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Act No. 92/2006 respecting European Cooperative Societies

TRANSLATED FROM THE ICELANDIC
(r/jonogm/evr.samv.log.thyding)

No. 92

14 June 2006

A C T respecting European Cooperative Societies

THE PRESIDENT OF ICELAND

makes known:- The Althingi (Legislative Assembly) has passed the present Act and I have ratified it by means of my approval:-

CHAPTER I

General Provisions

Art. 1

Scope

The provisions of the Council (EC) Regulation No. 1435/2003 of 22 July 2003 concerning Statutes for a European Cooperative Society (SCE) shall have the force of Law in this Country in conformity with Protocol 1 concerning universal alignment to the Agreement on the European Economic Area, cf. Act No. 2/1993 respecting the European Economic Area, whereby the Protocol is legalized. The Regulation is printed as an Appendix to the present Act.

In conformity with Regulation on European Cooperative Societies the present Act lays down further provisions concerning these Societies. These provisions extend only to European Cooperative Societies which are registered in Iceland, unless otherwise specified.

Art. 2

Book-keeping and Annual Accounts

European Cooperative Societies which are registered in this Country are subject to Acts on Book-keeping and Acts on Annual Accounts unless otherwise stipulated in the Regulation on European Cooperative Societies. A European Cooperative can obtain authority from the Register of Annual Accounts operated by the Director of Internal Revenue to enter its books in a foreign currency in conformity with the provisions of Acts on Book-keeping and to prepare and publish its annual accounts in a foreign currency in conformity with Acts on Annual Accounts.

In case a European Cooperative Society move its office to another State in the European Economic Area, a State being a party to the Convention of the European Free Trade Association or the Faeroe Islands the Board of Directors or the Management Board of the Society shall prepare a special Profit and Loss Account for the period as of the end of the latest annual accounts until the date on which the movement of a registered office has entered into force in accordance with para. 10, Art. 7 of the Regulation on European Cooperative Societies.

In case a Cooperative Society participate in the establishment of a European Cooperative Society by means of a merger, cf. Art. 19 of the Regulation on European Cooperative Societies and the European Cooperative Society will have a registered office in another State of the European Economic Area, a State being a party to the Convention of the European Free Trade Association or in the Faeroe Islands until the day when the European Cooperative Society is registered in accordance with para. 1, Art. 11 of the Regulation.

The Annual Accounts shall be delivered to the Register of Cooperative Societies within a month as of the end of the period to which the accounts extend.

In case a European Cooperative Society with a registered office in another State in the European Economic Area, a State being a party to the Convention of the European Free Trade Association or in the Faeroe Islands operate a business in this Country in the form of a branch that branches book-keeping and annual accounts shall be in conformity with Acts on Book-keeping and Annual Accounts. Authority contained in the second sentence of para. 1 also applies to these branches.

Art. 3

Name

A European Cooperative Society is in duty bound to have the abbreviation SCE in its name. In addition thereto a Society is authorized to have the words "European Cooperative Society" in its name and also to use the abbreviation SCE/esvf. The name shall be clearly stated to be different from the name(s) of other cooperative societies which have been recorded in the Register of Cooperative Societies, cf. Art. 9.

Art. 4

Participation of Employees in European Cooperative Societies

The Act having an identical name applies to the participation of employees in European Cooperative Societies.

CHAPTER II

Establishment of a European Cooperative Society

Art. 5

Participation in the Establishment of a European Cooperative Society

A Cooperative Society or a Company in a corresponding legal form having a head office in a State extend to the European Economic Area, a State being a party to the Convention of the European Free State Association or the Faeroe Islands is authorized to participate in the establishment of a European Cooperative Society if the Society:-

1. is established in accordance with Acts in a State of the European Economic Area, a Member of the Convention of the European Free Trade Association or the Faeroe Islands;
2. has a registered office in a State as per clause 1, and
3. has actual and continuous links to the economy of a Member State of the European Economic Area.

Upon the establishment of a European Cooperative Society in another manner than by merger or conversion the provision of para. 1 concerning Cooperative Societies or a Company in a corresponding legal form shall also apply to the legal persons stipulated in Art. 34 of the Agreement on the European Economic Area.

Art. 6

Participation of financial concerns in the establishment of a European Cooperative Society by means of Merger

A concern subject to the supervision of the Financial Supervisory Authority is not permitted to participate in the establishment of a European Cooperative Society in another State in the European Economic Area, a Member State of the Convention of the European Free Trade Association or the Faeroe Islands by means of merger if the Financial Supervisory Authority opposes this after completion of study due to the danger of serious interruptions in the payment brokerage system or activities in the financial market or having regard for public interests in other respects provided that the Authority oppose this prior to the issue of a certificate in accordance with Art. 7 to the effect that all acts and formal items before the establishment of a European Cooperative Society by means of merger.

The concern shall submit an application for a study by the Financial Supervisory Authority in accordance with para. 1. In case there be some opposition to the study being undertaken the Financial Supervisory Authority shall afford the firm an opportunity of expressing itself and amending shortcomings within a specified respite. If the firm does not do so its application shall be dismissed. The Financial Supervisory Authority shall render a decision within a month as of the receipt of an application or the end of respite.

The Register of Cooperative Societies shall reject an application for permission to start the implementation of a merger plan which provides for the establishment of a European Cooperative Society by means of merger in case the Financial Supervisory Authority study has not been undertaken, cf. para. 2, or if the Authority has opposed a merger on the basis of such a study.

Art. 7

Issue of certificates upon the establishment of a European Cooperative Society by merger

The Register of Cooperative Society shall issue certificates in accordance with para. 2, Art. 29 of the Regulation on European Cooperative Societies to the effect that all acts and formalities for the establishment of a European Cooperative Society by means of merger when the Register has granted a Cooperative Society permission to implement either a lawful decision by a Company meeting or a decision by the Board of Directors to participate in the establishment of a European Cooperative Society by means of merger in accordance with Chapter X of Act No. 22/1991 on Cooperative Societies or Chapter XIV of Act No. 2/1995, respecting Public Limited Companies as applicable.

Art. 8

The right to withdrawal from a take-over Company

In case a member of a Company has opposed the establishment of a European Cooperative Society by means of merger he can resign from the take-over Company if the merger leads to the fact that the registered office of the European Cooperative Society will be outside Iceland. A resignation shall be undertaken within the time limits and subject to the conditions stated in para. 5, Art. 7 of the Regulations on European Cooperative Societies.

CHAPTER III

Registration of European Cooperative Societies et al.

Art. 9

Registration Authority

The Register of Cooperative Societies operated by the Director of Internal Revenue will register Cooperative Societies. The registration of the Societies with the Register of Cooperative Societies is subject to the provisions of the Act respecting Cooperative Societies or, as the case may be, other legal provisions, i.a. concerning the currency of starting funds, cf. Art. 3 and para. 1 of Art. 77 of Regulation respecting European Cooperative Societies. European Cooperative Societies engage in business in the field of financial market are subject to provisions of Acts in that field and, as the case may be, other legal provisions upon the registration of the Societies.

The fee for the registration of European Cooperative Societies is subject to the provisions of Acts on the State Treasury's Extra Revenue relating to Cooperative Societies. Extra notifications et al. are subject to the same Act. The Minister of Finance is authorized to lay down by means of Regulations provisions regarding the registration of European Cooperative Societies, other than those generally applying to Cooperative Societies, including the organization of the registration, the operation of the register, access to the register and charges, i.a. for the issue of certificates and use of the information which the register has in machine-readable form. The Register will collect charges on account of a publication in the "Legal Gazette" in accordance with Laws and rules pertaining thereto as well as charges on account of the publication of information about registration and deregistration of European Cooperative Societies in the Official Journal of the European Union, cf. Art. 13 of the Regulation on European Cooperative Societies.

Art. 10

Publication of proposals for miscellaneous decisions

The management organ or an administrative organ in a European Cooperative Society with a one-tier system shall deliver to the Register of Cooperative Societies proposals for decisions or information in accordance with para. 2, Art. 7 of the Regulation concerning European Cooperative Societies, the transfer of registered office as per para. 3, Art. 35 of the Regulation concerning the conversion of an active cooperative to a European Cooperative Society as per para. 3, Art. 76 of the Regulation concerning the conversion of a European Cooperative Society to a cooperative in the State where the European Cooperative Society has a registered office. Information concerning registration shall without delay be published in the "Legal Gazette" at the notifying party's expense. In case the proposal be not published in full it shall be stated in the notification where it may be obtained.

CHAPTER IX

Transfer of registered office of a European Cooperative Society

Art. 11

Permission of the Financial Supervisory Authority to oppose transfer

A European Cooperative Society supervised by the Financial Supervisory Authority is not permitted to transfer an office from Iceland to another State in the European Economic Area, a Member State of the Convention of the European Free Trade Association or in the Faeroe Islands in case the Authority oppose the transfer within two

months from the publication of a notice of transfer in the “Legal Gazette” as per para. 2, Art. 7 of the Regulation on European Cooperative Societies, cf. para. 6 of the same Article.

At the latest two weeks after the publication of the transfer notification a European Cooperative Society subject to the supervision of the Financial Supervisory Authority shall file an application for study as to whether the Authority oppose the transfer of a registered office, cf. para. 1.

In case an application be not received within the respite this shall be dismissed. The Financial Supervisory Authority may oppose the transfer in case there be a danger of considerable interruptions in the payment brokerage system or activities in the financial market or having regard for public interests in other respects. In case something be against a study as per para. 2 being undertaken the Financial Supervisory Authority shall afford the Society an opportunity of expressing itself within a specific respite or amending shortcomings. In case the Society does not do so its application shall be dismissed.

Art. 12

Information to claimants about transfer

The Society shall give its known claimants in writing of the decision if a Society meeting of a European Cooperative Society approve of transferring the Society’s office to another State in the European Economic Area, a Member State of the Convention of the European Free Trade Association or to the Faeroe Islands, cf. Art. 7 of the Regulation in European Cooperative Societies.

The notification as per para. 1 shall contain information on the Society’s claimants’ right on the basis of para. 4, Art. 7 of the Regulation European Cooperative Societies to inspect the proposal for transfer and also a report in accordance with para. 3, Art. 7 of the Regulation. The notification shall furthermore contain information about claimants’ right as per Art. 14 of the present Act to oppose the transfer.

Art. 13

Application for transfer permission

A European Cooperative Society shall apply for permission with the Register of Cooperative Societies to transfer a registered office in accordance with Art. 7 of the Regulation on European Cooperative Societies to another State in the European Economic Area, a Member State of the Convention of the European Free Trade Association or the Faeroe Islands. An application shall be submitted within a month as of a Society meeting’s decision upon transfer.

An application shall be accompanied by:-

1. is established in accordance with Acts in a State of the European Economic Area, a Member of the Convention of the European Free Trade Association or the Faeroe Islands;
2. one copy of proposal for transfer;
3. one copy of a report as per para. 3, Art. 7 of Regulation on European Cooperative Societies;
4. a certificate from the management organ of a European Cooperative Society with a two-tier system, the administrative organ of a European Cooperative Society with a one-tier system or the managing director of a European Cooperative Society to the effect that the Society’s known claimants have been granted information in accordance with Art. 12 and
5. confirmation from the Financial Supervisory Authorities concerning firms as per Art. 11 to the effect that the Authority has studied an application in accordance with that Article and has not opposed transfer.

In case a European Cooperative Society has omitted attaching documents as per para. 2 of its application or another factor obstructs a study of an application the Register of Cooperative Societies shall afford the Society an opportunity of expressing itself a specific respite to amend shortcomings. In case the Society does not do so the Register of Cooperative Societies shall dismiss its application.

In case a Court of Law has upheld the decision of the Financial Supervising Authority in accordance with Art. 11 to oppose the transfer of a registered office, cf. Art. 28, the Register of Cooperative Societies shall dismiss the application.

Art. 14

The handling of transfer affairs with the Register of Cooperatives

In case the Register of Cooperative Societies has taken an application for transfer licence in accordance with Art. 13 for study it shall publish a challenge to claimants on a European Cooperative Society to publish this in the “Legal Gazette”.

In a challenge as per para. 1 it shall be stipulated that the claimants opposing the transfer of a registered office shall at the latest two weeks after the publication of a notice of transfer in the “Legal Gazette” give notification thereof in writing.

Art. 15

In case a claimant who has been challenged in accordance with Art. 14 oppose within a specified respite that a European Cooperative Society transfer a registered office the Register of Cooperative Societies shall send the message to the District Court in the jurisdiction in which the Society has a registered office. In case no claimant has opposed the transfer the Register of Cooperative Societies shall grant the Society the transfer licence being applied for.

Art. 16

Proceeding of a Transfer Case before a District Court

In case a message concerning the transfer of a registered office of a European Cooperative Society to another State in the European Economic Area, a Member State of the European Free Trade Association or the Faeroe Islands has been sent to a District Court the Court shall grant the Society a transfer licence provided it shows that the claimants who have opposed the transfer have received complete payment of their claims or satisfactory security for payment of the claims which have occurred within the respite specified in para. 2, Art. 14. Alternatively the Court shall reject the Society's application.

A District Court shall upon its own initiative advise the Register of Cooperative Societies about the findings in a transfer Case before the Court.

Art. 17

Issue of a certificate on account of transfer The Register of Cooperative Societies shall issue a certificate in accordance with para. 8, Art. 7 of Regulation on European Cooperative Societies concerning the completion of acts and formalities for transfer when:-

1. the Register has granted a transfer licence as per Art. 15 or
2. a District Court has granted a transfer licence as per Art. 16.

The Register of Cooperative Societies shall, however, not issue a certificate in the instances stipulated in para. 15, Art. 7 of the Regulation on European Cooperative Societies.

CHAPTER V

The organization of European Cooperative Societies

Art. 18

European Cooperative Societies with a two-tier system

The following provisions apply to European Cooperative Societies with a two-tier system in accordance with Art. 37-41 of the Regulation on European Cooperative Societies:-

1. In case there be no alternative stipulation contained in the Regulation on European Cooperative Societies the provisions concerning management or Directors in the Act on Cooperative Societies and, as the case may be, other Acts, shall also apply to the management and members of the management Board of these European Cooperative Societies as well as the supervisory management or members of the supervisory Board as applicable.
2. In addition to duties in accordance with the provisions of the Regulation on European Cooperative Societies the supervisory management Board shall render to an Annual General meeting a report containing information on matters of importance concerning an assessment of the Society's annual accounts in a report from Auditors or Inspectors.

In Art. 23 of the present Act there are to be found further provisions concerning the work of the supervisory management.

Art. 19

In case a supervisory management member be elected for management in accordance with para. 3, Art. 39 of Regulation on European Cooperative Societies the choice shall not be for a longer period than three months.

Art. 20

European Cooperative Societies with one-tier system

In case there be no alternative stipulation contained in the Regulation on European Cooperative Societies the provisions concerning the Board and Directors in the Act on Cooperative Societies and, as the case may be other Acts, shall also apply to the Board and Directors of European Cooperative Societies with a one-tier system as per Art. 42-44 of the Regulation.

Art. 21

Number of persons on the management organs of European Cooperative Societies

In case of a European Cooperative Society with a two-tier management system as per Art. 37-41 of the Regulation on European Cooperative Societies there shall be at least three persons on the management organ and at least three persons on the supervisory organ.

In case of a European Cooperative Society with a one-tier system as per Art. 42-44 of Regulation on European Cooperative Societies there shall be at least three persons on the management organ.

Art. 22

Managing Director of a European Cooperative Society

A European Cooperative Society shall have a managing director.

In case the Society's management be a two-tier system, cf. Art. 37-41 of the Regulation on European Cooperative Societies the management organ shall engage a managing director. In that instance the managing director cannot have a seat or the supervisory organ. In case the Society's management be a one-tier system, cf. Art. 42-44 of the Regulation the management organ shall engage a managing director.

There are further stipulations concerning a managing director and his sphere in the Act respecting Cooperative Societies.

Art. 23

Supervision in European Cooperative Societies with a two-tier system

In a European Cooperative Society with a two-tier system as per Art. 37-41 of the Regulation on European Cooperative Societies both the supervisory organ and the management organ shall supervise the managing director's work. The provision of Art. 39-40 of the Regulation on the supervision by the supervisory organ of the managing director's work and the entitlement to information also apply to the supervision of the supervisory organ and the management organ of the managing director's work.

Every member of the supervisory organ is entitled to obtain from the management organ and the managing director the requisite information to be enabled to supervise the work of the management organ in accordance with para. 3, Art. 40 of the Regulation on European Cooperative Societies as well as supervision of the managing director in accordance with para. 1. Each member of the management organ is entitled to obtain from the managing director the requisite information to be enabled to supervise his work.

The Society's Auditor shall notify the supervisory organ of comments which have been advanced to the management organ and the managing director.

Art. 24

Supervision in European Cooperative Societies with a one-tier system

The provisions of Art. 23 relating to the supervision by the management organ in a European Cooperative Society with a two-tier system of the work of the managing director and its right to obtain information from him apply to the management organ's supervision with a one-tier system in accordance with Art. 42-44 of the Regulation on European Cooperative Societies.

CHAPTER VI

Other Provisions

Art. 25

Members' Proposals

Each member is entitled to have a matter taken for consideration at a Society meeting if he files a requirement in writing accordingly at sufficient advance notice that it be possible to adopt the matter to the agenda of the meeting.

A requirement in accordance with para. 1 shall be sent to the management organ of a European Cooperative Society with a two-tier system or the organ (Board) of a European Cooperative Society with a one-tier system.

Art. 26

An authority calls a Society meeting

In case a meeting be not called in a European Cooperative Society in accordance with the Regulation on European Cooperative Societies, Statutes or a decision by a Society meeting the authority concerned shall call a

Society meeting in accordance with Art. 19 of Act No. 22/1991 respecting Cooperative Societies if a requirement relating thereto has been received from a member of the management organ or if the supervisory organ in a European Cooperative Society with a two-tier system, a member of the management organ of a European Cooperative Society with a one-tier system, a managing director, or auditor, an inspector or a member.

Art. 27

Arrangement vis-à-vis a European Cooperative Society with a registered office and head office in various EEA States

In case a European Cooperative Society does not meet its duties in accordance with Art. 12 of the Regulation on European Cooperative Societies to the effect that the Society's registered office and head office be in the selfsame State in the European Economic Area, a Member State of the European Free Trade Agreement or in the Faeroe Islands the Register of Cooperative Societies shall confirm this by means of a special decision. The Register shall thereupon give the Society instructions to amend the shortcoming within a suitable respite. The instructions shall contain a warning to the effect that the administration of the Society will be required if it does not amend the shortcomings.

In case a European Cooperative Society does not comply with instructions in accordance with para. 1 the Minister shall file a requirement to the effect that the Society will be taken for administration in accordance with Art. 62a of Act No. 22/1991 respecting Cooperative Societies.

Art. 28

Appeal

It is permissible to refer to a District Court a decision by the Register of Cooperative Societies concerning the registration of a European Cooperative Society within two months as of the date of decision. The same applies to the Register's decision to dismiss a Society's application for a transfer licence, cf. Art. 13.

A decision by the Register of Cooperative Societies in accordance with para. 1, Art. 27 concerning the location of the office of a European Cooperative Society may be submitted to a District Court within one month as of the date the Society obtained knowledge about the decision. The decision may be submitted to an authority in accordance with para. 2, Art. 27 before a District Court within a month as of the date of decision.

A decision by the Financial Supervision Authority as per Art. 6 concerning merging and Art. 11 concerning transfer may be submitted to a District Court within a month as of the time the Society obtained knowledge about the decision.

Art. 29

Penalty

The provisions of Chapter XIV of Act No. 22/1991 respecting Cooperative Societies as it pertains to penalties et al. apply i.a. to the administrations of European Cooperative Societies registered in this Country.

Art. 30

Entry into Force