

WESTERN AUSTRALIA

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**COMPANIES (CO-OPERATIVE)  
AMENDMENT ACT 1994**

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**No. 56 of 1994**

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**AN ACT to amend the *Companies (Co-operative) Act 1943*.**

*[Assented to 2 November 1994.]*

The Parliament of Western Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Companies (Co-operative) Amendment Act 1994*.

**Commencement**

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

**Principal Act**

3. In this Act the *Companies (Co-operative) Act 1943\** is referred to as the principal Act.

[\* *Reprinted as approved 16 December 1954.*

*For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 40, and Gazette of 31 August 1993 at pp. 4687-9.]*

**Sections 171A to 171F inserted**

4. Part VI of the principal Act is amended by inserting before section 172 the following sections —

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**Interpretation**

171A. In this Part, unless the contrary intention appears —

**“externally-administered non-cooperative”**  
means a non-cooperative —

- (a) that is being wound up;
- (b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting;
- (c) that is being dissolved or terminated;

- (d) that is under administration;
- (e) that is under official management;
- (f) that has executed a deed of company arrangement that has not yet terminated; or
- (g) that has entered into a compromise or arrangement with a person the administration of which has not been concluded;

**“new body”** means a body corporate referred to in section 176A (1);

**“non-cooperative”** means a company, society or association that is not registered as a company under this Part.

### **Non-cooperative may apply for registration**

**171B.** (1) Subject to section 173, a non-cooperative may apply to the Registrar to be registered as a co-operative company under this Part.

(2) The Registrar shall grant an application under subsection (1) if —

- (a) the Registrar is satisfied that neither section 171C nor 171D prohibits the applicant from being registered under this Part; and
- (b) the application is made in accordance with section 171E.

**Certain non-cooperatives not to be registered**

**171C.** A non-cooperative shall not be registered under this Part if —

- (a) it is an externally-administered non-cooperative; or
- (b) an application has been made to a court (in Australia or elsewhere) —
  - (i) to wind up, dissolve or terminate the non-cooperative; or
  - (ii) for the approval of a compromise or arrangement between the non-cooperative and a person,

which has not been dealt with.

**Prerequisites of registration**

**171D.** A non-cooperative shall not be registered under this Part unless —

- (a) under the law under which it exists, it may apply to become a different body;
- (b) it has complied with any requirements of that law in relation to applying to become a different body; and
- (c) if that law does not require its members, or a specified proportion of them, to consent to the application, the application has been consented to by at least 75% of those of its members who, being entitled to do so, vote in person or, if allowed, by proxy, at a meeting of which at least 21 days notice is given specifying the intention to apply to become a different body.

**Form and content of application**

**171E.** An application by a non-cooperative under section 171B shall be in writing in the prescribed form and shall be accompanied by —

- (a) a certified copy of a current certificate as to its existence or incorporation, or a document of similar effect;
- (b) evidence acceptable to the Registrar that neither section 171C nor 171D prohibits the applicant from being registered under this Part;
- (c) a certified printed copy of its constitution, if applicable;
- (d) a statement specifying, if applicable —
  - (i) its nominal share capital and the number and class into which the share capital is divided;
  - (ii) the number of shares taken up and the amount paid on each; and
  - (iii) the full name, or the surname together with at least one given name and any other initials, and the address, of each shareholder and the number and class of shares held by each shareholder;
- (e) in relation to each existing charge on its property, a copy of the instrument creating the charge that would be required to be kept at its registered office under section 95 if it were a co-operative company; and

- (f) any information that is, or documents that are, prescribed or that the Registrar requires by written notice given to the non-cooperative.

### **Registration of applicant as a co-operative company**

**171F.** When the Registrar grants an application under section 171B, the Registrar is to register the applicant as a co-operative company by registering the application, and is to allot to the co-operative company a registration number distinct from the registration number of each co-operative company already registered under this Part.

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### **Sections 176A to 176E inserted**

**5.** Part VI of the principal Act is further amended by inserting after section 176 of the principal Act the following sections —

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#### **Co-operative company may apply to become a new body**

**176A.** (1) A co-operative company may, if approved by special resolution, apply to become —

- (a) a company under the Corporations Law;
- (b) an incorporated association under the *Associations Incorporation Act 1987*;
- (c) a terminating building society under the *Building Societies Act 1976*;
- (d) a society under the Financial Institutions (Western Australia) Code; or

- (e) a body corporate under a law that is a law of a place outside the State and that is prescribed for the purposes of this section.

(2) Before making an application under subsection (1), a co-operative company shall, by special resolution, determine the name it will have when it becomes a new body.

(3) The name referred to in subsection (2) need not be the same as the co-operative company's name and shall not include the word "co-operative" or any other word importing a similar meaning.

(4) The Registrar may, by order in writing, exempt a co-operative company from complying with all or any specified provisions of this section in relation to any matter to which this section applies, and any such exemption may be granted unconditionally or subject to conditions.

**New body ceases to be registered as co-operative company**

**176B.** If and when a co-operative company becomes a new body, it ceases to be a co-operative company under this Part and the Registrar is to remove its name from the register.

**New body not to impose greater liability, etc.**

**176C.** (1) Any memorandum or articles of association or rules adopted by a co-operative company for the purposes of becoming a new body shall not —

- (a) impose on the members of the co-operative company, when it becomes the new body, any greater or different liability to

contribute to the assets of the new body than the liability to which they are subject as members of the co-operative company immediately before it becomes the new body; or

- (b) deprive any member of the co-operative company, when it becomes the new body, of any preferential rights with respect to dividend or capital to which the member is entitled as a member of the co-operative company immediately before it becomes the new body.

(2) Every person who is a member of a co-operative company immediately before it becomes a new body shall, when it becomes the new body, be a member of the new body.

(3) If a co-operative company becomes a new body that has a share capital, every member of the co-operative company who holds shares in the co-operative company immediately before it becomes the new body shall, when it becomes the new body, hold shares in the capital of the new body equal in number and nominal value to the shares held by the member as a member of the co-operative company.

### **Effect of certificate that new body exists**

**176D.** If a co-operative company becomes a new body, a certificate issued under the law applicable to the new body certifying that the new body exists is conclusive evidence that all the requirements of sections 176A, 176B and 176C have been complied with.



**New body corporate deemed to be a  
continuation of the co-operative company**

**176E.** When a co-operative company is registered as a new body, the body corporate constituted by the new body shall be deemed to be the same entity as the body corporate constituted by the co-operative company.

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