



## CHAPTER FIVE

# INCORPORATED SOCIETIES ACT (1908)

26 June 2019

***The Government has agreed to update legislation that applies to the more than 23,000 incorporated societies that operate in New Zealand.***

---

*“The Incorporated Societies Act 1908 is more than 100 years old, outdated and focuses largely on the formation and dissolution of incorporated societies,” James Hartley, General Manager of Commerce and Consumer Affairs at the Ministry of Business, Innovation and Employment, says.*

*“A draft Incorporated Societies Bill, which will replace the original Act, went through consultation in 2015. Cabinet has now signed off on some changes to that draft.*

*“The new Incorporated Societies Bill will enable incorporated societies – which include everything from netball and rugby clubs to Rotary groups – to run more effectively. The Bill provides an operating environment that meets current and future needs so that incorporated societies can thrive. It also helps society members to more effectively hold their officers to account.”*

*Mr Hartley says the new Bill reflects public feedback, which was supportive of the need for change.*

*“The feedback we received highlighted some important updates that were needed, so I am pleased this new Bill provides long-term assistance and improved clarity around the requirements to run an incorporated society.”*

*The Bill is expected to be introduced to Parliament later this year.*

5.1	Introduction
5.2	Advantages of Incorporation
5.3	Steps Towards Incorporation of an RSA/Branch
5.4	What Happens then?
5.5	The Rules
5.6	Requirement After Incorporation
5.7	Annual Financial Statement
5.8	Change of Name
5.9	Changes of Registered Office
5.10	Liquidation and Dissolution
5.11	Incorporation of RSA Branches of Local Associations
5.12	Register of Members
5.13	Searches and Inspection of Documents
5.14	Certified Copies
5.15	Contracts by Association
5.16	Interpretation of Rules

## THE INCORPORATED SOCIETIES ACT 1908

### **5.1 Introduction**

RNZRSA and all presently affiliated member Associations are already incorporated societies but need may arise from time to time to incorporate new Associations or perhaps branches. For this reason this paper sets out for guidance the essential points of the Incorporated Societies Act 1908, and amendments.

### **5.2 Advantages of Incorporation**

A brief summary of the advantages which arise from incorporation are detailed below:

- The incorporated society is recognized in law as a separate legal entity from its members.
- An incorporated society has what is known as perpetual succession, that is, it continues to exist as long as it complies with the law, is not wound up, or for any other reason, removed from the Register.

Property owned by the Society, is owned in the name of the society and not in the names of individual members.

- An incorporated society executes documents as a separate legal entity under common seal and enters into contracts in its own name.

- Members of an incorporated society have, with some exceptions, limited liability in relation to the debts of the society.

In other words, debts or other legal liabilities incurred by the society are the responsibility of the society — individual members cannot normally be held personally responsible to satisfy those debts.

### **5.3 Steps Towards Incorporation of an RSA/Branch**

The first steps towards incorporation requires the proposed Association and/or Branch (the entity) to comply with the following requirements:-

5.3.1 The proposed entity must have not less than fifteen (15) potential members.

5.3.2 The objects of the proposed entity must be lawful.

5.3.3 The proposed entity is not being formed to provide pecuniary gain for its members.

5.3.4 The proposed entity's name has been approved by National Headquarters RNZRSA and subsequently by the Registrar for Incorporated Societies.

### **5.4 What Happens then?**

The next steps along the path to incorporation are:-

5.4.1 A meeting should be called of persons interested in pursuing the formation of the entity.

5.4.2 At such meeting persons present should vote:

- whether to form the entity, and if so
- whether to incorporate

5.4.3 Assuming that the decision in each case is positive, then members proceed to:

- adopt a set of Rules
- confirm the location of its registered office
- elect its officers and committee and appoint an auditor
- open bank accounts and resolve how such accounts are to be operated.

5.4.4 What do we send to the Registrar?

- After the initial procedures, as detailed above, have been completed then the following should be sent to the Registrar of Incorporated Societies.
- An application form to incorporate a society, signed by fifteen (15) members, with the signatures witnessed by someone who hasn't signed the application form as a member.

- One copy of the Rules certified by an officer or solicitor of the Society. Each page of the Rules should be signed by three (3) members of the Society.
- A filing fee of \$100.00
- The forms required are available on line at [www.societies.govt.nz](http://www.societies.govt.nz) click on the "Information Library", in the left hand column, and when that comes up, click on the folder marked "Forms" and when that is opened, click on the folder "Incorporated Societies".
- That will open up a number of available forms, it is simply a matter of choosing the relevant one.
- Completed requirements should then be sent off to the:  
Registrar of Incorporated Societies  
The Companies Office  
National Processing Centre  
Private Bag 92061 Auckland Mail Centre  
Auckland 1142
- The Registrar will confirm the filing(s) and advise the society concerned that the detail submitted will be placed on the Ministry's website.

## 5.5 The Rules

Standard rules for incorporated RSAs and for RSA Clubs have been prepared and distributed to all concerned. A copy of each is included in the Manual.

The RNZRSA has received approval for these standard rules from the Registrar of Incorporated Societies and the 'RD.

The standard rules are guidelines to assist local RSAs. Some rules are mandatory and therefore must be included in the RSA rules, others are either strongly recommended or optional.

Under the Act the following matters must be provided for in the rules:

- 5.5.1 The name of the society with the addition of the word "Incorporated" as the last word in that name.
- 5.5.2 The objects for which the society is established.
- 5.5.3 The modes in which persons become members of the society and cease to be members.
- 5.5.4 The mode in which rules or bylaws of the society may be altered, added to or rescinded.
- 5.5.5 The mode of summoning and holding general meetings of the society.
- 5.5.6 The appointment of Officers of the society.
- 5.5.7 The control and use of the common seal.
- 5.5.8 The control and investment of the funds of the society.
- 5.5.9 The disposition of the property of the society in the event of a liquidation.

It is stressed that notwithstanding President's Forum action in providing accepted guidelines, local RSAs should consult their legal adviser in matters pertaining to the rules.

Once an RSA is satisfied with its proposed rules, two copies, both of which must have original signatures, are to be sent to the Chief Executive for approval by the President's Forum pursuant to RNZRSA rules. Upon approval the Chief Executive will return both copies of the Rules together with RNZRSA's "Certificate of Approval". One set of Rules together with RNZRSA's Certificate should be lodged with the Registrar.

After registration one copy of the Rules will be returned to the RSA together with the Certificate of Incorporation.

For subsequent amendments to rules see 5.6.

## 5.6 Requirement After Incorporation

On incorporation an RSA (or Club) becomes a separate legal entity and subject to the Act and its own rules, is capable of exercising all the functions of a body corporate. The RSA must always act

within the scope of its rules and must not carry out any operations which are beyond the scope of its objects as defined in its rules.

An incorporated RSA is not permitted to carry on any operation which would involve any pecuniary gain for its members. This does not mean that the RSA itself may not make a pecuniary gain, but rather that such gain may not be divided among or received by the members.

There are however exception to this requirement such as:

A member may derive gain from the RSA by way of salary as an employee or Officer of the Association.

Members may compete with each other for trophies or prizes other than money prizes.

The rules of the incorporated RSA or Club may at any time be amended or altered after incorporation either wholly or in part pursuant to its own rules. Points to be observed are:

- The prior written consent of the President's Forum is required.
- The procedure prescribed in the rules for amendment to rules must be followed.
- All amendments must be consistent with the provisions of the Act and in harmony with RNZRSA rules and have RNZRSA's Approval Certificate.
- One copy of the amendment together with the RNZRSA Certificate of Approval must be presented to the Registrar. The copy of the Rules amendments must be signed by three members of the RSA who should add after this signature, the Office, if any, they hold in the Association.
- The amendments must be accompanied by an "Alteration of Rules-Certificate" signed by a solicitor or Officer of the RSA to the effect that the amendments have been made in accordance with the rules.
- It is important to remember that the amendments will have no legal effect until they are registered.

### **5.7 Annual Financial Statement**

Each incorporated RSA or Club must deliver annually to the Registrar of Incorporated Societies a statement containing the following particulars:

- The income and expenditure of the association for the financial year.
- A list of the Society's assets and liabilities at the end of the financial year.
- A list of all mortgages, charges, and securities of any description affecting the association's property at the end of the financial year.
- The financial year that the accounts have been prepared for.
- Every statement must be accompanied by a certificate, signed by an officer of the RSA that the financial statement has been submitted to and approved by the members at a general meeting

### **5.8 Change of Name**

A local RSA or Club may at any time change its name with the approval of the President's Forum and the Registrar of Incorporated Societies.

Application should first be made in writing to the Chief Executive and when approved to the Registrar of Incorporated Societies for confirmation that the proposed name is available.

On receipt of the Registrar's advice the RSA must follow the same procedure as for an alteration of rules.

It is important to note that:

- No change of name is effective until registration.
- Every name must include "Incorporated" as the last word.

The Registrar may require any name change to be publicly advertised in the public interest or to protect creditors.

### 5.9 Changes of Registered Office

All changes in the place of the registered office must be immediately notified to the Registrar of Incorporated Societies.

### 5.10 Liquidation and Dissolution

Voluntary liquidation of an Association or Club may take place if at a general meeting its members pass a resolution for that purpose and that resolution is confirmed at a subsequent general meeting held not earlier than 30 days after the date of the passing of the resolution.

As the Act calls for a resolution passed by a simple majority it is not permissible to vary this provision in any way.

Voluntary liquidation is conducted as far as possible in the same way and subject to the same rules as voluntary liquidation of a company under the Companies Act 1993.

Liquidation by the court is an additional process where the High Court may order the liquidation under these circumstances:

- If the Association or Club suspends its operations for the space of a year.
- If the membership falls below 15 persons.
- If the Association or Club cannot pay its debts.
- If the association carried on any other operation whereby any member makes a pecuniary gain.

Any member, any creditor or the Registrar may apply to the High Court to have an Association or Club put into liquidation.

Dissolution by the Registrar is also authorised under the Act. The Registrar has power to dissolve an Association, where he is satisfied that the society is no longer carrying on its operations or that it is defunct by publishing a declaration of dissolution in the New Zealand Gazette.

Division of surplus assets of the local RSA (or Club) must be made in the manner provided in the rules after payment of all costs and liabilities. If the assets cannot be disposed of in accordance with the rules the Registrar has the authority to direct how the assets shall be disposed of.

### 5.11. Incorporation of RSA Branches of Local Associations

The Incorporated Societies Amendment Act 2005 sets out the procedures for the incorporation of a Branch.

The process is similar to that as outlined in 5.3 & 5.4 above, but with a couple of added requirements.

As the Branch is just that, i.e. a Branch of a local Association, the approval of the parent Association should be obtained before embarking on the process.

When approval is received, the Branch Executive should call a Special General Meeting for members to determine whether incorporation should proceed, and if so, the application for incorporation together with a copy of the rules of the Branch on which is written an application for incorporation that is signed, by not less than two (2) of the Officers of the parent Association and by not less than fifteen (15) members of the Branch, a certificate by an Officer of the Society or a Solicitor, certifying that a majority of the members of the Branch consented to the application; and the rules that are endorsed with the application are the rules of the Branch and the prescribed fee.

5.1 1.1 An important advantage arising out of a Branch incorporating is, in the absence of any rules constituting an inter-relationship, then on the insolvency of the parent Association, the Branch is under no legal obligation to support the parent Association.

Similarly on the insolvency of the Branch, the parent Association is under no legal obligation to financially support the Branch.

**5.12 Register of Members**

Each association must keep a register of its members containing their names, addresses and occupations and the dates at which they became members. The Registrar may call for a list of members, such list must be accompanied by a certificate signed by an Officer of the Society certifying that the list is correct.

**5.13 Searches and Inspection of Documents**

Any person may inspect free of charge the rules of any association (or Club), the application for incorporation and every financial statement or other document filed in the office of the Registrar of Incorporated Societies at which the Association or Club is registered.

**5.14 Certified Copies**

On payment of a prescribed fee the Registrar will provide certified copies of the Certificate of Incorporation of any Association or Club or of any other document or part of a document relating to that Association or Club.

**5.15 Contracts by Association**

Any contracts which if made between private persons, is required by law to be by way of deed, shall, when made by the Association or Club be made in writing under the common seal of the association. If a contract is required to be in writing other than by deed, then it may be made by the Association or Club in writing by any person acting under the authority of the Association or Club.

**5.16 Interpretation of Rules**

An Association or Club may experience problems or disputes about its policies or the manner in which its rules are being interpreted or applied. These matters must be dealt with by the Association or Club. The Registrar does not have the authority to intervene in disputes or to provide an interpretation of rules. RNZRSA can assist with rules interpretation but only the Association or Club can resolve the issues in line with their own rules. If a solution cannot be found then the remedies available are either a change to the rules or an application to the Court.