

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF CO-OPERATIVES REGULATIONS

Regulations 2002, No. 10

TABLE OF PROVISIONS

Regulation

1. Principal Regulations
2. Definition of debenture
3. Adoption of Corporations Act 2001 provisions concerning officers of co-operatives
4. Repeal and substitution
 12. Requirements for financial statements and financial records
5. Annual report
6. Repeal and substitution
 27. Application of Corporations Act 2001 to winding up
7. Application of Act and regulations to foreign co-operatives
8. Inspection of Register
9. New Schedule
 - SCHEDULE 2A
10. Transitional: regulation 12



NORTHERN TERRITORY OF AUSTRALIA

Regulations 2002, No. 10*

Regulations under the *Co-operatives Act*

I, JOHN CHRISTOPHER ANICTOMATIS, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Co-operatives Act*.

Dated 30 April 2002.

J. C. ANICTOMATIS
Administrator

By His Honour's Command

S. STIRLING
Minister for Employment, Education and Training
acting for and on behalf of the
Minister for Justice and Attorney-General

* Notified in the *Northern Territory Government Gazette* on 8 May 2002.

AMENDMENTS OF CO-OPERATIVES REGULATIONS

1. Principal Regulations

The Co-operatives Regulations are in these Regulations referred to as the Principal Regulations.

2. Definition of debenture

Regulation 4 of the Principal Regulations is amended by omitting from paragraph (c) "Corporations Law" and substituting "Corporations Act 2001".

3. Adoption of Corporations Act 2001 provisions concerning officers of co-operatives

Regulation 11 of the Principal Regulations is amended by omitting "Corporations Law" and substituting "Corporations Act 2001".

4. Repeal and substitution

Regulation 12 of the Principal Regulations is repealed and the following substituted:

"12. Requirements for financial statements and financial records

"(1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 4 of the *Corporations Reform (Northern Territory) Act* in relation to Parts 2F.3, 2M.2, 2M.3, 2M.4 and 2M.7 of the Corporations Act 2001, subject to the modifications specified in the Act and Schedule 2A.

"(2) For the purposes of section 233(1) of the Act, a co-operative must –

- (a) keep financial records and prepare financial statements as required by the provisions of the Corporations Act 2001 applied (as modified) by this regulation; and
- (b) ensure that those financial statements are audited in accordance with the provisions of the Corporations Act 2001 applied (as modified) by this regulation."

5. Annual report

Regulation 16 of the Principal Regulation is amended –

- (a) by omitting "For" and substituting "(1) For"; and
- (b) by adding at the end the following:

Co-operatives Regulations

"(2) For the purposes of section 244(1) of the Act, a co-operative that has to prepare or obtain a report for a financial year under the provisions of the Corporations Act 2001 applied by regulation 12 must include in its annual report to the Registrar for that year a copy of each report it prepares or obtains."

6. Repeal and substitution

Regulation 27 of the Principal Regulations is repealed and the following substituted:

"27. Application of Corporations Act 2001 to winding up

"For the purposes of section 311 of the Act, the following modifications are prescribed:

- (a) a reference in any applied provisions of the Corporations Act 2001 to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of the Act;
- (b) a reference in any of the applied provisions of the Corporations Act 2001 to ASIC is to be read as a reference to the Registrar;
- (c) section 461(1)(h) of the Corporations Act 2001 applies as if the words "ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:" were omitted and "the Registrar has, as the result of an inquiry conducted under Part 15 of the Act, stated that –" were substituted in their place;
- (d) section 464 of the Corporations Act 2001 applies as if –
 - (i) subsection (1) were omitted and the following were substituted in its place:

'(1) Where the Registrar is investigating, or has investigated, under Part 15 of the Act –

- (a) matters being, or connected with, the affairs of a co-operative; or
- (b) matters including such matters,

the Registrar may apply to the Court for the winding up of the co-operative.'; and

- (ii) subsection (3) were omitted and the following were substituted in its place:

'(3) The Registrar must give a copy of an application made under subsection (1) to the co-operative.';

Co-operatives Regulations

(e) section 513B of the Corporations Act 2001 applies as if the following paragraph were inserted after paragraph (d):

'(da) if the winding up is on the certificate of the Registrar – on the date that the certificate is given; or;'

(f) section 516 of the Corporations Act 2001 applies as if the words 'together with any charges payable by him or her to a co-operative in accordance with the rules' were inserted after 'past member';

(g) section 532 of the Corporations Act 2001 applies as if –

(i) subsection (1) were omitted and the following were substituted in its place:

'(1) Subject to this section, a person must not consent to be appointed, and must not act, as liquidator of a co-operative unless he or she –

(a) is a registered liquidator; or

(b) is or is to be appointed or nominated for appointment as the liquidator of a co-operative under section 310 of the Act.'; and

(ii) subsection (4) were omitted;

(h) section 542 of the Corporations Act 2001 applies as if the following were inserted after subsection (3)(c):

'and

(d) in the case of a winding up on the certificate of the Registrar under section 310 of the Act – with consent of the Registrar.';

(i) section 1341 of the Corporations Act 2001 applies as if –

(i) the words 'or subsection 1339(3)' were omitted;

(ii) a reference to the Consolidated Revenue Fund of the Commonwealth were a reference to the Consolidated Revenue Account of the Northern Territory; and

(ii) a reference to the Court were a reference to the Local Court;

(j) a reference in any of the applied provisions of the Corporations Act 2001 to a registered liquidator includes a reference to a person approved by the Registrar as a liquidator of a co-operative;

(k) a reference in any of the applied provisions of the Corporations Act 2001 to section 233 of that Act is to be read as a reference to Part 2F.1 of that Act;

Co-operatives Regulations

- (l) for the purposes of the application of the applied provisions of the Corporations Act 2001 to winding up on the certificate of the Registrar, the winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Act 2001 does not apply);
- (m) the applied provisions of the Corporations Act 2001 are to be read subject to sections 71 and 317 of the Act for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative.

7. Application of Act and regulations to foreign co-operatives

Regulation 34 of the Principal Regulations is amended by omitting subregulation (1)(a)(iv) and substituting the following:

- "(iv) section 311 (but only to the extent that it applies Parts 5.4, 5.4B and 5.6 of the Corporations Act 2001 to an insolvent participating co-operative);".

8. Inspection of Register

Regulation 40 of the Principal Regulations is amended by omitting paragraphs (h) and (j) and substituting the following:

- "(h) debentures and any other documents lodged with the Registrar because of the application of Part 1.2A, Chapter 2L, Chapter 6D and Part 7.11 of the Corporations Act 2001 under section 258 of the Act;
- (j) documents lodged with the Registrar because of the application of Part 5.3A and Division 3 of Part 5.9 of the Corporations Act 2001 under section 318 of the Act;".

9. New Schedule

The Principal Regulations are amended by inserting after Schedule 2 the following:

"SCHEDULE 2A

Regulation 12

**MODIFICATION OF APPLIED PROVISIONS OF
CORPORATIONS ACT 2001**

1. Interpretation of modified provisions

(1) The following definitions are to be substituted for the corresponding definitions under the Corporations Act 2001 for the purposes of interpreting provisions of that Act applied or modified by these Regulations, as modified by the Act and this Schedule:

'consolidated entity' means a co-operative together with all the entities it is required by the accounting standards to include in consolidated financial statements;

'Court' means the Supreme Court of the Northern Territory;

'debenture', in relation to a co-operative, has the same meaning as in section 4 of the Act;

'director', in relation to a co-operative, has the same meaning as in section 4 of the Act;

'disclosing entity' has the same meaning as in section 258 of the Act (which applies Part 1.2A of the Corporations Act 2001);

'financial year' means a financial year of a co-operative as determined in accordance with section 238 of the Act;

'member of a co-operative' has the same meaning as in Part 4 of the Act;

'officer', in relation to a co-operative, has the same meaning as in section 4 of the Act;

'Registrar' means the Registrar of Co-operatives appointed under the Act;

'related', in the context of related bodies corporate, has the same meaning as in Part 3 of Schedule 2 of the Act;

'the Act' means the *Co-operatives Act* of the Northern Territory.

(2) Expressions used in the applied provisions of the Corporations Act 2001, as modified, that are not defined in the Corporations Act 2001 have the same meaning as in the Act.

Co-operatives Regulations

(3) For the purposes of the applied provisions of the Corporations Act 2001, as modified, the accounting standards in force under the Corporations Act 2001 are to apply with any modifications that may be necessary or appropriate for the effectual application of the standards to co-operatives.

2. Modifications of section 287 of Corporations Act 2001

Section 287 of the Corporations Act 2001 applies as if the following subsection were added at the end:

'(3) An inspector may, by notice in writing, specify a period within which the translation must be made available to the inspector.'

3. Modification of section 288 of Corporations Act 2001

Section 288 of the Corporations Act 2001 applies as if –

- (a) the expression '(1)' were inserted before 'If'; and
- (b) the following subsection were added at the end:

'(2) An inspector may, by notice in writing, specify a period within which the hard copy must be made available to the inspector.'

4. Modification of section 289 of Corporations Act 2001

The Corporations Act 2001 applies as if section 289 were repealed and the following section were substituted in its place:

'289 Place where records are kept

'The financial records must be kept within the Territory but the co-operative may decide where within the Territory to keep them.'

5. Modification of section 292 of Corporations Act 2001

The Corporations Act 2001 applies as if section 292 were repealed and the following section were substituted in its place:

'292 Who has to prepare annual financial reports and directors' reports

'A financial report and a directors' report must be prepared for each financial year by all co-operatives.'

6. Modification of section 307 of Corporations Act 2001

Section 307 of the Corporations Act 2001 applies as if –

Co-operatives Regulations

- (a) the words 'company, registered scheme or disclosing entity' were omitted from paragraph (c) and 'co-operative' were substituted in their place; and
- (b) paragraph (d) were omitted and the following paragraph were substituted in its place:
 - '(d) whether the co-operative has kept registers as required by section 239 of the Act and other records as required by the Act (including provisions of this Act adopted by or under the Act).'

7. Modification of section 314 of Corporations Act 2001

Section 314 of the Corporations Act 2001 applies as if –

- (a) the words 'company, registered scheme or disclosing entity' were omitted from subsection (1) and 'co-operative' were substituted in their place;
- (b) the word 'either' were omitted from subsection (1);
- (c) the expression '(2).' were omitted from subsection (1)(b) and '(2); or' were substituted in its place; and
- (d) the following paragraph were inserted after subsection (1)(b):

'(c) in the case of a non-trading co-operative –

- (i) giving members notice –
 - that the reports referred to in paragraph (a) may be inspected at the registered office of the co-operative; or
 - that a concise report of the kind referred to in paragraph (b) may be inspected at the registered office of the co-operative; and
- (ii) making the report or reports (as the case requires) available for inspection.'

8. Modification of section 315 of Corporations Act 2001

The Corporations Act 2001 applies as if section 315 were repealed and the following section were substituted in its place:

'315 Deadline for reporting to members

'A co-operative must report to members under section 314 by the earlier of –

- (a) 21 days before the next AGM after the end of the financial year; or

Co-operatives Regulations

(b) 21 days less than 5 months after the end of the financial year.'

9. Modification of section 316 of Corporations Act 2001

Section 316 of the Corporations Act 2001 applies as if –

- (a) the words 'company, registered scheme or disclosing entity' were omitted from subsection (1) and 'co-operative' were substituted in their place; and
- (b) the following subsection were inserted after subsection (1):

'(1A) Paragraph (1)(b) does not apply to a member of a non-trading co-operative.'

10. Modification of section 318 of Corporations Act 2001

Section 318 of the Corporations Act 2001 applies as if –

- (a) the words 'company or disclosing entity' were omitted from subsection (1) and 'co-operative' were substituted in their place;
- (b) the word 'prescribed' were inserted in subsection (1) before 'debenture holders';
- (c) the word 'prescribed' were inserted in subsection (2) before 'debenture holder';
- (d) the words 'company or disclosing entity' were omitted from subsection (2) and 'co-operative' substituted in their place;
- (e) the words 'or made available' were inserted in subsection (2)(a) after 'sent';
- (f) subsection (3) were omitted and the following subsection were substituted in its place:

'(3) The co-operative must, as soon as practicable after the request –

- (a) if the terms of the debenture issue so provide – make the copies available for inspection free of charge at the registered office of the co-operative; or
 - (b) in any other case – give the prescribed debenture holder the copies free of charge.;
- (g) the word 'prescribed' were inserted in subsection (4) before 'debenture holders'; and
 - (h) the following subsection were added at the end:

'(5) In this section –

Co-operatives Regulations

"prescribed debenture holder" means a person who holds debentures of a co-operative but is not a member of the co-operative.'

11. Modification of section 319 of Corporations Act 2001

The Corporations Act 2001 applies as if section 319 were repealed and the following section were substituted in its place:

'319 Lodgement of annual reports with Registrar

'Under the Regulations made under this Act, a co-operative that has to prepare or obtain a report for a financial year under this Act (as adopted by or under the Act) must include in its annual report to the Registrar for that year a copy of each report it prepares or obtains.'

12. Modification of section 321 of Corporations Act 2001

Section 321 of the Corporations Act 2001 applies as if subsection (1) were omitted and the following subsection substituted in its place:

'(1) The Registrar may give a co-operative a direction to lodge with the Registrar a copy of reports prepared or obtained by it under Division 1 or 2.'

13. Modification of section 322 of Corporations Act 2001

Section 322 of the Corporations Act 2001 applies as if –

- (a) the words 'ASIC, the company, registered scheme or disclosing entity' were omitted from subsection (1) and 'the Registrar, the co-operative' were substituted in their place;
- (b) the word 'ASIC' were omitted from subsection (1)(a) and 'the Registrar' were substituted in its place;
- (c) subsection(1)(b) were omitted and the following paragraphs were substituted in its place"
 - '(b) in the case of a non-trading co-operative – make a copy of the amended report available for inspection at the registered office of the co-operative and inform any member who asks of its availability; and
 - (c) in any other case – give a copy of the amended report free of charge to any member who asks for it';
- (d) the words 'company, registered scheme or disclosing entity' were omitted from subsection (2) and 'co-operative' were substituted in their place; and
- (e) the words 'or inspect' were inserted in subsection (2)(b) after 'obtain'.

Co-operatives Regulations

14. Modification of section 324 of Corporations Act 2001

Section 324 of the Corporations Act 2001 applies as if –

- (a) the words 'a company' were omitted from subsection (1)(a), (b) and (c) and 'a co-operative' were substituted in their place;
- (b) the following paragraph were inserted in subsection (1) after paragraph (d):
 - '(da) the person is not ordinarily resident in the Territory;';
- (c) the word 'company' (twice occurring) were omitted from subsection (1)(e) and 'co-operative' were substituted in its place;
- (d) the words 'except where the company is a proprietary company,' were omitted from subsection (1)(f);
- (e) the word 'company' were omitted from subsection (1)(f)(i), (ii) and (iii) and 'co-operative' substituted in its place;
- (f) the words 'a company' were omitted from subsection (2)(a), (b) and (c) and 'a co-operative' were substituted in their place;
- (g) the word 'Australia' were omitted from subsection (2)(d) and 'the Territory' were substituted in its place;
- (h) subsection (2)(e) were omitted and the following paragraph were substituted in its place:
 - '(e) the business name under which the firm is carrying on business is registered under the *Business Names Act* of the Northern Territory or a return (in a form approved by the Registrar for the purpose) has been lodged showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report;';
- (i) the word 'company' (twice occurring) were omitted from subsection (2)(f) and 'co-operative' were substituted in its place;
- (j) the words 'except where the company is a proprietary company,' were omitted from subsection (2)(g);
- (k) the word 'company' were omitted from subsection (2)(g)(i), (ii) and (iii) and 'co-operative' were substituted in its place;
- (l) the words 'except where the company is a proprietary company,' were omitted from subsection (2)(h);

Co-operatives Regulations

- (m) the word 'company' were omitted from subsection (2)(h) and 'co-operative' were substituted in its place;
- (n) the word 'company' (wherever occurring) were omitted from subsections (4), (5), (6), (7), (8), (9), (10) and (11) and 'co-operative' were substituted in its place';
- (o) all the words before and including 'a person' were omitted from subsection (12) and 'A person' were substituted in their place;
- (p) the words 'company's' and 'company' were omitted from subsection (12) and 'co-operative's' and 'co-operative' were respectively substituted in their place;
- (q) the word 'company's' were omitted from subsection (13) and 'co-operative's' were substituted in its place; and
- (r) the word 'company' (wherever occurring) were omitted from subsections (14), (15) and (16) and 'co-operative' were substituted in its place.

15. Modification of section 329 of Corporations Act 2001

Section 329 of the Corporations Act 2001 applies as if –

- (a) the word 'company' (twice occurring) were omitted from subsections (1) and (1A) and 'co-operative' were substituted in its place;
- (b) the note at the foot of subsection (1A) were omitted;
- (c) the following subsection were inserted after subsection (1A):

'(1B) Despite subsection (1A), it is still necessary to give at least 21 days notice of a meeting of a co-operative at which a resolution will be moved to remove an auditor under this section.';

- (d) the word 'company' (wherever occurring) were omitted from subsections (2), (3), (4), (5) and (6) and 'co-operative' were substituted in its place;
- (e) all the words before 'resignation' (first occurring) were omitted from subsection (8) and 'The' were substituted in their place;
- (f) subsection (9) were omitted; and
- (g) the word 'company' (wherever occurring) were omitted from subsections (10) and (11) and 'co-operative' were substituted in its place.

16. Modification of section 330 of Corporations Act 2001

The Corporations Act 2001 applies as if section 330 were repealed and the following section were substituted in its place:

Co-operatives Regulations

'330 Effect of winding up on office of auditor

'An auditor of a co-operative ceases to hold office if –

- (a) a special resolution is passed in accordance with section 312 of the Act for the voluntary winding up of the co-operative; or
- (b) a certificate is issued by the Registrar for the winding up of the co-operative; or
- (c) an order is made by the Court for the winding up of the co-operative.'

17. Further modifications

The applied provisions of the Corporations Act 2001, other than those referred to in clauses 2 to 16 inclusive, apply as if –

- (a) all the notes were omitted; and
- (b) they were modified as set out in the Table.

TABLE

Provision	Amendment	
	omit	substitute
Section 247A(1)	'company or registered managed investment scheme'	'co-operative'
	'company or scheme' (twice occurring)	'co-operative'
Section 247A(4)	'company' (twice occurring)	'co-operative'
Section 247C(a)	'ASIC'	'the Registrar'
Section 247D	the whole section	
Sections 286(1) and 290(1)	'company, registered scheme or disclosing entity'	'co-operative'
Section 291	the whole section	
Sections 293 and 294	the whole section	

Co-operatives Regulations

Section 295(4)(c)	'company, registered scheme or disclosing entity'	'co-operative'
Section 296(1)	all the words after 'standards.'	
Sections 297(a) and 298(1)	'company, registered scheme or disclosing entity'	'co-operative'
Section 298(3)	the whole subsection	
Sections 299(2)(a) and 299(3)(a)	'company, registered scheme or disclosing entity'	'co-operative'
Section 299(3)(b)	'company, registered scheme or disclosing entity'	'co-operative, company or registered scheme'
Section 300(1)(c)	'company, registered scheme or disclosing entity'	'co-operative'
Section 300(1)(d)(ii)	'company'	'co-operative'
Section 300(1)	all the words after paragraph (g)	
Section 300(2)	'company's'	'co-operative's'
Section 300(3)(a) and (3)(b)	'company, registered scheme or disclosing entity'	'co-operative'
Section 300(5)(a), (6)(a) and (e) and (7)(a) and (c)	'company, registered scheme or disclosing entity'	'entity'
Section 300(8)	'company'	'co-operative'
Section 300(8)(a)	'and that is covered by subsection 199A(2) or (3)'	
	'of that kind'	

Co-operatives Regulations

Section 300(9)	'company' (wherever occurring)	'co-operative'
Section 300(10)	'public company that is not a wholly-owned subsidiary of another company or of a recognised company'	'co-operative that is not a wholly-owned subsidiary of another co-operative'
Section 300(11)	'company' (wherever occurring)	'co-operative'
Section 300(12) and (13)	the whole subsection	
Section 300A(1)	'company' (first occurring)	'co-operative that is included in an official list of the Exchange'
Section 300A(1)(a)	'company' (wherever occurring)	'co-operative'
Section 300A(1)(b)	'company's'	'co-operative's'
Section 300A(1)(c)	'company'	'co-operative'
Section 300A(2)	the whole subsection	
Section 300A(3)	'company's constitution'	'co-operative's rules'
Section 301(1)	'company, registered scheme or disclosing entity'	'co-operative'
Section 301(2)	the whole subsection	
Section 302	'A'	'A co-operative that is a'
Section 302(c)	'ASIC'	'the Registrar'
Section 310(a)	'company, registered scheme or disclosing entity'	'entity'
Section 311	'ASIC'	'the Registrar'
Section 311(a)	'this Act'	'the Act (including provisions of this Act adopted by or under the Act)'

Co-operatives Regulations

Section 312	'company, registered scheme or entity'	'co-operative'
Section 312(a)	'company, scheme or entity'	'co-operative'
Section 317	'public company'	'co-operative'
Section 320	'A'	'A co-operative that is a'
Sections 323 and 323A(2)	'company, registered scheme or disclosing entity'	'co-operative'
Section 323B	'company, registered scheme or disclosing entity'	'co-operative'
Section 323B(a)	'company, scheme or entity'	'co-operative'
Section 323C	'company, registered scheme or disclosing entity'	'co-operative'
Section 323D(1) and (2)	the whole subsection	
Section 323D(3) and (5)	'company, registered scheme or disclosing entity'	'co-operative'
Division 8 of Part 2M.3	the whole Division	
Section 325	the whole section	
Section 327(1A)	the whole subsection	
Section 327(1) to (16) inclusive	'company' (wherever occurring)	'co-operative'
Section 328	'company' (wherever occurring)	'co-operative'
Section 331	'company' (twice occurring)	'co-operative'

Co-operatives Regulations

Section 344(1)

'company, registered
scheme or disclosing
entity'

'co-operative'

"

10. Transitional: regulation 12

(1) In this regulation –

"commencement" means the commencement of these Regulations.

(2) Regulation 12 of the Principal Regulations as in force after the commencement applies to financial years and half-years ending after 30 April 2001.

(3) In relation to financial years and half-years that end on or before 30 April 2001 (but after 31 March 2000) –

(a) regulation 12 of the Principal Regulations as in force immediately before the commencement continues to apply but subject to the modification that it is to be read as if subregulation (5) were omitted and the following were substituted:

"(5) The provisions of Part 3.7 of the Corporations Law adopted in subregulation (2) apply as if section 324(12) were amended by omitting all the words before and including 'a person' (first occurring) and substituting 'A person.'";

(b) the provisions of the Corporations Law (and the accounting standards and regulations made under that Law) adopted by that regulation continue to apply as if they had not been repealed, relocated or amended;

(c) any directions given under section 10 of the Act by the Registrar as to modifications that are necessary or desirable for the effectual operation of the adopted provisions of the Corporations Law (as in force immediately before the commencement of these Regulations) continue to apply, except to the extent that the directions contemplate the omission of section 324(12) to (15) (inclusive) of the Corporations Law; and

(d) any relevant exemptions under section 234 of the Act continue in force.