrar, supply free of charge to the participating Registrar information, or copies of public documents, held by the Registrar relating to a

co-operative (including a foreign co-operative).

381 Registrar to be notified of changes

A foreign co-operative must lodge with the Registrar particulars of any change in the information provided by the co-operative under section 371 within 28 days after the change (other than information of a kind referred to in section 371(3)(e)).

Penalty: 20 penalty units.

382 Cessation of business

- (1) A foreign co-operative authorised to carry on business under this Part must, within 7 days after ceasing to carry on business as a co-operative in this State, give the Registrar written notice of that fact.

Penalty: 60 penalty units.

- (2) On notifying the Registrar that it has ceased to carry on business as a co-operative in this State, a foreign co-operative is no longer required to comply with this Part (other than Division 4).
- (3) Unless the Registrar has been given written notice that the foreign co-operative has resumed carrying on business as a co-operative in this State, the Registrar must, one year after receiving the notice, notify it that it is not authorised to carry on business in this State.

383 Functions conferred on Registrar under co-operatives laws

The Registrar may exercise any function conferred on the Registrar by or under a co-operatives law.

**Division 4—Winding up of foreign
co-operatives in this State**

384 Winding up to relate to State activities

- (1) This Division applies to the winding up of the affairs of a foreign co-operative in or in relation to this State.
- (2) A foreign co-operative may be wound up under this Division whether or not it has been wound up or deregistered or has otherwise ceased to exist as a co-operative under or because of the laws of the place in which it is registered, incorporated or formed.
- (3) This Division has effect in addition to, and not in derogation of, any other provisions of this Act or any other law with respect to the winding up of co-operatives.

385 Court may order winding up

- (1) The Supreme Court may order the winding up of a foreign co-operative if—
 - (a) the Registrar has, as a result of an inquiry conducted under Division 2 or 4 of Part 15, stated that it is in the interests of the public, of the members, or of the creditors, that the co-operative be wound up; or
 - (b) the co-operative's authority to carry on business in this State has been withdrawn under this Act; or
 - (c) the co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed or has ceased to carry on business in that place.

- (2) The Registrar may apply to the Supreme Court for the winding up of a foreign co-operative on any of the grounds referred to in subsection (1).
- (3) The Registrar must give a copy of an application made under this section to the foreign co-operative the subject of the application.

386 Application of Corporations Act to winding up of foreign co-operatives

- (1) The winding up or deregistration or withdrawal of an authority to carry on business in this State of a foreign co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the **Corporations (Ancillary Provisions) Act 2001** in relation to the application of Parts 5.4B and 5.6 and section 601AE of the Corporations Act.
 - (2) Parts 5.4B and 5.6 of the Corporations Act are applied subject to the modifications set out in Schedule 8 to this Act.
 - (3) Section 601AE of the Corporations Act applies to property that vests in the Registrar under section 387 of this Act as if the property were vested in the Registrar under section 601AD(2) of that Act.
 - (4) The fact that a foreign co-operative has been deregistered or has ceased to exist as a co-operative in the place in which it was registered, incorporated or formed does not affect the liability of a member or former member as a contributory on a winding up under this Division.
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387 Outstanding property of foreign co-operative

- (1) This section applies if, after the winding up of a foreign co-operative in this State, outstanding property of the body remains in this State.
- (2) The estate and interest in the property, at law or in equity, of the body or its liquidator at that time, together with all claims, rights and remedies that the co-operative or its liquidator then had in respect of the property, vests by force of this section in—
 - (a) if the co-operative was registered, formed or incorporated in Australia or an external Territory, the person entitled to the property under the law of the place in which the co-operative was registered, formed or incorporated; or
 - (b) in any other case, the Registrar.
- (3) If any claim, right or remedy of a liquidator may under this Division be made, exercised or availed of only with the approval or concurrence of the Supreme Court or some other person, the Registrar may, for the purposes of this section, make, exercise or avail himself or herself of the claim, right or remedy without the approval or concurrence.

Division 5—Mergers and transfers of engagements affecting foreign co-operatives

387A Definitions

In this Division—

appropriate Registrar, in relation to a proposed merger or transfer of engagements, means—

- (a) the State Registrar, if the merger is to result in a State co-operative or the transfer is to a State co-operative; or
- (b) the participating Registrar, if the merger is to result in a co-operative under the co-operatives law of the participating State concerned or the transfer is to such a co-operative;

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money) and includes securities, choses in action and documents;

instrument means an instrument (other than this Act) which creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law) and includes any judgment, order and process of a court;

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent);

original co-operative means—

- (a) in the case of a transfer of engagements, the transferor co-operative; or
- (b) in the case of a merger, each of the co-operatives that are merging;

State co-operative means a co-operative registered in this State;

State Registrar means the person for the time being holding the office of Registrar of Co-operatives under this Act;

successor co-operative means—

- (a) in the case of a transfer of engagements, the transferee co-operative; or
- (b) in the case of a merger, the co-operative formed by the merger.

387B Authority for merger or transfer of engagements

- (1) A State co-operative and a participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division.
- (2) A State co-operative and a non-participating co-operative may consolidate all or any of their assets, liabilities and undertakings by way of merger or transfer of engagements approved under this Division if—
 - (a) the merger is to result in a State co-operative; or
 - (b) the transfer is to a State co-operative.

387C Requirements before application can be made

- (1) Before a State co-operative and a participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer must have been approved by each of the co-operatives—

- (a) by a special resolution passed by special postal ballot; or
 - (b) if permitted by subsection (3), by a special resolution, or by a resolution of the board, of the co-operative.
 - (2) Before a State co-operative and a non-participating co-operative can apply for approval under this Division of a merger or transfer of engagements, the proposed merger or transfer of engagements—
 - (a) must have been approved—
 - (i) in the case of the non-participating co-operative, by a special resolution of the co-operative; or
 - (ii) in the case of the State co-operative, by a special resolution passed by special ballot; or
 - (b) if permitted by subsection (3), must have been approved—
 - (i) in the case of the non-participating co-operative, by a resolution of the board of the co-operative; or
 - (ii) in the case of the State co-operative, by a special resolution, or by a resolution of the board, of the co-operative.
 - (3) The proposed merger or transfer of engagements may be approved by special resolution, or by resolution of the board, of the co-operative if—
 - (a) the State Registrar consents to that procedure applying in the particular case; and
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- (b) in the case of a merger or transfer affecting a participating co-operative, the participating Registrar also consents to that procedure applying in the particular case.
 - (4) A consent referred to in subsection (3) may be granted subject to conditions, including any condition that a disclosure statement be provided to members or directors.
 - (5) A co-operative that contravenes a condition of a consent is taken not to have been given consent.

387D Disclosure statement required

- (1) A special resolution of a State co-operative or foreign co-operative is not effective for the purposes of this Division unless this section has been complied with.
- (2) Each co-operative must send to each of its members a disclosure statement approved by the appropriate Registrar specifying the following—
 - (a) the financial position of the State co-operative and the foreign co-operative as shown in financial statements that have been prepared as at a date that is not more than 6 months before the date of the statement; and
 - (b) any interest that any officer of the State co-operative or the foreign co-operative has in the proposed merger or transfer of engagements; and

- (c) any compensation or other consideration proposed to be paid, or any other incentive proposed to be given, to any officer or member of the State co-operative or foreign co-operative in relation to the proposed merger or transfer of engagements; and
 - (d) whether the proposal is a merger or transfer of engagements and the reason for the merger or transfer of engagements; and
 - (e) in the case of a transfer of engagements—whether it is a total or partial transfer of engagements; and
 - (f) in the case of a merger—whether the merged co-operative will result in a State co-operative or a co-operative under the co-operatives law of the participating State concerned; and
 - (g) any other information that the Registrar directs.
- (3) The disclosure statement must be sent to the members of the State co-operative or foreign co-operative so that it will in the ordinary course of post reach each member who is entitled to vote on the special resolution not later than—
- (a) if the resolution is to be decided at a meeting—21 days before the date of the meeting; or
 - (b) if the resolution is to be decided by a postal ballot—21 days before the day on or before which the ballot papers must be returned by members voting in the ballot.
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- (4) The appropriate Registrar may exempt the State co-operative or foreign co-operative from complying with this section.
 - (5) The appropriate Registrar may grant an exemption, or approve a disclosure statement, subject to any conditions it considers appropriate.

387E Making an application

- (1) An application for approval of a merger or transfer of engagements under this Division must be made to the State Registrar and, if the merger or transfer of engagements affects a participating co-operative, to the participating Registrar in the manner and form required by the Registrar concerned.
- (2) An application for approval of a merger must be accompanied by—
 - (a) 2 copies of the proposed rules of the merged co-operative; and
 - (b) in the case of a non-participating co-operative, details of voting on the special resolution (if any) of the co-operative; and
 - (c) any other information required by the Registrar to whom the application is made.

387F Approval of merger

- (1) If the State Registrar is the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that—
 - (a) this Division has been complied with in relation to the application; and

- (b) the proposed rules of the merged co-operative are adequate; and
 - (c) the certificate of registration of the State co-operative has been surrendered to the State Registrar; and
 - (d) in the case of a merger with a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the Registrar for the participating State concerned; and
 - (e) in the case of a merger with a non-participating co-operative, the merged co-operative will comply with this Act; and
 - (f) there is no good reason why the merged co-operative and its rules should not be registered.
- (2) If the State Registrar is not the appropriate Registrar, he or she must approve a merger pursuant to an application under this Division if satisfied that the merger has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).
- (3) On approving an application for merger, the State Registrar must—
- (a) cancel the registration of the State co-operative involved in the merger; and
 - (b) if the merger is to result in a State co-operative, register the merged co-operative and its rules and issue to it a certificate of registration under this Act.
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- (4) A merger takes effect on the issue of the certificate of registration for the merged co-operative (whether under this Act or under the co-operatives law of the participating State concerned).

387G Approval of transfer of engagements

- (1) If the State Registrar is the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that—
- (a) this Division has been complied with in relation to the application; and
 - (b) the rules or proposed rules of the transferee co-operative are adequate; and
 - (c) in the case of a total transfer of engagements from a participating co-operative, the certificate of registration of the participating co-operative has been surrendered to the participating Registrar; and
 - (d) in the case of a total transfer of engagements from a non-participating co-operative, the certificate of registration of the non-participating co-operative has been surrendered to the State Registrar; and
 - (e) in the case of a transfer of engagements by a non-participating co-operative, the transferee co-operative will comply with this Act; and
 - (f) there is no good reason why the transfer of engagements should not take effect.
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- (2) If the State Registrar is not the appropriate Registrar, he or she must approve a transfer of engagements pursuant to an application under this Division if satisfied that the transfer has been approved under the provision of the co-operatives law of the participating State that corresponds with subsection (1).
 - (3) A transfer of engagements takes effect on the day specified in the approval of the State Registrar.

387H Effect of merger or transfer of engagements

- (1) When a merger or transfer of engagements takes effect under this Division (the *transfer day*), the following provisions apply to the extent necessary to give effect to the merger or transfer—
 - (a) persons who were members of the original co-operative immediately before the transfer day are members of the successor co-operative in accordance with its rules; and
 - (b) the assets of the original co-operative vest in the successor co-operative without the need for any conveyance, transfer, assignment or assurance; and
 - (c) the rights and liabilities of the original co-operative become the rights and liabilities of the successor co-operative; and
 - (d) all proceedings by or against the original co-operative that are pending immediately before the transfer day are taken to be proceedings pending by or against the successor co-operative; and
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- (e) any act, matter or thing done or omitted to be done by, to or in respect of the original co-operative before the transfer day is (to the extent to which that act, matter or thing has any force or effect) to be taken to have been done or omitted by, to or in respect of the successor co-operative; and
 - (f) a reference in an instrument or in any document of any kind to the original co-operative is to be read as, or as including, a reference to the successor co-operative.
- (2) The operation of this section is not to be regarded as—
- (a) a breach of contract or confidence or otherwise as a civil wrong; or
 - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or
 - (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a transfer of engagements is not liable to duty or to any fee chargeable under any Act for registration.
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- (4) A document or an instrument executed or registered for or with respect to a transfer of any property to give effect to this section in respect of a merger is not liable to duty or to any fee chargeable under any Act for registration if the co-operative formed by the merger is a non-trading co-operative.

387I Division applies instead of certain other provisions of this Act

- (1) This Division applies instead of Division 1 (Mergers and transfers of engagements) of Part 12, in respect of the merger of a State co-operative with a foreign co-operative.
- (2) This Division applies instead of Division 1 of Part 12, in respect of a transfer of engagements between a State co-operative and a foreign co-operative.

Division 6—Liability of foreign co-operatives and State co-operatives operating in other States

387J Offences under this Act and co-operatives law

If—

- (a) an act or omission constitutes an offence under this Act and under a co-operatives law of a participating State; and
- (b) the offender has been punished for that offence under the co-operatives law of the participating State—

the offender is not liable to be punished for the offence under this Act.

Division 7—Savings and transitional provisions

387K Application of Part to registered foreign co-operatives

- (1) A foreign co-operative registered under this Part immediately before the commencement day (a *registered foreign co-operative*) is taken on and after the commencement day to be authorised to carry on business as a foreign co-operative under this Part and this Part (except sections 370 and 371(1)) applies accordingly.
- (2) The authorisation of a registered foreign co-operative is subject to the same conditions or restrictions that applied to its registration under this Act immediately before the commencement day.
- (3) A registered foreign co-operative must lodge with the Registrar particulars of any change in relation to the co-operative in any matter of a kind listed in section 371(2)(a) within 28 days after the change.
Penalty: 20 penalty units.
- (4) In addition to the grounds set out in section 376(1), the Registrar may give a show cause notice under that section to a registered foreign co-operative if the circumstances of the co-operative have materially changed since the co-operative was registered.
- (5) In this section—

commencement day means the day on which section 14 of the **Co-operatives and Private Security Acts Amendment Act 2008** comes into operation."

15 Exemption from stamp duty

At the end of section 457 of the **Co-operatives Act 1996 insert—**

"(2) An instrument issued or executed in connection with a CCU of a co-operative is not exempt under subsection (1)."

16 Amendment to Schedule 6

In Schedule 6 to the **Co-operatives Act 1996, omit "Section 376(1)".**

17 New Schedules 7 and 8 inserted

After Schedule 6 to the **Co-operatives Act 1996, insert** the following Schedules—

"SCHEDULE 7

Section 378

APPLIED CO-OPERATIVES PROVISIONS

1 Provisions applicable to participating co-operatives

The following provisions apply to participating co-operatives—

- (a) Division 4 (Application of Corporations Act to co-operatives) of Part 1 (Preliminary) (other than section 9);
- (b) section 252 (Name to include certain matter);
- (c) section 261 (Registrar's directions re: fundraising);
- (d) section 425 (Information and evidence);
- (e) section 426 (Extension or abridgment of time);
- (f) Part 17 (Offences and proceedings);

- (g) section 460 (Service on member of co-operative);
- (h) section 461 (Reciprocal arrangements);
- (i) section 463 (Regulations).

2 Provisions applicable to non-participating co-operatives

The following provisions apply to non-participating co-operatives—

- (a) Division 3 (The co-operative principles) and Division 4 (Application of Corporations Act to co-operatives) of Part 1 (Preliminary) (other than section 9);
- (b) section 13(2);
- (c) section 14 (Trading co-operatives);
- (d) section 15 (Non-trading co-operatives);
- (e) Part 3 (Legal capacity and powers);
- (f) section 84 (Transfer of share or interest on death of member);
- (g) section 85 (Transfer of small shareholdings and interests on death);
- (h) Division 5 (Oppressive conduct of affairs) of Part 4 (Membership);
- (i) section 106 (Effect of rules);
- (j) section 108 (Purchase and inspection of copy of rules);
- (k) section 109 (False copies of rules);
- (l) section 250 (List of members to be furnished at request of Registrar);
- (m) section 251 (Special return to be furnished at request of Registrar);

- (n) section 252 (Name to include certain matter);
 - (o) Division 1 (Power to raise money) of Part 10 (Funds and property);
 - (p) Part 13 (Arrangements and reconstructions);
 - (q) section 425 (Information and evidence);
 - (r) section 426 (Extension or abridgment of time);
 - (s) Part 17 (Offences and proceedings);
 - (t) section 460 (Service on member of co-operative);
 - (u) section 461 (Reciprocal arrangements);
 - (v) section 463 (Regulations).
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SCHEDULE 8

Section 386

MODIFICATIONS TO CORPORATIONS ACT

Modifications to winding up provisions

Parts 5.4B and 5.6 of the Corporations Act apply with the following modifications—

- (a) a reference in those Parts to ASIC is to be read as a reference to the Registrar; and
- (b) a reference in those Parts to an application to wind up a company under section 464 or Part 5.4A is to be read as a reference to an application by the Registrar under Division 4 of Part 14 of this Act; and
- (c) a reference in those Parts to a winding up ordered by the Court under a provision of Part 5.4A is a reference to a winding up ordered by the Court under Division 4 of Part 14 of this Act; and
- (d) a reference in those Parts to an order under a provision of Part 5.4A is a reference to an order under section 385 of this Act; and
- (e) for the purposes of an application by the Registrar to wind up a foreign co-operative, those Parts apply, with such modifications as the circumstances require, as if a winding up application had been made by the co-operative; and

- (f) those Parts apply as if a ground specified in section 385 of this Act were a ground for winding up by the Court specified in section 461 of the Corporations Act; and
 - (g) a reference in those Parts to an official liquidator is to be read as a reference to a person approved by the Registrar as a liquidator of a co-operative; and
 - (h) sections 467(4) and (5), 480(d), 481(5)(b), 513B, 517, 518, 523 and 524 do not apply; and
 - (i) a reference in section 485(2) to persons entitled to any surplus is a reference to a person entitled to the surplus under section 387 of this Act; and
 - (j) section 516 is to be read as if the words "together with any charges payable by the member to the co-operative in accordance with the rules" were inserted after "past member"; and
 - (k) Subdivision C of Division 6 of Part 5.6 does not apply; and
 - (l) a reference in those Parts to section 233 (Orders the Court can make) is to be read as a reference to Division 5 (Oppressive conduct of affairs) of Part 4 of this Act; and
 - (m) those Parts are to be read subject to sections 76 (Liability of members to co-operative) and 322 (Liability of member to contribute in a winding up where shares forfeited etc) of this Act for the purposes of determining the liability of members and past members
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to contribute on a winding up of a
co-operative; and

- (n) any other modifications (within the
meaning of Part 3 of the **Corporations
(Ancillary Provisions) Act 2001**) that
are prescribed by the regulations."
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Co-operatives and Private Security Acts Amendment Act 2008
No. 13 of 2008

s. 18

Part 3—Amendments to Private Security Act 2004

PART 3—AMENDMENTS TO PRIVATE SECURITY ACT 2004

18 Statutory review of this Act

See:
Act No.
33/2004.
Reprint No. 1
as at
26 September
2007.
LawToday:
www.
legislation.
vic.gov.au

In section 178(3) of the **Private Security Act 2004**, for "within 12 months after the end of the period of 3 years" **substitute** "by 1 June 2009".

PART 4—AUTOMATIC REPEAL OF AMENDING ACT

19 Repeal of Amending Act

This Act is **repealed** on the first anniversary of its commencement.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 13 March 2008

Legislative Council: 10 April 2008

The long title for the Bill for this Act was "A Bill for an Act to amend the **Co-operatives Act 1996** and the **Private Security Act 2004** and for other purposes."