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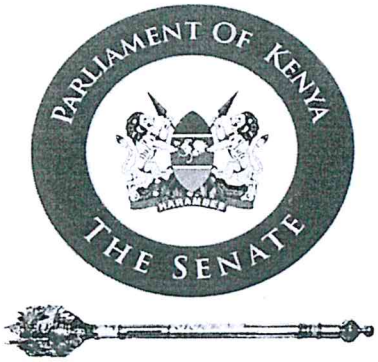
REPUBLIC OF KENYA

③ Hon. Speaker
You may approve for tabling.
MA
6/8/25



Approved.
06.08.2025

THIRTEENTH PARLIAMENT – FOURTH SESSION

REPORT OF THE STANDING COMMITTEE ON TRADE,

INDUSTRIALIZATION AND TOURISM

ON

THE COOPERATIVES BILL (NATIONAL ASSEMBLY COOPERATIVES

BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2024)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT BUILDINGS
NAIROBI

AUGUST,2025

PAPERS L

DATE	6/8/2025
TABLED BY	Chairperson, Trade, Industrialization & Tourism
COMMITTEE	Trade, Industrialization & Tourism
CLERK AT THE TABLE	A. Machaira

TABLE OF CONTENTS

PRELIMINARIES

Establishment and Mandate of the Committee

Article 124 (1) of the Constitution of Kenya provides for the establishment of Committees, where each house of Parliament may establish and make Standing Orders for the orderly conduct of its the proceedings, including the proceedings of its Committees.

The Senate Standing Committee on Trade, Industrialization and Tourism is established pursuant to Standing Order 228(3) of the Senate Standing Orders. The Committee is mandated to consider all matters related to trade, industrialization, tourism, cooperatives, investment and divestiture policies.

In undertaking its mandate, the Committee oversees the Ministry of Investment, Trade and Industry, the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development and the Ministry of Tourism, Wildlife, Culture & Heritage. Specifically, the Committee oversights the following state departments —

a) State Department for Investment Promotion;
b) State Department for Trade;
c) State Department for Industry;
d) State Department for Cooperatives;
e) State Department for Micro, Small and Medium Enterprise (MSME) Development; and
f) The State Department for Tourism.

Committee Membership

(1) Sen. Boy Issa Juma, MP	**- Chairperson**
(2) Sen. Esther Anyieni Okenyuri, MP	**- Vice Chairperson**
(3) Sen. Jackson Kiplagat Mandago, EGH, MP	- Member
(4) Sen. Godfrey Osotsi, CBS, MP	- Member
(5) Sen. John Methu, MP	- Member
(6) Sen. Karungo Thangwa, CBS, MP	- Member
(7) Sen. George Mbugua, MP	- Member
(8) Sen. Hamida Kibwana, MP	- Member
(9) Sen. Andrew Omtatah Okoiti, MP	- Member

CHAIRPERSON'S FOREWORD

Hon. Speaker,

The Cooperatives Bill, 2024 (National Assembly Bills No.7 of 2024) is an of Act of Parliament that seeks to provide a framework to align the Act with the provisions of Part Two of the Fourth Schedule of the Constitution, providing that cooperative development is a devolved function.

The Bill was read the first time on Wednesday, 12th February, 2025, and thereafter committed to the Standing Committee on Trade, Industrialization and Tourism for consideration. The Bill was sponsored in the Senate by the Senate Majority Leader.

The main objects of the Bill include, among others, seeks to establish a legal framework that supports a sustainable and competitive cooperative sector within a devolved governance system. It aims to enhance the promotion, registration, regulation and supervision of cooperatives while defining the responsibilities of national and county governments in the sector.

Mr. Speaker Sir,

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit their written memoranda through a call for memoranda made in the local dailies of 5th March, 2025. By close of the period (Tuesday 18th March, 2025), the Committee had received memorandum from various stakeholders.

Committee Observations

Hon. Speaker,

In view of the above, the Senate Standing Committee on Trade, Industrialization and Tourism held twelve (12) meeting to review the Bill and consider the submissions by the stakeholder. The Committee observed that the proposed amendments generally ought to achieve the following –

a. Modernize Kenya's Cooperative sector by enhancing transparency, efficiency, and Member engagement while ensuring Constitutional compliance;
b. Address historical challenges such as poor Governance and fraud, while establishing frameworks to ensure long-term sustainability;
c. Introduce additional provisions to restrict on borrowing and investments to prevent financial mismanagement;

d. Establish the Office of the Commissioner for Cooperative Development at the National level and County Directors for Cooperatives at the County level, with clearly defined roles to prevent overlaps.

e. Provide Term limit for both acting officials and elected Board Members enhance accountability, prevent prolonged incumbency, and promote democratic leadership transitions within cooperatives

Hon. Speaker, Sir,

The Committee recommends that the **Cooperatives Bill, 2024 (National Assembly Bills No. 7 of 2024)** be adopted, subject to the proposed amendments

Hon. Speaker,

I wish to extend my deepest appreciation to the institutions and individuals who dedicated their time and expertise to prepare and submit memoranda to the Committee. Their insights were invaluable to our deliberations. I also express my sincere gratitude to the Members, and Committee colleagues for their rigorous engagement, constructive debate, and unwavering commitment to refining this, Bill.

Lastly, we are profoundly indebted to the Office of the Speaker and the Clerk of the Senate for their steadfast logistical and procedural support throughout this process.

Mr, Speaker Sir,

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Trade, Industrialization and Tourism on the Committee on its consideration of the Cooperatives Bill (National Assembly Bill No. 7 of 2024).

I thank you.

Signed..... Date 1/8/2025

SEN. BOY ISSA JUMA, MP

CHAIRPERSON, SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM

CHAPTER ONE: INTRODUCTION

1.0 Background

(1) The Cooperatives Bill (National Assembly Bill No. 7 of 2024) was read for the First time on 12th February, 2025 and subsequently committed to the Committee on Trade, Industrialization and Tourism pursuant to standing order 145 (1) of the Senate Standing Orders. The Committee was expected, pursuant to standing orders 145(5) and 148 to facilitate public participation and table its report within thirty calendar days of the committal of the Bill to the Committee.

(2) The Bill seeks to provide for a legal framework that promotes a sustainable and competitive cooperative sector for socio-economic development in a devolved system of governance and to give effect to Article 186 and the Fourth Schedule to the Constitution

(3) The Bill seeks to promote uniform norms and standards in the registration, regulation, supervision and management of Cooperatives and establish a framework for consultation and co-operation among Counties.

(4) The Bill seeks to establish the office of the Commissioner for Cooperative Development at the National level and the office of the County Director for Cooperatives at the County level and provide for inter-governmental Cooperative relations. The Office of the Commissioner for Cooperative Development will be responsible for promotion, registration, and regulation of Cooperatives and provide for inter-governmental cooperative relations.

(5) The Bill has 168 clauses divided into seventeen parts and three schedules.

(6) The Bill concerns the County Governments in terms of Article 110(1)(a) of the Constitution, in that it contains matters that affect the functions of the County Governments as prescribed in the Fourth Schedule of the Constitution.

(7) The Bill is aligned with the National Co-operative Policy (Sessional Paper No. 4 of 2020) and is an output of the National Co-operative Policy Operationalization Task Force, which was appointed in 2020 to initiate and develop a framework or implementation of the National Co-operative Policy Interventions, review Co-operative legislation, Co-operative Institutional Reforms and Co-operative Capacity Building.

implementation of the National Co-operative Policy Interventions, review Co-operative legislation, Co-operative Institutional Reforms and Co-operative Capacity Building.

1.2 Background on Cooperative in Kenya

a) The Cooperative Sector in counties has further greatly assisted in trade development and economic growth. However, under the current legal framework which is the Cooperatives Societies Act, 2004, cooperative development is a function primarily maintained by the National government, giving limited participation by the County government. This is in contravention of Article 186 and Schedule Four Part 2 (7)(e) of the Constitution. The Commissioner for Co-operative Development as per the Co-operatives Societies Act CAP 490 is tasked with the responsibility of the growth and development of co-operatives societies in the County. Generally, the role of counties in the promotion and facilitation of cooperative development has been overshadowed by the National government.

b) In Kenya, a cooperative is a member-owned and democratically controlled enterprise that operates based on cooperative principles. These principles include voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training, and information, cooperation among cooperatives, and concern.

c) Cooperatives in Kenya can operate in various sectors, including agriculture, housing, consumer goods, financial services, and more. They are established to meet the common economic, social, and cultural needs of their members. Cooperative members contribute capital, share in the risks and benefits of the cooperative's activities, and participate in decision making processes.

d) As it currently stands, the Cooperative Societies Act, Cap 490 of the Laws of Kenya, governs the formation, registration, and operation of cooperatives in Kenya. The Commissioner for Cooperatives oversees the registration and regulation of cooperatives, ensuring compliance with the law and promoting the

development of the cooperative movement in the country. Under the Cooperative Societies Act, cooperative societies exhibit several salient features:

e) Voluntary and Open Membership: Membership in a cooperative society is voluntary and open to all who are eligible according to the society's bylaws, without discrimination.

f) Democratic Member Control: Cooperative societies operate democratically, with members having equal voting rights regardless of their shareholding. Decisions are made through democratic processes, with each member having one vote.

g) Member Economic Participation: Members contribute capital to the cooperative society and share in the risks and benefits of its operations. Members participate actively in the economic activities of the cooperative.

h) Autonomy and Independence: Cooperative societies are autonomous, self-help organizations controlled by their members. They operate independently and make decisions based on the needs and aspirations of their members.

i) Cooperation Among Cooperatives- Cooperative societies promote cooperation and collaboration among themselves, recognizing the benefits of working together to achieve common goals and objectives.

j) Concern for the Community: Cooperative societies contribute to the sustainable development of their communities by addressing social, economic, and environmental challenges and promoting the well-being of their members and the broader community.

1.3 Challenges Facing Cooperatives in Kenya

i. Governance Challenges: Some cooperatives face governance issues such as poor leadership, lack of transparency, and inadequate accountability mechanisms. This can lead to mismanagement of resources and internal conflicts.

ii. Financial Management: Many cooperatives struggle with financial management, including inadequate financial reporting, poor record-keeping, and unsustainable financial practices. This can hinder their ability to attract investment, access credit, and grow their operations.

iii. Market Access and Competition: Cooperatives often face challenges in accessing markets for their products and services due to competition from larger corporations and limited marketing resources. This can affect their profitability and sustainability.

iv. Capacity Building: There is a need for capacity building and training programs to strengthen the skills and capabilities of cooperative members and leaders in areas such as business management, governance, marketing, and financial management.

v. Legal and Regulatory Framework: Some cooperatives struggle to navigate the complex legal and regulatory environment in Kenya, including compliance with the Cooperative Societies Act and other relevant laws. Simplifying regulatory processes and providing support for compliance could help alleviate this challenge. Further, since the promulgation of the Constitution, the legal framework governing cooperatives has yet to take the role of county governments into cognizance. This Bill seeks to address this issue.

vi. Access to Financing: Many cooperatives face difficulties in accessing affordable financing to support their operations and growth initiatives. Improving access to credit and financial services tailored to the needs of cooperatives could enhance their sustainability.

vii. Climate Change and Environmental Sustainability: Cooperatives in sectors such as agriculture face challenges related to climate change, including unpredictable weather patterns, droughts, and pests. Building resilience to climate change and promoting environmentally sustainable practices are critical for their long-term viability.

(8) The Cooperative Bill (2024) therefore replaces Kenya's outdated Cooperative Societies Act (1997) with a modern legal framework aligned with the country's devolved governance system (under Article 186 and the Fourth Schedule of the Constitution).

(9) The Bill tackles weak governance, financial risks, and member exploitation by introducing stricter oversight, transparency measures, and accountability rules. It

aims to protect members' interests, boost sustainable growth, and strengthen Sacco's and financial cooperatives.

(10) Ultimately, the reforms seek to rebuild public trust, ensure stability, and drive long-term development in Kenya's cooperative sector under devolution.

1.4 Summary of Clauses

The Bill therefore proposes the following —

(11) **Part I (Clause 1-5)** of the Bill provides for preliminary matters including the short title of the Bill. It provides for the interpretation of terms used in the Bill and the objects of the Act. It also provides for the guiding principles in the implementation of the Act and the application of the Act.

(12) **Part II (Clause 6-18)** of the Bill provides for the establishment of the offices and administration of the Act. It establishes offices in three divisions: Division 1 relates to the National Government Offices, wherein it establishes the office of the Commissioner for Cooperative Development and provides for the staff of the office of the Commissioner. It also makes provision for a vacancy in the office of the Commissioner, the functions of the Commissioner and provides for annual reports by the Commissioner.

Division 2 relates to County Government Offices. It establishes the office of the County Director for Cooperatives and provides for staff of the office of the County Director for Cooperatives. It makes provision for vacancy in the office of the County Director for Cooperatives, the functions of the County Director for Cooperatives and provides for an annual report by the County Director for Cooperatives.

Division 3 relates to the Inter-Governmental Cooperatives Relations Technical Forum. It establishes the Inter-Governmental Cooperatives Relations Technical Forum and provides for its functions and meetings.

(13) **Part III (Clause 19-27)** of the Bill provides for the structure of cooperatives in Kenya. It establishes a four-tier structure which includes Primary Cooperatives, Secondary Cooperatives, Cooperative Federations and an Apex Cooperative. It sets out the types of primary cooperatives that may be registered and prohibits multiple

objects in primary Cooperatives. It provides for the objects of secondary Cooperatives and the objects of Cooperative federations. It provides for registration and subscription to the Apex Cooperative and the role and functions of the Apex Cooperative. It also provides for the annual reports of the Apex Cooperative and registration, regulation and operations of Apex Cooperative.

(14) **Part IV (Clause 28-43)** of the Bill provides for registration of cooperatives. It includes the procedure for registration, restriction of registration of Cooperatives within the same common bond and limitation on names of Cooperatives. It provides for the registration of a Cooperative and its by-laws and a certificate of registration as evidence of registration. It also provides for the requirement to display a Cooperative certificate of registration and change of name or loss of certificate. It further makes provision for the deeming of a cooperative as a body corporate and prohibition against dual registration as well as amendment of by-laws. It provides for the binding effect of the by-laws of a Cooperative and for appeals against refusal to register. It further provides for the presumption of the signature by the Commissioner, the protection of Cooperative identity and for the protection and restriction on the use of the name "Sacco". It also provides for the mandatory usage of names in certain Cooperatives.

(15) **Part V (Clause 44-51)** of the Bill provides for the rights and liabilities of members. This includes qualification for membership, limitation of holding share capital, exercise of members' rights, limitation of membership to producer Cooperatives, voting rights of members, transfer of shares, rights of members and the obligations of a member.

(16) **Part VI (Clause 52-56)** of the Bill provides for the duties of cooperatives. It requires **every** cooperative to have a registered address in Kenya and to keep a copy of the Act and by-laws at its registered office. It also provides for estimates of income and expenditure, accounts and audits and production of books and other documents by cooperatives.

(17) **Part VII (Clause 57-66)** of the Bill provides for governance of cooperatives. It includes provisions on general meetings, special general meetings, presiding at general meetings, the use of physical, virtual or hybrid general meetings and the

delegate system of representation. It also provides for membership and powers of the board, eligibility to the board of directors and responsibilities of the board. It also makes provision for the creation of a Supervisory Board and its duties as well as a Nomination Committee.

(18) **Part VIII (Clause 67 -68)** of the Bill provides for the amalgamation and division of cooperatives. This part outlines the procedures for the amalgamation and division of cooperatives.

(19) **Part IX (Clause 69-80)** of the Bill provides for the rights and obligations of cooperatives. It permits a cooperative to enter into a charge over a member's produce and fine a member for violation of by-laws. It also provides for first charge over debts and assets of a member and first charge over members' shares. It makes provision for an employer's failure to remit the sum deducted from an employee. It also provides for prohibition against attachment of member's share, the rights of withdrawing from membership and the liability of past and deceased members. It further provides for the transfer of share or interest of deceased members. It also provides for evidence of member's interest in Cooperative and restriction on production of Cooperative books.

(20) **Part X (Clause 81-89)** of the Bill provides for property and funds of cooperatives. It provides for how the property and funds of a cooperative are to be applied. It also provides for restriction on giving loans and borrowing as well as investment of a Cooperative's funds, investment in non-core activities and investment in companies. It further makes provision declaration and payment of bonuses, the maintenance of a reserve fund and the distribution of net balance.

(21) **Part XI (Clause 90-98)** of the Bill provides for charges by cooperatives. It provides for the creation of charges over Cooperative property, compliance of charges with applicable law, the registration of charges by the Commissioner and for the Register of charges. It also makes provision for the issuance of a Certificate of satisfaction of charges and for the requirement for the Receiver to give notice of appointment to the Commissioner. It also makes provision for the requirement of a Cooperative to keep a copy of instruments of charge at the registered office and for

the register of particulars of charges. It further provides for the right of members and creditors to inspect the register of charges.

(22) **Part XII (Clause 99-105)** of the Bill provides for inquiry, inspection and surcharges. It provides for inquiry by the Commissioner into the by-laws, working and financial conditions of any Cooperative registered in Kenya. It also provides for the power to surcharge officers of a Cooperative, appeal against a surcharge order and the recovery of surcharge. It further provides for the inspection of books of an indebted Cooperative, the expenses of inquiry and inspection and routine inspection.

(23) **Part XIII (Clause 106-117)** of the Bill provides for the dissolution of Cooperatives. It includes the procedure for dissolution, the cancellation of registration, effects of cancellation and makes provision for the liquidation of a Cooperative whose registration is canceled. It also makes provision for the appointment of a liquidator, the qualifications of a liquidator, the powers of a liquidator and the making of a liquidation account of cooperatives. It sets out the powers of the Commissioner during liquidation. It also provides for appeals against an order of the liquidator or Commissioner, enforcement of orders and outlines offenses relating to liquidation of a Cooperative.

(24) **Part XIV (Clause 118-123)** of the Bill provides for special powers of the Cooperative tribunal to set aside certain transactions. It provides for the power of the Cooperative Tribunal to set aside transactions that are under value, the power to void preference and provides the meaning of the term 'relevant time' used in clauses 118 and 119 of the Bill. It also makes further provisions for orders under clauses 118 and 119 ancillary provisions. It further provides for the power of the Cooperative Tribunal to set aside certain extortionate transactions and outlines the circumstances in which a floating charge on a Cooperative undertaking or property may be invalid.

(25) **Part XV Clause (124 –146)** of the Bill provides for settlement of disputes. It establishes the Cooperative Tribunal and provides for the appointment of its members. It also sets out the remuneration and term of office for members of the Cooperative Tribunal. It provides for the gazettement of members of the Tribunal and when a vacancy in the office of the Tribunal may arise. It also provides for the jurisdiction of the Tribunal, registries, sittings and proceedings of the Tribunal. It

provides for orders by the Tribunal and general offenses at the Tribunal and grants the Tribunal unlimited geographical and pecuniary jurisdiction in matters of cooperative disputes. It provides for the quorum and benches of the Tribunal, conflict of interest and voting at the Tribunal. It further provides that the powers of the chairperson may be exercised by the vice chairperson and for appeals to the High Court from the Tribunal. This part also provides for the Chairperson's power to appoint a Cooperative assessor at the Tribunal and for contempt of the Tribunal. It also provides for the appointment of a Deputy Registrar of the Tribunal and the right of parties before the Tribunal. It also provides for the immunity of officers of the Tribunal and for alternative dispute mechanisms at the Tribunal.

(26) **Part XVI (Clause 147-162)** of the Bill contains general provisions. It provides for procurement and disposal in Cooperatives, enforcement of ethics and integrity in Cooperatives, cooperative self-regulation, credit information sharing, inter-cooperative borrowing, cooperative capital raising instruments and remuneration to officers and members of a Cooperative. It also establishes the Cooperative Development Fund and delegates to the Cabinet Secretary the power to make regulations. It further provides for the powers of the Cabinet Secretary and the County Executive Committee Member, other powers of the Commissioner, and other powers of the County Director for Cooperatives. It outlines offenses, provides for the distinction of Cooperatives from trade unions and sets out a general penalty for offenses.

(27) **Part XVII (Clause 163-168)** of the Bill provides for transitional provisions. It proposes the repeal of the Cooperative Societies Act (No. 12 of 1997) and the amendment of the Public Officer Ethics Regulations, 2003. (LN. No 6 of 2003). It also provides for transition to the Office of the Commissioner and County Director for Cooperatives and the enactment of County Assembly legislations. It provides for the transition of the members of and proceeding before the Cooperative Tribunal as well as the transition of notices, orders, directions and appointments.

(28) **Schedules**

The First Schedule outlines the procedure of liquidation of cooperatives under clause 109. The Second Schedule outlines preferential debts in relation to the

payment of debts for a Cooperative under liquidation, while the Third Schedule outlines offences relating to conduct before and during liquidation and criminal proceedings relating to those offences under clause 117.

CHAPTER TWO: OVERVIEW OF THE LEGAL FRAMEWORK ON COOPERATIVES IN KENYA

2.0 Constitutional provisions

(29) Article 10 of the Constitution regulates National values and principles of governance and provides that the national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them: applies or interprets this Constitution, enacts, applies or interprets any law, or makes or implements public policy decisions. The national values and principles of governance include: patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;good governance, integrity, transparency and accountability; and sustainable development.

2.1 International legal framework

(30) In **1895**, the **International Cooperative Alliance (ICA)**was founded to promote cooperative principles worldwide. In **1966,** the **ICA Principles** were formally defined, setting a foundation for cooperative values. **1995,** the **ICA Principles** were revised to align with changing social and economic landscapes. In **2002** the **ILO Recommendation No. 193 on the Promotion of Cooperatives** was adopted, establishing modern standards and principles for cooperatives. In **2012**, the **International Year of Cooperatives** declared by the UN, highlighting the role of cooperatives in achieving economic and social goals. In **2015** the **UN Resolution on Cooperatives** was passed, recognizing cooperatives as partners in achieving sustainable development goals. This timeline **documents** the history of the cooperative movement that has been built on principles of **fairness, democracy, and community support, evolving over time to address global social and economic challenges**.

(31) **ILO Recommendation no. 193 (2002)** is one of the main guidelines for cooperatives and emphasizes: **voluntary membership** stating joining a cooperative

should be a choice, **democratic control** stating that the members should control cooperatives democratically, with one member, one vote, **economic participation** that emphasizes that members contribute and benefit economically in a fair way, **autonomy and independence** that states that cooperatives should be self-governed and free from outside control, **education and training** that states that providing education and training to members for cooperative development, **cooperation among cooperatives** that announces that cooperatives should work together to strengthen the movement, and **concern for community** that restates that cooperatives should work to benefit the communities they serve.

2.2 Acts of Parliament that regulate cooperatives

(32) The Co-operative Societies Act (CAP. 490) is an Act of Parliament relating to the constitution, registration and regulation of cooperative societies enacted on 22nd December, 1997 and came into force on 1st June, 1998. The Act contains provisions regulating registration of co-operative societies, privileges of registered societies, rights and liabilities of members, duties of co-operative societies, amalgamation and division of co-operative societies, rights and obligations of co-operative societies, property and funds of co-operative societies, charges by co-operative societies, inquiry and inspection, special powers of the court to set aside certain transactions dissolution, surcharge, and settlement of disputes.

(33) The Sacco Societies Act (CAP 490B) was enacted on 24th December, 2008 and operationalized on 26th September, 2009 and is an act of Parliament to make provision for the licensing, regulation, supervision and promotion of Sacco societies, to establish the Sacco Societies Regulatory Authority. The Act applies to every deposit-taking business and specified non-deposit taking business specified by regulation. The Act contains provisions regulating establishment objects and functions of the Sacco societies Regulatory Authority, licensing of Sacco societies, governance of Sacco societies, regulation and supervision of Sacco societies, and establishment of the Deposit Guarantee Fund.

2.3 Policy framework

(34) **Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya.** The Cooperative Society Act 1966 was enacted pursuant to Sessional paper no. 10 of 1965. **Sessional Paper No.14 on Co-operative Development Policy 1975** was formulated to continue recognition of co-operatives as vital institutions for mobilising the natural, human and financial resources for national development.

(35) **Sessional Paper No 6** on *Co-operatives in a Liberalized Economic Environment* was formulated to provide a policy framework for Cooperative development in a changing economic environment and the Cooperative Management approach by withdrawing of state involvement in the day-to-day management of co-operative societies and unions. **The Co-operative Societies Act, Cap. 490** was enacted pursuant to **Sessional Paper No. 6 of 1997,** to regulate the constitution, registration and regulation of co-operative societies.

(36) **Sessional Paper no. 4 of 2020** was formulated to ensure that co-operative societies participate effectively in making Kenya an industrialized country as envisaged in Kenya Vision 2030. The Cooperatives Bill has been drafted pursuant to **Sessional Paper no. 4 of 2020 on National Cooperative Policy** on promoting co-operatives for socio-economic transformation from the State Department for Cooperatives.

CHAPTER THREE: COMPARATIVE ANALYSIS

3.0 Introduction

(37) Cooperatives play a very important role in Kenya's economy and social development, serving as key drivers of financial inclusion, agricultural productivity, employment creation, and poverty reduction. With over 14 million members and contributing approximately 45% of the country's GDP, the Cooperative movement is a cornerstone of Kenya's socio-economic framework. Despite their significance, Cooperatives face persistent challenges, including governance weaknesses, limited access to financing, regulatory inefficiencies, and inclusivity gaps particularly for women, youth, and marginalized communities. These challenges hinder their full potential, necessitating legislative reforms to enhance transparency, sustainability, and equitable participation.

(38) The proposed Cooperative Bill (2024) seeks to address these gaps by modernizing Kenya's legal framework to align with global best practices while fostering local economic resilience. This Comparative Analysis evaluates Kenya's reforms against the cooperative laws of Ethiopia (Proclamation No. 147/1998), Brazil (Law No. 12690/2012), and India (Multi-State Cooperative Societies Act, 2002, amended in 2023), alongside state-level models like the Maharashtra Cooperative Societies Act. By examining critical aspects such as registration processes, term limits, financing mechanisms, government support, and devolution, this study identifies innovative solutions to strengthen Kenya's cooperative sector.

(39) The findings aim to ensure that the 2024 Bill not only resolves existing systemic weaknesses but also positions Kenyan cooperatives as engines of inclusive and sustainable development. Through this comparative approach, Kenya can adopt globally proven practices while tailoring reforms to its unique socio-economic context.

3.1 Comparative Analysis Table

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (Multi-State Cooperative Societies Act, 2002 & State Laws)
Duties of Cooperatives	- Maintain registered office and records. - Prepare annual financial statements audited per IFRS. - Enter binding contracts with members (e.g., agricultural produce). - Distribute surplus per by-laws and regulations.	- Promote member welfare and economic participation. - Maintain proper books of accounts. - Submit annual reports to regulatory authorities. - Ensure democratic governance and member education.	- Operate under cooperative principles (voluntary membership, democratic control). - Submit annual financial statements to the Brazilian Cooperative Organization (OCB). - Reinvest surpluses for development or member dividends.	- Maintain registered office and records. - Prepare annual financial statements audited by certified auditors. - Distribute surplus as per bylaws (max 25% to reserves). - Promote member welfare, education, and democratic governance.
Term Limit	- **3-year term** per election. - **Re-election allowed** (no explicit cap on total terms).	- **3-year term** per election. - **Maximum of 2**	- **No fixed term limit** nationally; varies by cooperative's bylaws.	- **5-year term** for board members (uniform under

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (Multi-State Cooperative Societies Act, 2002 & State Laws)
		consecutive terms (6 years total).	- Common practice: **2–3-year terms**, often renewable.	2023 amendments). - **Maximum of 2 consecutive terms** (10 years total). - **Cooling period** of 1 term before re-election.
General Meetings	- Annual General Meeting (AGM) within 4 months of financial year-end. - Special meetings for urgent matters. - Physical meetings required for key decisions (e.g., dissolution). - Virtual/hybrid allowed in exceptions.	- AGM within 3 months of financial year-end. - Special meetings convened by board or 1/3 of members. - Decisions by majority vote; 2/3 majority for major changes (e.g., bylaws).	- AGM mandatory within 4 months of year-end. - Extraordinary meetings for mergers/dissolutions. - Quorum: 2/3 of members for major decisions.	- **AGM within 6 months** of financial year-end. - **Special meetings** for urgent matters (e.g., mergers). - **Quorum**: 1/3 members for AGMs; 2/3 for major decisions (e.g., dissolution). - **Hybrid meetings** permitted post-2023 amendments.

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (**Multi-State Cooperative Societies Act, 2002 & State Laws)**
Financing	Proposed National & County Cooperative Funds	Limited state support	Strong (e.g., **SESCOOP** for training & credit)	- National Cooperative Development Corporation (NCDC) provides loans/grants. - State-level cooperative banks/funds (e.g., Maharashtra Rajya Sahakari Bank). - Tax exemptions under Section 80P of IT Act.
Board of Directors	- 5–9 members; gender balance (max 2/3 same gender). - 3-year term; re-election allowed. - Qualifications: secondary	- 5–15 members; 1/3 must be women. - 3-year term; max 2 terms. - Training required post-election.	- Minimum 3 members; term limits vary by bylaws. - No gender quota but encouraged.	**- 5–21 members** (varies by society size). - Gender quota: 1–2 seats reserved for women (state-dependent). - Qualifications: No formal

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (Multi-State Cooperative Societies Act, 2002 & State Laws)
	education, no conflicts of interest.		- Professional experience preferred.	education mandate, but "fit and proper" criteria apply. - Disqualifications: Criminal record, insolvency, or conflicts of interest
Time Limits	- Registration within **30** days of application. - AGM reports due within **3–6 months**. - Appeals to Cooperative Tribunal within 30 days.	- Registration within 60 days. - AGM reports due within 3 months. - Dispute appeals within 30 days.	- Registration within 90 days. - AGM reports due within 4 months. - No strict appeal deadline.	- Registration: 90 days (multi-state); 30–60 days (state-level). - AGM reports: Due within 6 months. - Appeals: 30–60 days to cooperative tribunal.
Amalgamation	- Special resolution by 2/3 majority. - Commissioner approval required.	- Approval by 3/4 majority of each cooperative. - Federal Agency reviews	- Approval by 2/3 majority. - Judicial review for creditor protection.	- Approval by 2/3 majority of each society. - Central/State Registrar approval required.

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (Multi-State Cooperative Societies Act, 2002 & State Laws)
	- Assets/liabilities transfer automatically.	fairness. - New entity assumes all obligations.	- Tax incentives for mergers.	- Creditor protection: Mandatory notice period. - Tax-neutral treatment for mergers.
Filling Vacancies	-The Bill does not explicitly address procedures for filling board vacancies, leaving this to individual cooperatives bylaws	Requires vacancies to be filled within 60 days through a special general meeting or board appointment, subject to member approval.	Allows cooperatives to define vacancy-filling processes in their bylaws, often requiring board approval or interim appointments until the next election	Mandates that vacancies be filled within 90 days, with appointments approved by the Registrar of Cooperatives to ensure compliance
Penalties	Bill proposes fines for non-compliance with reporting requirements (e.g., late AGM reports) but lacks detailed	Imposes strict penalties, including fines and dissolution, for fraudulent activities or repeated	Enforces graduated penalties (fines, suspension of benefits) for breaches of cooperative principles or	Specifies penalties in the Multi-State Act, including fines and imprisonment for embezzlement or falsification of records.

Aspect	Kenya (Cooperatives Bill, 2024)	Ethiopia (Cooperative Societies Proclamation No. 985/2016)	Brazil (Cooperatives Law No. 5,764/1971)	India India (Multi-State Cooperative Societies Act, 2002 & State Laws)
	penalties for governance violations.	failures to submit financial reports	financial mismanagement.	
Transparency	Requires annual audited financial statements but lacks provisions for public access to records.	Mandates public disclosure of annual reports and audits to regulatory authorities and members	Cooperatives must publish key decisions and financial summaries in local newspapers or online platforms.	The 2023 amendments require digitized records and public access to AGM minutes and audit reports.
Digitization & Access to Records	Permits hybrid meetings but does not mandate digital record-keeping	Limited digital infrastructure; physical records dominate.	Advanced digitization through the *SESCOOP* platform for training and compliance tracking.	Mandates e-filing of returns, digital AGM's and centralized databases for multi-state cooperatives.

3.2 Recommendations Drawn from the Comparative Analysis

(a) **Term Limits & Governance**

From India: Introduce a **cooling period** after 2 terms (like India's 1-term gap) to prevent elite capture. By requiring leaders to take a break after two terms, India's system ensures that no single individual or faction can dominate indefinitely. This reduces the risk of patronage networks and cronyism.

From Ethiopia: Cap re-election at **2 consecutive terms** (6 years total) to ensure leadership rotation.

(b) **Financing & Government Support**

From Brazil: Adopt a dedicated Cooperative support agency **(like Brazil's SESCOOP)** for training/credit.

From India: Expand County-level Cooperative funds (similar to India's NCDC/state banks) for grassroots access.

(c) **Regulations & Compliance**

From India: Implement **digital reporting** and centralize audits (e.g., India's e-filing for annual returns).

From Brazil: Allow bylaw flexibility for small Cooperatives (e.g., Brazil's decentralized term limits).

(d) **Gender & Inclusion**

From Ethiopia: Enforce mandatory training for board members (Ethiopia's post-election training model).

From India: Reserve specific seats for women/youth (like Maharashtra's 2-seat quota).

(e) **Amalgamation & Dispute Resolution**

From Brazil: Offer **tax incentives for mergers** (e.g., Brazil's creditor protection + tax neutrality).

From India: Standardize 30-day appeal windows (like India's tribunal deadlines).

(f) **Penalty:** Introduce tiered penalties (e.g., warnings, fines, disqualification) aligned with Brazil's model, and criminalize severe offenses as in *India.*

(g) **Transparency:** Adopt India's digitization requirements and Brazil's public disclosure rules to enhance accountability.

(h) **Digitization & Access to Records:** Integrate *India's* e-governance model and Brazil's SCOPE-like platform for seamless compliance and member access.[1]

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1. [1] National Assembly of Kenya. (2024). *The Cooperatives Bill, 2024*. Government Printer.
2. Ministry of Labor and Skills. (2022). *Cooperative business management occupational standard*. Scribd. https://www.scribd.com
3. Federal Democratic Republic of Ethiopia. (2016). *Cooperative Societies Proclamation No. 985/2016*. Federal Negarit Gazette.
4. Federative Republic of Brazil. (1971). *Cooperatives Law No. 5,764/1971*. Official Gazette of the Federative Republic of Brazil.
5. Government of India. (2002). *Multi-State Cooperative Societies Act, 2002* (along with relevant state laws, e.g., Maharashtra Cooperative Societies Act).
6. Federal Senate of Brazil. (1971, December 16). *Lei nº 5.764, de 16 de dezembro de 1971 [Law No. 5,764 of December 16, 1971]*. Official Gazette of the Federative Republic of Brazil.

CHAPTER FOUR: PUBLIC PARTICIPATION IN CONSIDERATION OF THE BILL

4.0 Legal provision on public participation

(40) Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate, the Committee invited interested members of the public to submit their written memoranda through a call for memoranda made in the local daily newspapers of Tuesday, 05th March, 2025 which is attached to the report as Annexure 4.

4.1 Submissions by Stakeholders

(41) The Committee further met on Tuesday 29th April 2024 and reviewed submissions received from the following institutions; -

(42)

(a) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME)

(b) State department of Cooperatives (SDC)

(c) Council of County Governors (CoG)

(d) Intergovernmental Relations Technical Committee (IGRTC)

(e) Cooperative Alliance of Kenya (CAK)

(f) Institute of Certified Public Accountants of Kenya (ICPAK)

(g) Kenya Teachers Sacco Association (KETSA)

(h) Law Society of Kenya (LSK)

(i) Cooperative University of Kenya (CUK)

(j) Coops Africa and Credence Africa (CC)

(k) Collins Omollo

(l) David Herbling

(m) Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance

(n) Joseph Arap Bett

(o) Stephen Kiritu Mwangi

(p) Raphael Kyasui, Principal Manager, Business and Accounting Strategic Management Advisors

(q) Waswa Mukoya Kevin

(r) SN

4.2 Consideration of stakeholders' submissions on the Cooperatives Bill, (National Assembly Bills No. 7 Of 2024)

(43) The Committee considered the stakeholders submissions as detailed below;

Long Title

(44) Mr. Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance

Proposal :**AN ACT** of Parliament to ~~establish the Office of the Commissioner for Cooperative Development at the national level of government and the Office of the County Director for Cooperatives in each county government~~; to **regulate the establishment, organisation, management**~~provide for~~ promotion**, development of cooperatives in a devolved system of governance; and connected purposes**~~gistration, and regulation of Cooperatives; to provide for inter-governmental Cooperative relations~~; and for connected purposes.

Rationale is this is customised from Article 4 of the model law for Africa. In addition, the purpose of the law is development and regulation of the Cooperative movement and not the creation of offices which are incidental to the regulation of the movement.

The Committee resolved to **adopt** this proposal as it was keeping with overall objective of the Bill

Clause 2 – Interpretation.

(45) Council of County Governors proposed amend the definition of a "secondary cooperative" to a cooperative whose memberships is restricted to primary cooperatives is two or more primary cooperatives, rationale to avoid ambiguity

Committee resolved to proposed amendment to define '**Secondary Cooperative**' as **Intracounty secondary** cooperative whose membership is **intracounty primary** cooperative and **Intercounty secondary** cooperative as cooperative whose membership is intercounty primary cooperatives
The Committee **accepted** this proposal to avoid ambiguity and ensure clarity.

(46) Coops Africa and Credence Africa proposed insert the definition of **multipurpose** cooperatives as a cooperative that has two or more objectives. Justification was to enabling them to diversify like other businesses, enhance economic resilience, unlock growth potential through value chain integration, protect member autonomy, and ensure financial stability via regulated governance mechanisms while mitigating risks of over extension.

The Committee acknowledged the proposal but **rejected** the inclusion of the term ***"Multipurpose Cooperative"*** in the Bill, as the phrase is not used within the legislation. Consequently, there was no need to define it, however, the amendments to Clause 21 by the National Assembly requires that the approval of the Commissioner be sought prior to registering a cooperative with more than two objects.

(47) Law Society of Kenya proposed the definition to "**bylaws**" should include registered amendments to those bylaws.

The rational was it recognises the evolving nature of Cooperatives Governance structure and aligns with clause 37 which provides for the amendment of the bylaws ensuring that any amendments once registered become part of the governing rules

Committee **adopted** this proposal as it will enrich the Bill, approval of Primary and Secondary to be done by County Directors and Apex and Federations are done by Commissioner. The Committee further observed that the approval should be based on the delineation of functions.

(48) Mr. Fred Sitati, Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance proposed Rename "**Cooperative technical officer**" as "Cooperative Officer

Rationale is the new term would confuse the public

Committee **rejected** this proposal as the change in terminology would not confuse the public because the roles of the technical officer were enumerated clearly.

(49) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME), proposed include in the definition for **primary Cooperatives** as whose membership is **intracounty primary** cooperative (operating within one county) and an **intercounty primary cooperative** (expanding across at least three counties with 500+ members per new county, initially registered as intracounty).

The Committee **adopted** this proposal noting that it was important to ensure that members of the Cooperative are defined adequately.

(50) Coops Africa and Credence Africa proposed a new insertion to define '**multipurpose Cooperatives**' as Cooperatives with two or more objectives to align cooperative laws with modern economic realities, unlock growth potential, enhance financial stability, support value chain integration, and strengthen freedom of

association, while ensuring responsible regulation through feasibility studies, financial assessments, and regulatory approval.

The Committee resolved to **reject** the proposal, reasoning that since the term 'Multipurpose Cooperative' is not included in the Bill, defining it would be unnecessary. However, they noted that under Clause 21 amendments, cooperatives seeking to operate with multiple objectives must first obtain approval from the Commissioner before registration.

(51) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME), proposed define the **reserve fund** as assets set aside from a cooperative's net surplus for investments, working capital, distribution of dividends and bonuses, and settlement of liabilities to expand its usage.

Committee adopted this idea but resolved to provide its definition '**levy fund**' as assets set aside from net surplus of Cooperative for investment in fixed assets and liquid assets, shares, supporting working capital and settlement of liabilities

(52) Mr. Joseph Arap Bett proposed deletion of the word '**annual delegates meeting' and 'special delegates meeting.**

The rationale is the terms "annual delegates meeting" and "special delegates meeting" should be removed from the Bill because the bill consistently recognizes only "a member" as the sole individual with voting rights, financial responsibilities, and decision-making authority, questioning how these rights and obligations could transfer to delegates via regulations or by-laws, and whether delegates would assume liabilities meant for absent members.

Committee proposed that while some functions can be delegated, critical decisions like borrowing or investing in non-core activities should be handled by actual members, not delegates.

(53) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME), proposed define "**levy**" as used under clause 153 as the definition is important.

Committee **adopted** this proposal to provide for new definition of '**levy**' as the payment made by cooperatives under section 153.

(54) Joseph Arap Bett proposed delete the definition "**Vulnerable**" member

Rationale is the word Vulnerable member is not used in the Bill.

Committee **rejected** the proposal as the word term "vulnerable member is used in the Bill under clause 61.

(55) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME), proposed define '**produce**' as "**members produce**" instead agricultural.

The rationale is to take into account and include handicrafts and other products.

Committee **adopted** the proposal and resolved to amend the definition to "members produce instead of agricultural produce'. In addition, the Committee noted under Clause 69 of the Bill should reflect the varying types of members produce.

(56) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME, proposed redefining "**member**" to include individuals, cooperative societies joining at registration or later, and corporate entities where at least one shareholder/director is an existing member, all subject to the society's by-laws. Committee **adopted** this proposal as it will enrich the Bill

(57) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME, proposed defining "**subsidiary**" as an organization wholly or partially owned by the cooperative to provide clarity in the Bill. Committee **adopted** this proposal as it will enrich the Bill

(58) Committee proposed to replace the word '**County Director**' wherever it appears in the Bill to '**County Commissioner of Cooperatives**'. This will reflect a more directive role

(59) Committee resolved to define **diaspora-based member**" as a member who is a Kenyan citizen but is not resident in Kenya

Clause 4-Guiding principles.

(60) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME, proposed amending Clause 4(a)(iii) to "Member economic participation by members" to align with the International Cooperative Alliance's terminology.

Committee **rejected** this proposal as the meaning was clear and no need to rephrase

Clause 7- Staff of the office of the Commissioner

(61) Institute of Certified Public Accountants of Kenya proposed provision of the position of a Deputy Commissioner.

The rationale is the inclusion of a Deputy Commissioner enhances the effective administration of Cooperatives particularly in matters of policy enforcements and oversight.

Committee **rejected** this proposal as the proposed Bill provides for the appointment of other technical officers to the office of the Commissioner. Further, the Committee observed from the oral submissions made before it by the State Department incharge of Cooperatives that the position of Deputy Commissioner currently exists as an office in the public service. The Committee recommended creation of additional administrative offices should be left to the Public Service Commission.

Committee resolved the Technical Officers in Commissioners office should have relevant academic qualifications in Cooperative management and practice and

comply with Chapter Six of the Constitution. The Committee further resolved to provide a three-year transition period

Clause 8 (1)-Vacancy in the office of the Commissioner

(62) Law Society of Kenya proposed provide a timeline for filling the vacancy The rationale for setting a timeline for filling the vacancy ensures service continuity and aligns with best practises for effective governance. Rationale is a set timeline for filling the vacancy ensures service continuity and aligns with best practises for effective governance.

The Committee **adopted** this proposal and further recommended that acting appointments should last for 3 months, renewable once, with a maximum total period of 6 months. If further acting service is required beyond this limit, a new person should be appointed. The Committee also proposed amendment to the position should be advertised three months prior to it becoming vacant and be filled within six months of it becoming vacant.

(63) **Clause 8(2)**-Law Society of Kenya proposed the outline of the specific academic competencies and experience required by the Commissioner prior to appointment. The jjustification is because the clause in vague and needs to be clarified

Committee **adopted** this and proposesed amendment to outline specific academic competency of a Commissioner to have a Bachelor degree in Cooperative management with a minimum of twenty years' experience in senior management in public service of which 10 should be in the Cooperative sector in a position not lower than County Commissioner of Cooperatives and meet Chapter Six of the Constitution requirement with a term limit of **(5)**five years, renewable once, or until the statutory retirement date, whichever comes first.

(64) Institute of Certified Public Accountants of Kenya (ICPAK) proposed that a person who is to appointed as Commissioner is required to have complied with Chapter Six of the Constitution.

The rationale is to ensure that the appointment process adheres to the Constitutional requirements relating to Leadership and Integrity

Committee **adopted** this and proposesed amendment to outline specific academic competency of a Commissioner to have a Bachelor degree in Cooperative management with a minimum of twenty years' experience in senior management in public service of which 10 should be in the Cooperative sector in a position not lower than County Commissioner of Cooperatives and meet Chapter Six of the Constitution requirement with a term limit of **(5)**five years, renewable once, or until the statutory retirement date, whichever comes first.

Clause 9-Functions of the Commissioner

(65) Institute of Certified Public Accountants of Kenya (ICPAK) proposed amendment to read 'The Commissioner shall be responsible for the ~~registration, growth, development and regulation of Cooperatives~~ policy direction, coordination of operations among cooperatives, between cooperatives and the county governments in Kenya'

The rationale is the separation of roles between the Commissioner of Cooperatives and the County Director of Cooperatives will reduce the instance of conflict of interest and allow for devolved.

The Committee **rejected** this proposal on the basis that the delineation of functions had already been provided for in subclause (2).It noted that other than the Fourth Schedule to the Constitution that delineates the functions of County governments vis a vis the functions of National government, Gazette Notice no. 16472 dated 16th December, 2024 also delineates the functions under Cooperatives- County Governments are mandated to register primary and secondary cooperatives.

Committee also noted further that the clarification on which Cooperatives the Commissioner was to register as proposed in the amendment to subclause (2) would clarify the roles.

(66) Council of County Governors proposed the **deletion of Clause 9(2) (b) which reads** Coordinate the implementation of an intergovernmental relations mechanism in the Cooperative's Sector.

Rationale is the same is provided for in clause 16

Committee **resolved to keep both provisions**. The two provisions can co-exist since one relates to the functions of the Commissioner while the other establishes the intergovernmental framework.

(67) Council of County Governors proposed to **Align clause 9(2) (c)** which reads Promote and register ~~all~~ cooperative Federations and the **Apex and Diaspora Cooperatives** in Kenya and maintain a national register of all Cooperatives.

Justification is this will align the Bill to the Fourth Schedule of the Constitution.

The Committee **adopt** this proposal and resolved to amend the provisions to align it to the Constitutional delineation of roles. It noted that other than the Fourth Schedule to the Constitution that delineates the functions of County governments vis a vis the functions of national government, Gazette Notice no. 16472 dated 16th December, 2024 also delineates the functions. Under Cooperatives- County Governments are mandated to register primary and secondary Cooperatives

(68) Council of County Governors proposed delete and **insert a new clause 9(2) (d)** ~~Promote and facilitate the registration of Cooperative federations and the Apex cooperative~~ **Develop guidelines in consultation with the council of county governors for the registration and standard certificate with a common seal and signature from the commissioner which shall be gazetted by the Cabinet Secretary.**

Rationale was the Cabinet secretary is mandated to develop regulatory instruments.

The Committee resolved to **reject** the proposal and amend paragraph (d). However, the Committee resolved to provide for the delineation of functions under paragraph (d). Further the Committee resolved to require the Cabinet Secretary to provide for a form of the Certificate of registration

(69) Council of County Governors proposed **Insert new clause 9(2) (e** ~~Conduct inquiries into the affairs of the Cooperatives in accordance with this Act~~ **Establish an integrated cooperatives management information system.**

The Committee adopted this proposal but still retained the power to conduct inquiries. Committee noted proposal as it ensure that County governments have access to the information. However, there is need to include the power to conduct inquiries thus recommended implementing Integrated Cooperative Management System

(70) Coops Africa and Credence Africa proposed amending the Bill to include "or Director as applicable" wherever the Commissioner is mentioned, arguing that cooperative regulation is a constructively concurrent function. County Governments handle primary and secondary cooperatives (via the Director), while the National Government oversees federative and apex cooperatives (via the Commissioner). The Director must still seek the Commissioner's approval for certain functions, implying partial devolution. The

Committee, however, **rejected** the proposal, noting the need for clear role delineation per the Constitution and Gazette to avoid ambiguity. Instead, they resolved to amend the Bill to explicitly define the Commissioner's and County Commissioner of Cooperatives respective roles.

(71) Intergovernmental Relations Technical Committee proposed the Commissioner should not register primary and secondary Cooperatives

The Committee **adopted** this proposal but resolved to provide for delineation of the functions between the Commissioner and the respective County Directors of

cooperatives. Committee observed that it is necessary for the Commissioner to register intercounty primary and secondary Cooperatives. However, intracounty primary and secondary Cooperatives should be registered by the respective County Commissioner of cooperatives.

(72) Intergovernmental Relations Technical Committee proposed the Commissioner should conduct inquiries in to the affairs of federations and apex cooperatives. And should conduct inquiries in to the affairs of primary and secondary Cooperatives on the recommendation of County Governments.

The Committee **adopted** this proposal but resolved to provide for delineation of the functions between the Commissioner and the respective County Directors of Cooperatives Committee observed that it is necessary for the Commissioner to conduct inquiries in to intercounty primary, secondary Cooperatives, Cooperative federations and apex Cooperatives. However, inquiries in to the affairs of intracounty primary and secondary Cooperatives should done by the respective County Commissioner of Cooperatives.

Clause 12(2)- Staff of the office of the County Commissioner for Cooperatives

(73) Institute of Certified Public Accountants of Kenya (ICPAK) proposed the technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice and in compliance with chapter six of the Constitution
The rationale is to ensure the appointment process for the technical officers adheres to the constitutional requirements of leadership, integrity and competence.

The Committee **adopted** this proposal that the technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice and in compliance with

Chapter six of the Constitution. The Committee further resolved to provide a three-year transition period noting it would enhance the Bill

(74) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME, proposed to requires technical officers to have appropriate academic qualifications, competencies, and experience in cooperative management.

The Committee **adopted** this proposal that the technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice and in compliance with Chapter six of the Constitution. The Committee further resolved to provide a three-year transition period noting it would enhance the Bill

Clause 13(1)- Vacancy in the office of the County Commissioner of Cooperatives

(75) Law Society of Kenya proposed to provide a timeline for the filling the vacancy Rationale is this is the best practices for effective Governance

Committee **adopted** this and proposed an amendment to provide a timeline for filling in of a vacancy and to limit timeline for acting.

(76) The Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME, proposed to requires technical officers to have appropriate academic qualifications, competencies, and experience in cooperative management.

The Committee **adopted** this proposal that the technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice and in compliance with

Chapter six of the Constitution. The Committee further resolved to provide a three-year transition period noting it would enhance the Bill

(77) Clause 13(2)- Law Society of Kenya proposed there is need to provide for academic and experimental competencies of the person to fill the position of County Commissioner of Cooperatives. The rationale is the provision is vague

Committee **adopted** the proposal the need to provide for the academic and experiential competencies to fill the position of County Commissioner of Cooperatives to have a Bachelor degree in Cooperative management with a minimum **(10)** ten years' experience in Cooperative management and practice and meets Chapter Six of the Constitution requirement

Clause 14- Functions of the County Commissioner of Cooperatives

(78) Council of County Governors proposed amend clause 14 (1) to read

The County Commissioner of Cooperatives shall be responsible **to the County Executive** Committee Member for the growth and development of cooperatives in the county.

Rationale is to aligns the executive authority of the county to the CEC

Committee observed that the Council of County Governors intends to have the County Commissioner of Cooperatives report to the CEC. This may be achieved by requiring the County Commissioner of Cooperatives to advice the CEC as one of his functions.

The Committee **adopted** this proposal as a function under (2). The Committee resolved to maintain the County Commissioner of Cooperatives but create a functional connection with the County Executive Committee member in charge of Cooperatives under subclause (2).

(79) Council of County Governors proposed Amendment 14 (2) (b) to read

~~Carry our inspections into the affairs of Cooperatives in the county~~ **register primary and secondary cooperatives**

The Committee resolved to **adopt** this proposed amendment and retain the previous provisions.

(80) Council of County Governors proposed amend clause 14 (2) (c)
~~Supervise elections of Cooperatives within the county~~ **shall maintain a county cooperative register**

The Committee resolved to **adopt** this proposed amendment and retain the previous provisions.

(81) Council of County Governors proposed to amend clause14 (2) (d)
~~Enforce good governance in the management of Cooperatives in the county~~ **recommend conduct of inquiries to the Commissioner into the affairs of primary and secondary Cooperatives in accordance with this Act.**

The Committee noted that the County Commissioner of Cooperatives should have the authority to conduct inquiries regarding intra-county primary and secondary cooperatives without requiring the Commissioner's involvement.

Committee **rejected** the initial recommendation to refer such matters to the Commissioner, it proposed instead that the County Commissioner of Cooperatives be granted explicit powers to independently conduct these inquiries.

(82) Institute of Certified Public Accountants of Kenya (ICPAK) Clause 14(2) proposed delete paragraph (h)

Rationale is the establishment should be supported by budgetary provisions

The Committee resolved to **reject** this proposal as provision in the Bill seeks to ensure the growth of the sector by providing information and therefore the provision was necessary

(83) Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development (MCMSME proposed amendment to the clause to clarify that the County Commissioner of Cooperatives shall supervise elections in primary and secondary cooperatives to prevent overlaps.

Committee **adopted** it specifically for intercounty and intersecondary cooperatives

(84) Coops Africa and Credence Africa proposed amendment to clause 14 (2) be updated to seeks the functions of the County Commissioner for Cooperatives in line with **Gazette Notice No. 16472 of 2024**, clearly defining their responsibilities in policy development, regulation, auditing, training, governance, and dispute resolution.

(85) The rationale is to ensure alignment with National standards and eliminate jurisdictional overlaps.

The Committee resolved to a**dopt** this proposal to delineate the functions in accordance to the Constitution and the Gazette Notice. Defining roles and responsibilities eliminate jurisdictional overlaps, enhance service delivery, and provide clarity to cooperatives on which level of government to engage for various regulatory and developmental issues

(86) Intergovernmental Relations Technical Committee proposed Insert the following paragraphs—

(a) Register primary and secondary Cooperatives

(b) Shall maintain a County Cooperative register

(c) Recommend conduct of inquiries in to the affairs of primary and secondary Cooperatives in accordance with this Act.

The Committee **adopted** the proposal and resolved to amend the Bill to mandate the County sed for clarification of the roles and responsibilities of the of Cooperatives to—

(a) register intracounty primary and secondary cooperatives

(b) maintain their respective county cooperatives register

(c) conduct inquiries into the affairs of intracounty primary and intracounty

(87) Stephen Kiritu Mwangi proposed for clarification of the roles and responsibilities of the Commissioner or County sed for clarification of the roles and responsibilities of the of Cooperatives on overseeing multi county cooperatives. Provide for the establishment of regional governance committees to oversee multicounty cooperatives.

Rationale is to ensure adequate representation of multicounty Cooperatives

Committee **adopted** this proposal that there is need for complete functional delineation.

(88) Cooperative University of Kenya proposed mandates capacity building for cooperative directors and CEOs,

Committee **rejected** restricting training exclusively to the Cooperative University to avoid creating a legislative monopoly, ultimately adopting the broader requirement.

Clause 15- Annual report by the County Commissioner for Cooperatives

(89) Institute of Certified Public Accountants of Kenya (ICPAK) and the Ministry of Cooperative proposed to require County Commissioner of Cooperatives to submit their report to the County Executive Committee Member no later than three months after the end of the financial year.

The rationale is to provide good time for the Apex Cooperative at the National level to confirm and consolidate their financial report and that of County levels for submission within stated frameworks

The Committee resolved to **adopt** the timeline proposed of the report no later than three months after the end of the financial year was ideal and recommended additional submissions to the County Assembly and the Commissioner

The Committee resolved to **adopt** the proposed timeline, recommending that the

report be submitted no later than three months after the end of the financial year, and advised that additional submissions be made to the County Assembly and the Commissioner.

Clause 16 (1)-Establishment of the intergovernmental Cooperatives Relations Technical Forum

(90) Council of County Governors proposed under clause 16 (1) (a) the Forum to be co-chaired between the Commissioner and the chairperson of the caucus of the County Executive Committee Members responsible for Cooperatives

The rationale is through tradition all intergovernmental bodies are co-chaired.

The Committee resolved to—

(a) Require that in the absence of the Commissioner, the County Directors of Cooperatives shall nominate one of their own to chair the meeting of the forum.

(b) **reject** the proposal to substitute the County Commissioner of Cooperatives with the County Executive Committee Members.

(91) Council of County Governors proposed changing the membership from the Directors of Cooperatives to the responsible CEC

The rationale is the executive power in the County governments is vested in the CEC

The Committee noted the proposal and observed that the forum was technical in nature and therefore its membership should contain the technocracy.

(92) Institute of Certified Public Accountants of Kenya (ICPAK) proposed Include the principal secretary responsible for Cooperatives

The rationale is it ensure inclusivity of the State Department of Cooperatives in the technical forum

The Committee noted the proposal and observed that the forum was technical in nature and therefore its membership should contain the technocracy.

(93) Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance proposed the Forum should bring on board the state, the cooperative and other actors and should be renamed the National Council for Cooperatives

The rationale is this is per the guidelines for Cooperative legislation by the International Labour Organization (ILO) and Committee for Promotion and Advancement of Cooperatives (COPAC) which recognizes Cooperatives as autonomous and independent private sector organization.

The Committee **rejected** the proposal.

(94) Intergovernmental Relations Technical Committee (IGRTC) proposed the Commissioner should chair the Intergovernmental Cooperatives relations technical forum

The Committee **rejected** the proposal since it was already contained in the Bill under clause 16 (1) (a). However, the Committee also noted that in the absence of the Commissioner one of the County Commissioner of Cooperatives should chair the Forum

Clause20-Primary Cooperatives

Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance proposed

Provide for the following types of cooperatives—

(a) Financial services such as savings and credit, banking and insurance
(b) Wholesale and retail business amongst members
(c) Crop production, purchasing, processing, marketing, distribution and related activities
(d) Industrial production, manufacturing and distribution of goods
(e) Construction of houses for members and real estate business

(f) Animal husbandry

(g) Dairy farming

(h) Seed production

(i) Fishing, processing and marketing of fish and other sea products

(j) Mining, processing and marketing of mineral products

(k) Health care services

(l) Information and communication technology services

(m) Professional services such as law, accounting and engineering

(n) Fashion design and related services

(o) Funeral services

(p) Advisory services

(q) Cleaning services

(r) Content creation

(s) Cooperative schools

The Committee observed that the Cooperatives under (c), (f), (g), (h), (i) could be subsumed within the producer category of cooperatives depending on the objectives of the Cooperative. The Committee further noted that the construction of houses was already covered by the Housing Cooperative. In respect to the proposed financial services Cooperative, the Committee observed that the same could be covered under Sacco's and SICOs in the Bill. Additionally, the cooperatives described under (l), (m), (n), (o), (p), (q) and (r) could be subsumed under the worker category in the Bill. Finally, the consumer Cooperative could take in to account the wholesale and retail proposal.

The Committee therefore **rejected** this proposal noting that the categories of primary Cooperatives could be expanded should new categorizations emerge in the market and therefore the provisions of the Bill should be retained.

(95) **SN** observed that the structure proposed by the Bill is bureaucratic and the distinction between the four types of cooperatives is unmerited. Some producer Cooperatives cannot meet all the requirements of carrying out production, processing and marketing. The provision should take in to account Cooperatives that

can only do one instead of all.

The rationale is that the provision as currently drafted locks out the producer Cooperatives that carry out only one of these functions e.g. most small-scale farmer's Cooperatives

The Committee observed that the structure of Cooperatives is best practice and will ensure that order within the Cooperative sector. Committee further noted that the Bill should be amended to accommodate producer cooperatives that carry out only one of these functions.

The Committee therefore resolved to **reject** the proposal to do away with structure of Cooperatives proposed and amend the proposal to accommodate Cooperatives that are not able to carry out all requirements.

Committee further resolved to propose an amendment to provide for members intending to join two or more cooperatives must disclose their existing memberships to each new cooperative and, before applying for a loan, provide letters from all cooperatives confirming their financial liabilities

Clause 21-Prohibition against multiple objects in primary Cooperatives

(96) Institute of Certified Public Accountants of Kenya (ICPAK) proposed an amendment to substitute Commissioner with County Commissioner of Cooperatives.

Rationale is this will ensure that primary Cooperatives are registered by County Governments.

Committee observed that registration of Cooperatives should be delineated between the Commissioner at the National level and the Directors at the County level. Committee resolved to **adopt** the amendment as far as registration of intracounty primary and secondary Cooperatives is concerned.

(97) Fred Sitati proposed the provision should be amended to provide that a Commissioner should not register a Cooperative with more than one activity and not

objective.

Rationale is diversification of activities so as to rope in as many people as possible including women, youths and vulnerable groups.

The Committee resolved to **reject** the proposal and noted that that the intention of the Bill was not to limit activities but objectives since several activities can be employed towards the attainment of one objective. Activities are the specific actions or tasks undertaken to achieve an objective. Objectives are broader and more strategic, while activities are more concrete and operational.

Clause 24-Registration and subscription of the Apex Cooperative

(98) **Fred Sitati & SN proposed Rename** "Apex Cooperative" to "Cooperative confederation"

The membership should target secondary and federative Cooperatives on behalf of primary Cooperatives.

The rationale is its established at the National level to promote Cooperative development. Membership to the Apex cooperative should be voluntary dictated by the quality of services provided. To make the membership mandatory will may cause resentment among Cooperative but progressively this may be introduced with the concurrence of the Cooperative

The Committee **rejected** the proposal to rename Apex as description provided within the Bill fits well with Apex Cooperation. The Committee however approved amendment to make subscription to the Apex Cooperative optional.

Clause 29- Registration

(99) Institute of Certified Public Accountants of Kenya (ICPAK) proposed delete the word Commissioner and replace with County Commissioner of Cooperatives

The **rationale** is the amendment will ensure that the power to register primary and secondary Cooperatives is given to County governments.

The Committee resolved to **adopt** the amendment as far as registration of intracounty primary and secondary Cooperatives is concerned. Committee observed that registration of Cooperatives should be delineated between the Commissioner at the National level and the Directors at the County level

(100) Coops Africa and Credence Africa proposed Insert a new section on Provisional Registration of Cooperatives by County Governments.

Justification is the amendment seeks to address the Gap created by the Removal of Provisional Registration, avoiding Delays Caused by National Government Inefficiencies, strengthen the Delineation of Duties Between National and County Governments, promote Cooperative Growth and Economic Inclusion, provide Legal Certainty and Regulatory Oversight, standardize and Regulatory Compliance

The Committee resolved to **reject t**he proposal the registration of Cooperatives should be delineated between the Commissioner at the National level and the Directors at the County level. The Committee resolved to provide the timelines for the registration of Cooperatives by both the County Commissioner of Cooperative and the Commission and proposed that the County Commissioner of Cooperative register intracounty primary and intracounty secondary Cooperatives within 30days. In addition, the Committee noted that the Commissioner under clause 32 had 30 days to conclude registration.

Clause 39 -Appeal against refusal to register

(101) Law Society of Kenya (LSK) proposed the Bill to provide a timeline for filing an appeal from the date of receiving a notification of refusal.

The rationale is including a timeline for filing an appeal provides an aggrieved party with a defines period within which they can exercise their right to lodge an appeal.

The Committee resolved to **adopt** a thirty-day timeline for filing of an appeal

Clause 54 -Accounts and Audit

(102) David Herbling proposed Insert a new section on accounts and audit that reads—

(1) The Board of every Cooperative and Sacco shall ensure it keeps all proper books of account and records

(2) Cooperatives and SACCO's whose membership are majority drawn from public service (e.g teachers, police, civil servants etc) shall submit their books to the Auditor General

(3) The Auditor General may, in writing, allow a cooperative or Sacco to hire the services of a private Audit firm for the purposes of audit under this section within a period of three months after the end of each financial year, the board shall prepare, sign and publish:

(a) a balance sheet showing in detail the assets and liabilities;

(b) statement of income and expenditure;

(c) such other statements of account as required by International Accounting and Audit Standards

(4) The audited accounts shall be widely circulated to members, published on the Sacco/cooperative website, and published in at least one daily newspaper widely circulated throughout Kenya

The rationale is to access to information for members to the state of affairs, transparency and accountability in the running of these organisations.

The Committee **rejected** this proposal and recommended the provisions of the Bill be retained as the concerns by the stakeholder have already been addressed on the Bill. Clause 54 of the Bill provides for accounts and audits by an auditor appointed by the membership from a list of auditors approved by the Commissioner. The Commissioner is also required to prepare and submit financial and non-financial annual reports on the performance and activities of the Cooperatives to the CS while the county commissioner of cooperatives is required to submit the reports to the CEC.In addition, under clause 49 a member of a Cooperative has the right to access information pertaining to the cooperative including the accounts of the cooperative.

(103) Coops Africa and Credence Africa proposed the Board of Directors of every

Cooperative society shall ensure the submission of quarterly financial and operational returns to the Director, tailored to the nature of the cooperative's activities. These returns shall include, but are not limited to:

General Financial Returns for All Cooperatives:

i. Statement of financial position (balance sheet).
ii. Statement of comprehensive income (income statement).
iii. Trial balance.
iv. Cash flow statement.
v. Management accounts detailing revenue, expenses, and surplus distribution.
vi. Report on member contributions, withdrawals, and refunds.
vii. List of cooperative assets, indicating fixed and current assets and their status.
viii. Summary of liabilities, including outstanding debts and obligations.
ix. Any other financial information prescribed in the regulations based on the size and complexity of the cooperative.

Additional Requirements Based on Cooperative Type:

(a) Savings and Credit Cooperatives (SACCOs) and Financial Services Cooperatives:

i. Loan performance report, including:
   - Classification of loans (performing and non- performing loans).
   - Loan provisioning and write- offs.
   - Delinquency ratio and credit risk assessment.
ii. Liquidity and capital adequacy report.
iii. Investment portfolio statement detailing all cooperative investments, including securities, deposits, and real estate.

(b) Agricultural Cooperatives:

i. Production and inventory report on agricultural products and inputs.
ii. Status of agricultural equipment and machinery, including operational efficiency.
iii. Status of storage facilities and logistics infrastructure.
iv. List of cooperative-owned agricultural land and its utilization status.

(c) Transport Cooperatives (TransCoops):

i. List of fleet assets, including vehicles, maintenance schedules, and depreciation status.

ii. Operational income and expenditure report, including fuel costs, repairs, and insurance expenses.

iii. Loan and lease obligations for fleet expansion and renewal.

iv. Compliance status with transport regulatory requirements.

(d) Housing Cooperatives:

i. Property ownership report, including details of cooperative-owned land, buildings, and ongoing construction projects.

ii. Membership subscription payments towards housing projects.

iii. Loan obligations related to real estate development.

iv. Occupancy and tenancy reports for rental cooperative properties.

(e) Investment Cooperatives:

i. Breakdown of cooperative investments, including:

- Equity holdings in listed and unlisted companies.
- Bonds, treasury bills, and other financial instruments.

Real estate assets and returns on investment.

ii. Valuation report on investment properties and other assets.

iii. Risk exposure analysis related to investments.

The quarterly financial and operational returns shall be submitted **within fifteen (15) days after the end of each quarter**.

(2) A cooperative that fails to comply with sub- section (1) shall be deemed to have committed an offence. The Director shall impose a fine on the Board of Directors, jointly and severally, as prescribed in the regulations, for each month the cooperative fails to file the required returns.

The rationale is it will enhance financial and operational supervision, balance oversight with regulatory compliance, reduce financial and governance risks, ensure timely decision making by regulators, protect members' contributions and align with best practices in financial regulation.

The Committee **adopted** the proposal to require that the estimates be provided to Members **21** prior to the date of the General meeting. Committee noted that specification of statutory timeline will enrich the Bill.

The Committee **adopted** the proposal of amending paragraph (e) to remove the County Commissioner of Cooperatives auditing function, Cooperatives are already mandated to conduct their own audits and submit reports, and the County Cooperatives of Cooperative may lack the capacity to audit all regulated Cooperatives in the County

Committee **adopted** the proposed amendment to include authentication of the accounts by the Chief Executive Officer provide for timeline for filling of returns as this will enrich the Bill

(104) Stephen Kiritu Mwangi proposed provide for a risk management framework

The Committee resolved to reject the proposal as one of the functions of the Board of directors was risk management under clause 64 (1).

Clause 55 Auditing

(105) Coops Africa and Credence Africa proposed Audit of Cooperatives

(1) The Auditor shall conduct annual audit of a cooperative society's governance, financial and management systems.

(2) A cooperative society shall provide any information as the Auditor may require enabling the auditor carry out the audit.

(3) The Auditor shall prepare the audit report as set out in section (8) above and shall submit copies of the report to the Commissioner and County Commissioner of Cooperatives and to the Board of Directors of the respective cooperative.

(4) The Auditor shall, in the audit report prepared under subsection (3) recommend measures to be adopted by the cooperative to improve performance and shall also prepare a risk report as part of the audit report.

(5) The Board of the cooperative shall cause the Cooperative to adopt measures

recommended under subsection (4).

(6) A Board of Directors of a cooperative that fails to comply commits an offence and the County Commissioner of Cooperatives of Cooperatives or the Commissioner of Cooperatives shall require any officer or member of the Board of Directors to pay a fine as to be set out by the regulations for this offence jointly or severally.

(7) Notwithstanding subsection (1), the Commissioner or County Commissioner of Cooperatives may require a cooperative to make reports as may be prescribed by regulations or circulars in order to ensure that a cooperative is in compliance with this Act.

A Board of Directors of a Cooperative that fails to cause an audit of its financial statements within the prescribed period shall be deemed to have committed an offence. Where a Cooperative fails to have its financial statements audited within the required time frame for the previous financial year, the members of the board of directors shall automatically lose their positions at the next general meeting and shall be ineligible for re- election for a period of three years unless the Commissioner or County Commissioner of Cooperatives determines that the failure was due to circumstances beyond their control.

(8) In the event of non-compliance with the audit requirements, the Commissioner or County Commissioner of Cooperatives shall have the authority to:

(a) Dissolve the board of directors and appoint an interim board, which shall serve until a general meeting is convened to elect a new board.

(b) Recommend the freezing of capital expenditure until compliance with the audit requirements has been met.

(c) Require that the County Commissioner of Cooperatives place the cooperative under enhanced supervisory and regulatory oversight, as prescribed by regulations, to ensure the cooperative's operational expenses are managed appropriately until it complies with the audit requirements.

(d) Impose fines, penalties, surcharges, or recommend recovery measures, including criminal charges, against members of the board of directors who were in office at the time of non- compliance, where such non- compliance

resulted in financial loss, fraud, misappropriation, or misuse of cooperative funds.

(9) The Commissioner or County Commissioner of Cooperatives shall develop regulations outlining the process for enforcing compliance, including timelines for corrective action, the structure of interim governance, and the procedures for imposing

The rationale it seeks to ensure accountability for non-compliance and audit requirements; provide regulatory recourse for persistent non- compliance; strengthen oversight to project member's interests; enforce legal and financial accountability

The Committee resolved to **adopt** this proposal to have the board of directors be held responsible for failure to cause an audit. Section 55 (12) of the Bill captures the removal of directors who do not cause financial statements to be audited. However, the Bill does not make it an offence. In addition, the Committee resolved to empower the Commissioner and the County Commissioner of Cooperative to compel the holding of an Annual General Meetings.

Committee further proposed new amendment to establish two new oversight offices the **National Audit Director** and the **County Audit Director** of Cooperatives with detailed provisions on their appointment, qualifications including(have a bachelor's degree in finance, accounting, or economics from a university recognized in Kenya, a minimum of ten years' experience in auditing or public finance management, meet the requirements of Chapter Six of the Constitution, and be a practicing member in good standing of a professional accounting body recognized by law), functions (mainly auditing and verification of cooperative accounts according to international standards), and a fixed five-year renewable terms to enhance auditing and oversight of cooperatives at both national and county levels.

This new proposal aims to strengthen audit and financial oversight mechanisms across various levels of cooperatives, ensuring more rigorous verification of

audited accounts, improving transparency, accountability, and compliance with recognized auditing standards. It also seeks to professionalize and formalize the auditing function through appointed officials with specified qualifications and structured recruitment, thereby addressing gaps in financial governance and enforcement present in the original clause. Additionally, increasing the notice period enhances member engagement and preparedness for meetings. Overall, the amendments seek to cure weaknesses in financial monitoring, enforcement authority clarity, and cooperative governance standards.

The Committee resolved to have the Board of Directors held responsible for failure to cause an audit. In addition, the Committee resolved to empower the Commissioner and the County Commissioner of Cooperative to compel the holding of an Annual General Meetings.

On Prohibition Against Side Selling, Committee resolved to **retain** Clause 154 of the Bill which requires the Cabinet Secretary to prescribe guidelines for use of collateral's for securing loans and mortgages in Cooperatives

Clause 56 and 57 -General Meeting and Special General Meeting

(106) Fred Sitati (Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance and Stephen Kiritu Mwangi proposed provide for digital platforms or governance including online voting and member communication

The Committee resolved to adopt this proposal of provision for online voting and communication as it would enrich the Bill.

Prohibition against side Selling and diverting

(107) Coops Africa and Credence Africa proposed the Bill should provide for the prohibition against side selling and diverting by making it an offence for a member of a Cooperative who has as secured a loan with produce or other form of

contribution to side sell, divert funds or divert produce so as to deprive the cooperative of its right of recovery of the loaned sum.

The Rationale is to enhance loan security and financial discipline in Cooperatives; preventing fraudulent practices and protecting cooperative resources; holding third parties accountable for participating in side selling; strengthening cooperative legal remedies and debt recovery; reducing the need for government bailouts and ensuring cooperative sustainability

The Committee a**dopted** this proposal and resolved to retain Clause 154 of the Bill which required the Cabinet Secretary to prescribe guidelines for use of collateral's for securing loans and mortgages in Cooperative.

Clause 60 (2) -Delegate system of representation

(108) Coops Africa and Credence Africa Insert the following clause Setting up a subsidiary Company

1. A Cooperative intending to set up a subsidiary company fully or partly owned by the cooperative society shall be approved in a general meeting by two thirds of members present and voting.

2. A cooperative intending to set up a subsidiary company shall submit the proposal and the minutes of the general meeting that approved the decision to the Director for approval and the Director may impose such terms and conditions on the Cooperative society as the Director deems fit if the proposed investment is not likely to have any adverse effect on the safety and soundness of the Cooperative.

The Cooperative may submit an appeal against the decision of the Director to the Tribunal or Court as the case may be. The proposal seeks to enhance member control and approval for subsidiary formation; ensure regulatory oversight and financial prudence, prevent the conversion of cooperative subsidiaries in to private enterprises; provide an appeal mechanism to ensure fairness

The rational seeks to enhance member control and approval for subsidiary

formation; ensure regulatory oversight and financial prudence, prevent the conversion of cooperative subsidiaries in to private enterprises; provide an appeal mechanism to ensure fairness.

Committee noted that section 60 does not refer to a meeting of delegates rather it provides for the ability of a Cooperative member to delegate their representation in accordance with the bylaws of the cooperative in instances not captured under the exceptions in subclause (2). Further, the Committee observes that there is no reference to a special delegate meeting within the Bill and proposes that the same be deleted.

The Committee observed clause 60 (2) of the Bill requires for the discussion of formation of a subsidiary company to a primary cooperative to be discussed in a physical general meeting of the cooperative. Further, under clause 83, investment in subsidiaries is to be approved at a general meeting. The

The Committee resolved to **adopt** the proposal to have the Commissioner or County Commissioner of Cooperative to approve the setting up of a subsidiary company. In addition, the Committee **adopted** the requirement of a 2/3rd approval by the members of the Cooperative. Further, under clause 83, investment in subsidiaries is to be approved at a general meeting

(109) Stephen Kiritu Mwangi proposed to provide for affirmative action measures to ensure adequate representation of youth and women.

The Committee resolved to reject this proposal to provide for affirmative action measures to ensure adequate representation of youth and women as the same has been captured under clause 154 (al) which requires the Cabinet secretary to provide affirmative action for the benefit of special interest groups of women, youth, persons with disability, and minority and marginalized communities in cooperatives.

Clause 61 (1) -Membership and Powers of the Board.

(110) Cooperative Alliance of Kenya proposed amend the number of board members in Apex Cooperatives and Cooperative Federations from the current proposal of up

to 9 members to accommodate more representation based on their size, complexity and operational needs. Therefore, we propose the following amendment—

Every Cooperative shall have a board of directors consisting of not less than five and not more than nine members who shall be elected by members at the general meeting **provided that for Apex co-operative societies with a national outlook, the number of the board of directors may be enlarges to an approval by the Commissioner**

The rationale is the proposal is in line with Article 100 of the constitution which mandates the promotion of regional balance, marginalized groups, including women, persons with disabilities, youth, ethnic minority and marginalized communities. Additionally, Article 36 of the Constitution upholds the freedom of Association enabling cooperative societies to grow, diversify and operate seamlessly across county boundaries.

The Cooperatives also have huge business investments across various counties in Kenya and therefore broader representation taking in to account all interested parties managing the various businesses is ideal.

The governance structures for cooperative societies already in place allow for more than nine board members in their bylaws. Therefore, the restriction to 9 members is likely to disrupt the governance structures in place leading conflicts over representation of some regions or economic sectors diminishing trust and unity amongst members

Committee acknowledged that the Apex Cooperative, as a National body representing all cooperatives in the Country, requires special consideration to expand its board for broader representation, and thus adopted the proposal to amend the Bill granting the Commissioner discretion to increase the Board of Directors to a maximum of 15 members, ensuring inclusion of key cooperative types such as producer, housing, savings and credit, savings and investment, transport, work, and consumer cooperatives within the membership.

The Committee **adopted** the proposal to reduce the number of members who would be subject to election to a third.

(111) **SN** proposed 'Under sub clause (5) (b) substitute 2/3rds with 1/3rd'

Rationale is it will not only not disrupt the current practice but will also ensure continuity.

The Committee observed that the status quo should be maintained and therefore the appointment should only be done for 1/3rd of the members at different times.

(112) State department of Cooperatives proposed **delete the current clause and provide for**

(a) The primary cooperative to have a board of directors consisting of not less than five and not more than nine members

(b) the secondary cooperative, federative cooperative, and apex cooperative to have a board of directors consisting of not less than seven and not more than fifteen members

The Committee observes that the proposal recommends that the primary cooperative board membership should be between 5 and 9. It further recommends that the membership of the Board of a secondary cooperative, federative cooperative, apex cooperative should be between 7 and 15 members. This a departure from the Bill which recommends that all cooperatives board members should be between 5 and 9 in keeping with Mwongozo guidelines.

Clause 61(5) provides for the requirements that board members should ensure regional representation, two thirds gender representation; regional representation and vulnerable members representation.

Committee adopted the proposal

Clause 61 (2)-Membership and Powers of the Board.

(113) Cooperative Alliance of Kenya Proposed amend clause 61 (2) to read

Members of the board of directors shall be elected for a term of three years, and shall be eligible for re-election ~~for one term of three years~~ **subject to the applicable laws of the cooperative society.**

The Rationale is the proposal of a maximum tenure of 6years for directors will

result in a high turnover of directors at the Board level which lead to governance crisis/ succession issues, business disruptions and unnecessary instabilities. Further cooperatives are managed through bylaws and therefore members should determine show sits on their boards as their leaders and when they should leave. Additionally, cooperatives invest heavily in the capacity building of their directors; therefore six-year tenure will result in an unutilized return on investment.

Committee **rejected** this proposal and **resolved to provide for a rotation system** that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

(114) Coops Africa and Credence Africa proposed **delete** the current clause and insert the following that includes the current provisions but has more enhanced governance

Composition of the Board

1. Every **primary** cooperative shall have a board of directors consisting of not less than five and not more than nine members, who shall be elected at the general meeting in accordance with the cooperative's by-laws.
2. Every secondary cooperative, federative cooperative, and apex cooperative shall have a board of directors consisting of not less than seven and not more than fifteen members to ensure regional representation of the cooperative's membership and accommodate the diverse interests of affiliated primary cooperatives.
3. The election of board members for all cooperatives shall be conducted in a manner that ensures equitable regional representation and promotes diversity in leadership, as may be prescribed in the regulations.

The Committee **rejected** this proposal as it's a departure from the Bill which recommends that all cooperatives board members should be between 5 and 9 in keeping with Mwongozo guidelines. Clause 61(5) provides for the requirements

that board members should ensure regional representation, two thirds gender representation; regional representation and vulnerable members representation

Clause 61 (2)-Membership and Powers of the Board.

(115) Collins Omollo proposed members of the board of directors shall be elected for a term of three years and shall be eligible for re-election for **final** one term of three years.

The rationale is it removes any ambiguity in the clause and for avoidance of doubt that members of the board of directors can only serve a maximum of two terms of three years each.

The Committee adopt the proposal of providing term limit but resolved to provide for a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

(116) Coops Africa and Credence Africa proposed the following;

Term Limits for Board Members and Chairperson

- **Board Members**: Serve a 3-year term, renewable once (max 6 consecutive years). After two terms, must wait 6 years before re-election.
- **Chairperson**: Elected from the board for a 3-year term, renewable once. After two terms, must wait 6 years before seeking re-election as chair.

Disqualifications from Board Membership

A person is ineligible if they:

- Have fraud, corruption, or financial misconduct convictions (past 10 years).
- Are undischarged bankrupts.
- Found guilty of professional/ethical misconduct.
- Removed from office for mismanagement or misconduct.

- Have conflicts of interest (e.g., competing business).
- Lack required fidelity/bond coverage.
- Fail to comply with Kenya's Chapter 6 constitutional requirements.
- Fail the "fit and proper" test (competency, integrity, financial standing).

Powers and Responsibilities of the Board

- Govern the cooperative, enter contracts, handle legal matters, and act to achieve cooperative objectives.

Composition, Representation, and Diversity

- **Gender balance**: No more than two-thirds of one gender.
- **Staggered appointments**: Ensure continuity (two-thirds appointed at different times).
- **Regional representation**: Fair geographical inclusion.
- **Inclusion of vulnerable groups**: Ensure marginalized members are represented.
- Regulations will be issued for qualifications, elections, and governance compliance.

Rationale is to prevents leadership entrenchment by limiting consecutive terms.

The Committee **adopt** this proposal of providing term limit and and resolved to provide for a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

State department of Cooperatives proposed amend the provision to provide tor a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of

replacing the entire board at once.

The Committee **adopted** this proposal of providing term limit and resolved to provide for a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

(117) Kenya Teachers Sacco Association and SN proposed the term limit of Board members should not be limited.

The rational is the proposal stifles the principle of democracy in cooperatives through legislation. In addition, the principle of autonomy and independence portends that cooperatives shall not be overly influenced through legislation or other methods.

The Committee **adopt** this proposal of providing term limit and resolved to provide for a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

(118) Coops Africa and Credence Africa proposed **amend** 61 (2) to read

Members of the board of directors shall serve a term of three years and shall be eligible for re-election for one additional term of three years.

The rationale is the proposal of a maximum tenure of 6years for directors will result in a high turnover of directors at the Board level which lead to governance crisis/ succession issues, business disruptions and unnecessary instabilities. Further Cooperatives are managed through bylaws and therefore members should

determine show sits on their boards as their leaders and when they should leave. Additionally, Cooperatives invest heavily in the capacity building of their directors therefore six-year tenure will result in

The Committee resolved to **adopt** this proposal of providing term limit and resolved to provide for a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

(119) Stephen Kiritu Mwangi proposed provide a recall mechanism.

The Committee resolved to adopt this proposal to provide recall of directors. The right to recall should lie with at least 2/3rds of the members of the cooperative.

(120) Stephen Kiritu Mwangi proposed provide for annual performance appraisal of directors to be carried out by the commissioner/ county director or the supervisory board

The Committee resolved to **reject** this proposal. The Annual General Meeting serves as a performance appraisal of the Board.

(121) Fred Sitati proposed to provide for independent directors to mentor and check the elected directors

Rationale is in line with evolving governance trends globally. This would address the trust deficit in the cooperative sector.

The Committee rejected the proposal as the Bill provides for a supervisory board to check the elected directors.

Clause 64-Responsibilities of the board

(122) Stephen Kiritu Mwangi proposed require the board of directors to provide for a crisis management plan

The Committee **adopted** the proposed amendment on the crisis management plan and the annual survey as it will enrich the provisions of the Bill.

(123) Stephen Kiritu Mwangi proposed require the board to cause an annual survey to be carried out to gather feedback from members on governance, services and overall satisfaction. In addition, there is need to ensure that data of the members is protected.

Require the cooperatives to develop a whistle blower policy to encourage the reporting of governance and financial misconduct.

The Committee **adopted** the proposed amendment on the crisis management plan and the annual survey as it will enrich the provisions of the Bill. The Committee further noted that it was important to ensure that the data of members is protected in compliance to the Data Protection Act. In addition, the Committee observed that a whistle blower policy should be developed by the Directors.

Clause 65-Supervisory Board and its duties

(124) Stephen Kiritu Mwangi proposed provide for the establishment of the internal audit function. The Auditors should report directly to the supervisory Board.

The Committee **rejected** this proposal and noted that under clause 65 (1) (d) the supervisory committee is to review internal audit programmes and findings.

The Committee further noted that given the internal audit function is an administrative function each cooperative will provide for it under its administrative structure in order to ensure conformity with clause 65(1) (d). Committee resolved the Bill should provide for delineation of function

Clause 66 (3) (c)-Nomination Committee

(125) Collins Omollo Proposed delete the paragraph—

Not more than three other persons ~~drawn from any of the associations of~~

~~professional bodies in Kenya, government officials, religious community within the areas of operation of the cooperative.~~ **who are members of the Cooperative of whom not more than two shall be of the same gender.**

The rationale is the vetting of candidates for election as members of the board of directors or supervisory committee needs to be a member led process.

Cooperatives are "members'" clubs and making this committee to be exclusively a non- members affair could jeopardize this long-standing principle.

The Committee **resolved** to **amend** clause 66 (1) to ensure that the Board of Directors or the Supervisory Board only nominate that approval be done at the general meeting. The Committee further resolved to require that the Board of Directors or Supervisory Board to seek general meeting approval for nominations and mandate that recruitment advertisements and the names of the Nomination Committee, be published in at least one major daily newspaper of nationwide circulation and on social media.

(126) Stephen Kiritu Mwangi proposed to require that the members of the Committee are competitively nominated through a transparent and competitive process including public advertisements for positions with clear criteria for eligibility.

The Committee resolved to **adopt** this proposal to provide for publication of the vacancy to ensure transparency in the process. Recruitment advertisements and the names of the Nomination Committee, be published in at least one major daily newspaper of nationwide circulation and on social media.

(127) Stephen Kiritu Mwangi proposed require the nomination Committee to conduct thorough background checks on candidates including their financial history, criminal record and past involvement in cooperative governance. Allow members to propose the candidates for the board positions.

The Committee **rejected** this proposal as the members at a General Meeting are to approve the members of the board. Further the members at a General Meeting are also required to approved the appointment of members to the nomination Committee

(128) **SN proposed** the involvement of non-members as the nomination Committee limits the involvement of members in the process.

The vetting should therefore be done by the County Commissioner of Cooperatives, the CEO of the Cooperative and the current board members. The Nomination Committee should be composed of Cooperative members with external representatives playing a limited or advisory role. That any member aggrieved by the decision of the vetting committee should have the ability to appeal the decision within 7 days.

The rationale is the involvement of members drawn from external bodies brings in members who do not share in the goals of the Cooperative or have loyalty to it.

The Committee **rejected** this proposal as Board Members could not vet themselves or vet persons who are likely to succeed them without conflict or the perception of conflict arising. Therefore, the vetting must be done by persons who are not coloured or perceived to be coloured by conflict. The Committee observed that the members of the nomination committee are approved by the members of the cooperative at a general meeting.

Clause 67 (9) (a)-Amalgamation of Cooperatives.

(129) Kenya Teachers Sacco Association (KETSA) proposed each of the amalgamating cooperatives shall stand dissolved and its registration canceled **except for amalgamation by absorption.**

The rationale is the provision will take into account merger by absorption and facilitate merger for purposes of pre-empting failure of a cooperative in distress.

The Committee **adopted** the proposal, the purpose of amalgamation to create one where there was two or more. Therefore, the Cooperatives that opt to amalgamate should be dissolved and registered afresh as new entities.

Clause 73(1)- Failure to remit the sum deducted

(130) Council of County Governors and Intergovernmental Relations Technical Committee proposed the County Governments should issue demand notices for primary and secondary cooperatives.

The National Government should issue agency notices for all Cooperatives including primary and secondary Cooperatives upon recommendation by the County Governments

Rationale is the technical Committee split the function between the two levels of Government to provide clarity.

The intention is to have County Governments issue the demand notices to primary and secondary Cooperatives for which it has functional mandate over and where it fails to achieve remittance, they shall escalate the issue for enforcements of agency notices to the National Government.

The Committee **adopted** this proposal as is in line with the functional delineation and it ensures that the Commissioner and Director both carry out their roles in respect to primary and secondary Cooperatives.

Clause 81-Restriction on giving loans

(131) Coops Africa and Credence Africa proposed Insert the following new clause on insider lending—

(1) A director or employee of a cooperative shall not use their position to further their personal interests,

(2) An application for a loan by a director or employee of a cooperative society shall first be approved by the board of directors of the cooperative and where the applicant attends board meetings, they shall not be present in the meeting considering the loan application.

(3) The rates, terms and conditions of any loan made to a director or employee of a cooperative society, an immediate family member of the director or employee

or a business associate of a director or employee shall not be more favourable than those offered to members of the Cooperative society.

(4) A Cooperative society shall not lend to its directors or employees or its directors', an immediate family member of the director or employee or a business associate of a director or employee or permit to be outstanding, an amount which in the aggregate exceeds ten per cent of its gross loan portfolio.

(5) A cooperative shall, on or before the fifteenth of each month, submit to the Director an insider lending and loans performance report which the Director may provide through guidelines.

(6) An officer of a cooperative society who violates the provisions of this regulation shall be liable to pay to the Director a financial penalty equivalent to the loan disbursed in addition the recovery of the loan so disbursed.

The rationale is the proposal seeks to prevent abuse of position for personal gain; ensuring transparency and fair loan terms; limiting exposure to insider lending risks; enhancing regulatory oversight and monthly reporting; imposing financing penalties for non-compliance

The Committee **adopted** this proposal and resolved to provide for insider lending. It noted that the Bill does not provide for the procedure through which members of the board of directors or the employees of the Cooperatives can access loans within the cooperatives.

The Committee observed that there was need to provide for such insider lending within this Bill as is provided for in the SACCO's Act.

The Cooperative employees and board members cannot act as guarantors for loans from their cooperative, limits loans or credit facilities to them to a maximum of 10% of the cooperative's gross loan portfolio, requires loan terms to be consistent with those for other members without favoritism, prohibits them from participating in decisions on their own loans, mandates monthly insider lending reports to the Commissioner, and empowers the Commissioner to require repayment, impose

interest, and remove employees who fail to comply, with these provisions applying irrespective of any related legal prosecutions.

Clause 82- Restriction on Borrowing

(7) Coops Africa and Credence Africa proposed **delete the Current section and rephrase it as follows**

Restriction on Borrowing

1) A cooperative which under its by-laws has power to borrow money Director all from time to time at a general meeting fix the maximum liability which it may incur in loans or deposits from non-members: Provided that for the purposes of this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan.
2) The maximum liabilities fixed shall be subject to the approval of the Commissioner and Director of Cooperatives who may at any time reduce it or impose such conditions as may deem necessary.
3) Where the Director of Cooperatives approves the limits of borrowing powers, the Director shall forward and recommend such changes to the Commissioners for registration.
4) A member of the Cooperative may appeal against the decision of the Commissioner or Director made under sub-rule (2) to the Cooperative Tribunal within thirty days of such decision.
5) A registered Cooperative shall not receive loans or deposits which will make its liability exceed the limit fixed by the general meeting.
6) Notwithstanding the provisions of sub clause (1) the Cooperative shall be required to submit to the Director for approval any intended specific borrowing including borrowings approved by the General Meeting through budgets.
7) No approval for borrowing shall be approved by the Director unless it had been approved by the General Meeting either through a budget, a supplementary budget or through a special general meeting and the rules and procedures of all for such meetings was strictly complied with.

8) The Commissioner or Director may reduce such borrowings or impose conditions as they shall deem necessary.

Rational is the proposal shall enhance member oversight and control over borrowing; introduce regulatory oversight to safeguard cooperative funds; preventing unauthorized borrowing and strengthening compliance; providing a dispute resolution mechanism for borrowing decisions; and minimise the risk of cooperative insolvency due to excessive debt.

Committee **adopted** the proposal and resolved that any borrowing by the cooperative, must be approved by the general meeting and ratification of the Commissioner or County Commissioner of Cooperatives. The Committee further resolved to provide a threshold of debt to equity of 30% and require a debt management report be issued to members. The Committee agreed that any issue of borrowing decision should come from members of the Cooperative with approval of two-thirds (⅔) of members. Committee rejected the delegate proposal as the delegate member decision will be like an elite capture.

(132) Stephen Kiritu Mwangi proposed insert a provision requiring cooperatives to maintain a suitable debt to equity ratio and report on their debt management strategies to members.

Committee **adopted** the proposal and resolved that any borrowing by the cooperative, must be approved by the general meeting and ratification of the Commissioner or County Commissioner of Cooperatives. The Committee further resolved to provide a threshold of debt to equity of 30% and require a debt management report be issued to members. The Committee agreed that any issue of borrowing decision should come from members of the Cooperative with approval of two-thirds (⅔) of members. Committee rejected the delegate proposal as the delegate member decision will be like an elite capture.

Clause 83- Investment of Cooperative's Funds

(133) Coops Africa and Credence Africa proposed Insert the following additional

provisions under clause 83--

b) Any decision of investment of Cooperative funds shall be approved at a General meeting by two thirds majority of members present and voting.

c) A cooperative seeking to invest shall submit the investment memorandum or the proposal and feasibility report and the minutes of the meeting that approved the investment decision to the Commissioner or Director for approval before making the investment and the Commissioner or Director may impose such terms and conditions on the Cooperative as the Commissioner or Director deems fit if the proposed investment is not likely to have any adverse effect on the safety and soundness of the Cooperative

d) Where the cooperative invests in real estate other than for its own accommodation, it shall not hold more than twenty per cent of the equity in the investment or expend a sum exceeding twenty-five per cent of its share capital in such venture.

Rationale is the proposal seeks strengthen member oversight and decision making; enhancing regulatory oversight to prevent unsound investments; preventing financial mismanagement and losses; and setting limits on real estate investments to protect liquidity.

(1) Committee **adopted** the proposal of two-thirds (⅔) member approval, regulatory pre-approval for investments (feasibility reports required and finally cap to 25% of share capital for non-core real estate investments to safeguard liquidity and member interests thus limits speculative investments. The Committee rejected the proposal to have additional approval from the Commissioner or Director.

The Committee **rejected** the proposal to have additional approval from the Commissioner or County Commissioner of Cooperative.

Clause 84- Investments in non-core activities

(134) Coops Africa and Credence Africa proposed **Insert the words "more than**

25%" and delete "beyond any limits as may be prescribed" So as to read

1) A Cooperative shall not invest more than 25 % of its funds or members' deposits in non-core activities.
2) Where the society invests in real estate other than for its own accommodation, it shall not hold more than twenty per cent of the equity in the investment or expend a sum exceeding twenty-five per cent of its share capital in such venture.

Rational is it will reduce the investment in non-core activities which often weaken the financial standing of cooperatives by tying its funds in non-income generating activities. This has been witnessed in SACCOS that have had significant investments in speculative land buying tying up the finds such that there is no money left to perform its core function which is offering credit to its members.

Committee **adopted** the proposal of two-thirds **(⅔)** member approval, regulatory pre-approval for investments (feasibility reports required and finally cap to 25% of share capital for non-core real estate investments to safeguard liquidity and member interests thus limits speculative investments. The Committee rejected the proposal to have additional approval from the Commissioner or County Commissioner of Cooperatives.

(135) Raphael Kyasui Principal Manager, Business and Accounting Strategic Management Advisors proposed where a cooperative wish to engage in housing as an investment then there should be a funds drives for that purpose and the property investments should have its own officials, separate bank accounts and independent signatories.

Rationale is SACCOs have invested in housing at the expense of meeting members demands for loans and refunding their shares when they are leaving for retirement

(1) Committee **adopted** the proposal of two-thirds (⅔) member approval, regulatory pre-approval for investments (feasibility reports required and finally cap to 25% of share capital for non-core real estate investments to safeguard liquidity and member interests thus limits speculative investments. The Committee rejected the proposal to have additional approval from the Commissioner or County Commissioner of Cooperative

Clause 85(1) (b)-Investment in Companies

(136) Coops Africa and Credence Africa proposed 85 (1) A Cooperative may acquire or invest in the majority shares of one or more companies provided that –

(b) the acquisition or the investment is approved by the Commissioner and the Commissioner or Director may impose such conditions or vary the investment terms as he or she may deem fit giving reasons

Rationale is the proposal seeks to enhance regulatory oversight and public interest protection; prevent mismanagement and unsound investments; ensure justified decision making.

Committee **adopted** this proposal and resolved to provide for the approval two-thirds (⅔) majority shareholder approval through ballot voting for acquisitions, while removing the additional approval previously needed from the County Commissioner of Cooperatives.

Clause 86 - Declaration and payment of bonus

(137) Raphael Kyasui Principal Manager, Business and Accounting Strategic Management Advisors proposed reintroduce the post of cooperative officers to supervise the operations of cooperatives, authorize the payments by all cooperatives.

Committee **rejected** this proposal, clause 7 state that at the County level there is established the office of the County Director for Cooperatives under clause 11 and

the same is also provided with staff under clause 12. The two offices are charged with enforcing good governance in the management of cooperatives.

Additionally, Clause 86 of the Bill requires a cooperative to pay dividends, bonus or distribute any part of its accumulated funds after a audited accounts and a report disclosed the surplus funds from which the payments are to be made after the recommendation of the Board of Directors and approval at the annual general meeting.

Further clause 87 requires every cooperative to maintain a reserve fund prescribed by Regulation or by bylaws of the cooperative to discharge the liabilities of the cooperative should it be dissolved.

Committee **rejected** the proposal my Ministry of Cooperative to amend the Bill by deleting "accumulated" and "surplus," as doing so could allow cooperatives to pay dividends and bonuses from non-surplus funds, potentially leading to borrowing for such payments.

(138) Stephen Kiritu Mwangi proposed 'Introduce caps on allowances and benefits of board members to prevent excessive remuneration'

The Committee resolved to **reject t**his proposal noting that under clause 62 the Directors will not receive a salary or fixed periodic payments but may only be paid for expenses incurred in the course if executing a duty for the cooperative at a rate approved by the members at a general meeting.

The Committee further noted that clause 86 related to payment of bonus to members and not payments to Directors.

(139) The Committee **rejected** the proposal my Ministry of Cooperative to amend the Bill by deleting "accumulated" and "surplus," as doing so could allow cooperatives to pay dividends and bonuses from non-surplus funds, potentially leading to borrowing for such payments

Clause 98 -Inquiry by the Commissioner

(140) Council of County Governors proposed amend the proposal to read

The Commissioner shall conduct inquiries into the affairs of ~~Cooperatives~~ **federations, apex and diaspora cooperatives** in accordance with this Act

The Commissioner shall conduct inquiries into the affairs of primary and secondary cooperatives on the recommendation of the county governments in accordance with the Act.

Rationale is the CS Cooperatives and the Council of County Governors Technical committee agreed to split the inquiries function to provide clarity on the role of the Commissioner.

The Committee **adopted** this proposal resolved that the functional delineation should be maintained even in inquiries, inspections and surcharges.

In addition, the Committee noted that it would be important to allow for members of a Cooperative to retain the power to move the commissioner or county commissioner of cooperative to carry out an inquiry.

(141) Council of County Governors proposed amend clause 98(1) to read

The Commissioner ~~may on the Commissioner's own accord, and~~ shall on request by the ~~County Director~~ **County Executive Committee Member** for Cooperatives or the Authority or on the application of a liquidator or of any creditor or not less than one-third of the members present and voting at a meeting of the Cooperative which has been duly convened, hold an inquiry **or direct any person authorised by the Commissioner in writing to hold an inquiry** into the bylaws, working and financial conditions of any Cooperative registered in Kenya.

Rationale is the CS Cooperatives and the COG Technical committee agreed that members shall not make direct requests to the Commissioner on inquiries.

The Committee **adopted** the proposal will remove the Commissioner's discretion, thereby requiring them to be moved by either the CEC, the Authority, Liquidator, Creditor or one third of members.

The proposal by the Council of County Governors seems to remove the direction of the Commission to institute an inquiry on their own motion rather than remove the direct application by members.

Since the function on inquiry is split between the Commissioner and the County governments, it may be important to separate this so that applications by members of primary and secondary cooperatives make their applications first to the CEC who can then recommend the same to the Commissioner. While members of federations, apex and diaspora cooperatives can make their applications directly to the Commissioner for consideration.

First tier inquiry for primary and secondary to the Director. Then the member of the cooperative to write to Commissioner to intervene. Commissioner not to intervene without on his own motion without consulting the Director.

(142) Intergovernmental Relations Technical Committee proposed the Commissioner, ~~may on the Commissioner's own accord~~, ~~and~~ shall on request by the County Director for Cooperatives or the Authority or on the application of a liquidator or of any creditor or not less than one-third of the members present and voting at a meeting of the Cooperative which has been duly convened, hold an inquiry or direct any person authorized by the Commissioner in writing to hold an inquiry, into the by-laws, working and financial conditions of any Cooperative registered in Kenya.

The Committee observed that it was important to allow the Commissioner or County Director of Cooperatives as the case may be to carry out an inquiry on their own accord should they feel there is need to do so.

Clause 99-Power to surcharge officers of a cooperative, Clause 100-Appeal against a surcharge order and Clause 101- Recovery of surcharge

(143) Coops Africa and Credence Africa the following; -

- Replace the word **may** with **shall** wherever it appears in clauses **99, 100, and 101** to ensure that the Commissioner and the Director of Cooperatives are **compelled** to impose surcharges when financial mismanagement is identified.
- Amend clauses **99, 100, and 101** to specify that the **Commissioner for Cooperatives** is responsible for surcharge enforcement for **diaspora, federative, and apex cooperatives**, while the **Director of Cooperatives** is responsible for surcharge enforcement for **primary and secondary cooperatives**.

- Ensure that both **National and County Governments** have equal and clearly defined responsibilities in enforcing financial recovery in cooperatives under their jurisdiction.
- Edit clause 101(2) to explicitly state that the following parties shall have the power to institute action for the recovery of surcharged amounts:

  a. The Board of Directors of the cooperative – to allow cooperatives to take independent legal action against individuals responsible for financial mismanagement.

  b. Any member of the cooperative – to allow individual cooperative members to initiate recovery proceedings if the board fails to act.

  c. The Commissioner for Cooperatives or the Director of Cooperatives – to ensure that government regulators have the authority to enforce surcharge recovery.
- Define minimum and maximum surcharge penalties, specifying that:
  a. The surcharge shall be equivalent to 110% of the financial loss incurred.
  b. A penalty surcharge of not less than 25 percent and not exceeding 100 percent of the misappropriated amount shall be imposed.
  c. Interest on the surcharged amount shall be set at five percent per month, compounded monthly until full recovery is made.
- Add a clause **101(3)** to mandate that if surcharged amounts are not paid within thirty days, the Commissioner or Director of Cooperatives shall initiate enforcement measures, including:

a. Attachment of assets belonging to the responsible individual(s).

b. Deduction from salaries or allowances of surcharged officials, where applicable.

c. Initiation of civil recovery proceedings for enforcement.

d. Referral for criminal prosecution if the financial mismanagement constitutes fraud or deliberate misappropriation.

- Amend clause to specify that failure by the Commissioner or the Director of Cooperatives to enforce a surcharge shall constitute dereliction of duty and may result in disciplinary action against the officer responsible.

Rationale is to seeks remove discretion to ensure mandatory enforcement, expand the role of county governments in enforcement, provide additional avenues for surcharge recovery, introduce definite surcharge amounts and interest rates, strengthen regulatory teeth to ensure effective recovery of misapplied funds, prevent lax enforcement and ensure uniform treatment of cooperatives, protect cooperative members and financial sustainability.

The Committee resolved that an order for a surcharge shall be made within twenty-one (21) days.

The Committee **adopted** the proposal that the Commissioner or County Commissioner of Cooperatives should act within a specific period and provide reasons for not acting

Committee **adopted** the proposal to amend clauses 99, 100, and 101 to specify that the National Audit Director Commissioner for Cooperatives is responsible for surcharge enforcement for diaspora, federative, and apex cooperatives, while the County Commissioner of Cooperatives is responsible for surcharge enforcement for primary and secondary cooperatives and ensure that both National and County governments have equal and clearly defined responsibilities in enforcing financial recovery in Cooperatives under their jurisdiction.

Committee proposed to amend the Bill by adding a new section 101A that provided the National or County Audit Director to apportion inquiry expenses

between the cooperative, members or creditors requesting the inquiry, and officers involved, with their decision being final and any awarded expenses recoverable as a civil debt.

Committee stated it is important to note that a person liable to pay a surcharge has a right to appeal to the tribunal and then the High Court.

The Committee **adopted** the proposal to require the Commissioner to refer cases of criminal culpability to the DCI for further action, this will strengthen whose enforceability in the past has not been effective by ensuring accountability for wrongdoing.

The Committee **rejected** the proposal to amend the Bill to hold Board Members personally liable for financial losses resulting in gross negligence or mismanagement with clear penalties, noting that existing provisions already require member approval for investments and allow the Commissioner or Director to surcharge board members for financial mismanagement or breach of trust.

(144) **Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance** the Committee resolved to **adopt** this to have the requirement of any allegations of criminal culpability forwarded to the Director of Criminal Investigation was going to enrich the Bill

Clause 123-Establishment of the Cooperative Tribunal

(145) Council of County Governors proposed **amend** clause 123(2) to read

(a) a chairperson

(b) ~~two~~ **one** deputy chairperson

(c) not less than ~~six~~ seven other members, **two of whom shall be nominated by the council of county governments**

Rationale is to Increase the membership to nine and include County government representation.

Committee **adopted** this proposal

Clause 124-Appointment of members of the Cooperative tribunal

(146) Stephen Kiritu Mwangi proposed to require appointees to the Cooperative Tribunal to have experience in Cooperative governance, finance and dispute resolution.

The Committee resolved to **adopt** this proposal and amend to include the additional expertise in finance or dispute resolution. The Committee noted that clause 124 (3) (a) requires that an appointee have a minimum of ten years' experience in Cooperative management, law of practice.

The Committee proposal an amendment to include a provision requiring the Tribunal **Chairperson** to be an advocate of the High Court of Kenya with at least seven years' experience and include verification of good standing with other professional bodies for other members in the Tribunal in order to aligns with best practices and strengthens the Bill.

Clause 127-Vacancy in the Office of Cooperative Tribunal

(147) Collins Omollo proposed add a new clause under (c) to read as follows;

d) dies

e) resigns in writing

Rationale is there is need to provide for a scenario where a member of the tribunal dies or resigns in writing in which case a vacancy then arises automatically.

Committee **adopted** this proposal

Clause 128 -Jurisdiction of the Cooperative Tribunal

(148) **Fred Sitati (FS), Chief Cooperative Officer to 2019; Law lecturer Cooperative University of Kenya to 2020; Author, Cooperatives by the International Cooperative Alliance** proposed disputes involving public servants should be handled under the Cooperatives bill but by the public service commission.

Rationale is that Public servants are expected to conduct themselves professional and ethically while executing their official duties failure to which the relevant law regulating their conduct can be invoked.

The Committee rejected this proposal noting that provision relating to disputes arising from cooperative regulation and the tribunal is best placed to handle such disputes. Further, right of appeal exists in the High Court.

(149) Stephen Kiritu Mwangi proposed to provide for expedited hearings in cases involving governance disputes or financial management

The Committee resolved to **adopt** the proposal as it will enrich the Bill and provide for conclusion of matters referred to the Tribunal within six months.

Clause 146-Procurement and Disposal of in Cooperatives.

(150) Coops Africa and Credence Africa proposed Insert a new clause of acquisition and disposal of assets valuation

(1) Every Cooperative shall develop a procurement and assets disposal policy that shall be reviewed from time to time and approved by the Commissioner or the Director as applicable.

(2) Where a cooperative has not developed a procurement and assets disposal policy, the Commissioner or Director shall cause it to develop the policy within a prescribed period.

(3) Subject to subsections (1) and (2), where a Cooperative has not or failed to develop a policy for the Procurement and Disposal of Assets, the Public Procurement and Disposal of Assets Act, 2015, shall to the applicable extent,

apply to the cooperative as if it was a Public entity, until such time it has developed such policy

Rationale is the proposal seeks to ensure enhancement of transparency and accountability in asset management; reducing corruption and unnecessary procurement; strengthening regulatory compliance and governance; preventing loss of member investments through unregulated asset transactions.

The Committee adopted this proposal and resolved to amend the Bill by having procurement guidelines for Cooperatives developed by the intergovernmental cooperatives relations technical forum and gazetted by the Cabinet Secretary, rather than applying the Public Procurement Act, while maintaining fairness, transparency, and competitiveness in line with Cooperative Bylaws.

Clause 153-Cooperatives Development Fund

(151) Council of County Governors proposed Insert a new subsection

The Fund shall be shared between the National and County governments at the ratio of 60:40 percent.

The Rational is to allow development of the Cooperative sector at levels of government.

Committee proposed amendment to establish the National Co-operative Development Fund and the County Co-operative Development Fund to support cooperative development through education, training, research, and related activities. Both Funds are governed by respective Boards of Trustees appointed by the Cabinet Secretary (national) and Governors (county), with members drawn from cooperative representatives and experts meeting specific qualifications. The Boards are corporate entities with powers to sue, acquire property, borrow, and contract. The Funds receive revenue mainly from levies on cooperatives, donations, and grants, and must keep audited accounts while investing surplus funds securely. The Boards' expenses are capped and subject to approval processes. Chief Executive Officers of the Funds are competitively recruited, with defined

qualifications and terms. Members of the Boards serve staggered three-year terms renewable once and may be removed under specified conditions. The Funds' activities, disbursements, and accounts are transparent, with public access to records subject to a fee, and quarterly reports submitted to the Commissioner. The National Fund's headquarters is in Nairobi, while the County Funds are based at county headquarters, with secretariat support provided by the Ministry in charge of Treasury. This framework is designed to enhance cooperative capacity building and resource management at both national and county levels.

(152) Institute of Certified Public Accountants of Kenya proposed **to** require the County Executive Committee Members to prescribe the sums contributed by primary and secondary cooperatives while the cabinet secretary prescribes the sums contributed by cooperative federations and apex cooperatives.

Rationale is to will ensure efficiency in the operations of the Cooperative Development Fund.

The Committee resolved to **reject t**he proposal as regulation of Cooperatives should be delineated between the Commissioner at the National level and the Directors at the County level. However, the contributions by each cooperative to the cooperative development fund was a National standard that is to be implemented across the Country and therefore the same should be done by the Cabinet Secretary.

Clause 157-Other powers of the Commissioner

(153) Council of County Governors proposed amend the provision to read

Without prejudice to the any other powers under this Act the Commissioner may –

Without prejudice to the any other powers under this Act the Commissioner may –

(a) Call for elections for cooperative federations or apex cooperative

(b) Attend meetings of a cooperative **federation, diaspora cooperative or apex cooperative** and require every cooperative **federation, diaspora cooperative, apex cooperative** to send to the Commissioner a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;

(c) Issue circulars and guidelines for better administration of **cooperative federations, diaspora cooperatives or apex cooperatives under** this Act;

(d) Require that **cooperative federations, diaspora cooperatives or apex cooperatives** update their by-laws; and

(e) Exercise such other powers consistent with this Act as may be prescribed in Regulations

Rationale is this in line with functional delineation

The Committee resolved to **adopt** this proposal and amend the provision to clarify functional delineation between the Commissioner and the County Director of Cooperatives. This will ensure clarity of function

Clause 158- Other powers of the Director for cooperatives

(154) Council of County Governors proposed the powers should be given to CEC

The rationale is the CEC as the Executive Mandate

The Committee **adopted** this proposal that the powers relate to the day to day oversight of Cooperatives should remain with the Director. However, the Director reports to the CEC.The functions of supervisions have been split between the Commissioner and the County Director of Cooperatives.

Other proposals

(155) Raphael Kyasui Principal Manager, Business and Accounting Strategic Management Advisors proposed reintroduce the Cooperative Officers by both National and County Governments.

Rationale is the officers would supervise and monitor the day to day operations of cooperative societies. Additionally, the officers will ensure that payments are not made from capital but profits.

The Committee **rejected** this proposal of reintroduction of Cooperative Officers to supervise and monitor this function of supervisions have been already been split between the Commissioner and the County Commissioner of Cooperatives.

(156) Raphael Kyasui Principal Manager, Business and Accounting Strategic Management Advisors proposed reintroduce the Ministry of Cooperatives to register cooperatives, promote their objectives, regulate and supervise daily operations of Cooperatives.

Rationale is this would improve supervision and ensure Cooperatives including SACCOs stick to their core objective of mobilising savings and offering the members loans.

The Committee **rejected** this proposal as the organisations of government is at the discretion of the President. There is a Ministry of Cooperatives and Micro, Small and Medium Enterprises (MSMEs) Development. Further there is a Principal Secretary incharge of cooperatives.

New clause to establish the Cooperative Regulatory Authority

(157) Coops Africa and Credence Africa proposed

1. Establish the Cooperative Regulatory Authority as an independent regulatory body with full oversight of all cooperative sectors.
2. Absorb SASRA into the authority and expand its mandate to cover housing, investment, agricultural, and worker cooperatives.
3. Separate cooperative registration, promotion, and development functions from regulatory enforcement to eliminate conflicts of interest.
4. Ensure financial sustainability of the authority through cooperative licensing fees, regulatory levies, and supervision fees.

5. Develop structured transition plans for cooperatives to comply with the new regulatory framework.

Rationale is the cooperative sector is a critical pillar of Kenya's economy, yet the current fragmented regulatory framework has left many Cooperatives vulnerable to fraud, financial mismanagement, and governance failures. While SACCOs have limited regulatory oversight under SASRA, thousands of cooperatives across different sectors remain unregulated.

The establishment of a Cooperative Regulatory Authority would modernize cooperative governance, ensure financial stability, and protect cooperative members from exploitation and financial losses. A structured and independent regulator is essential to enforcing compliance, safeguarding cooperative assets, and fostering sustainable cooperative growth.

The Senate is urged to prioritize the establishment of this authority as a necessary step in strengthening Kenya's cooperative movement and securing its long-term sustainability.

The Committee noted that the SASRA had been instrumental in ensuring that SACCOs are well regulated.

The Committee noted that SASRA's role can be expanded without creating a new body.

Subsume SACCO's Act and rename SASRA as the Cooperative Regulatory Authority.

(158) Coops Africa and Credence Africa proposed_Insert the following new clause-

(1) A director or employee of a cooperative shall not use their position to further their personal interests,

(2) An application for a loan by a director or employee of a cooperative society shall first be approved by the board of directors of the cooperative and where the applicant attends board meetings, they shall not be present in the meeting considering the loan application.

(3) The rates, terms and conditions of any loan made to a director or employee of a cooperative society, an immediate family member of the director or employee or a business associate of a director or employee shall not be more favorable than those offered to members of the Cooperative society.

(4) A Cooperative society shall not lend to its directors or employees or its directors', an immediate family member of the director or employee or a business associate of a director or employee or permit to be outstanding, an amount which in the aggregate exceeds ten per cent of its gross loan portfolio.

(5) A cooperative shall, on or before the fifteenth of each month, submit to the Director an insider lending and loans performance report which the Director may provide through guidelines.

(6) An officer of a cooperative society who violates the provisions of this regulation shall be liable to pay to the Director a financial penalty equivalent to the loan disbursed in addition the recovery of the loan so disbursed.

Rationale is_the proposal seeks to prevent abuse of position for personal gain; ensuring transparency and fair loan terms; limiting exposure to insider lending risks; enhancing regulatory oversight and monthly reporting; imposing financing penalties for non-compliance.

The Committee **accepted** this proposal however, the proposed Bill does not provide for loan provisions to either its members or the directors or employees. Therefore, the Committee proposed it is essential to strengthen SASRA Act to curb fraud and abuse of office. Review in respect to SACCOs Act.

New clause on Acquisition and Disposal of Assets

(159) Coops Africa and Credence Africa Proposed Insert a new clause of acquisition and disposal of assets valuation

(1) Every Cooperative shall develop a procurement and assets disposal policy that shall be reviewed from time to time and approved by the Commissioner or the Director as applicable.

(2) Where a cooperative has not developed a procurement and assets disposal policy, the Commissioner or Director shall cause it to develop the policy within a prescribed period.

(3) Subject to subsections (1) and (2), where a Cooperative has not or failed to develop a policy for the Procurement and Disposal of Assets, the Public Procurement and Disposal of Assets Act, 2015, shall to the applicable extent, apply to the cooperative as if it was a Public entity, until such time it has developed such policy

Rationale is_the proposal seeks to ensure enhancement transparency and accountability in asset management; reducing corruption and unnecessary procurement; strengthening regulatory compliance and governance; preventing loss of member investments through unregulated asset transactions.

The Committee **adopted t**his proposal. Clause 146 of the Bill requires that the cooperatives contract goods and services and dispose of goods in accordance with a system that fair, equitable, transparent competitive and cost effective however the same need not be governed by the Public Procurement and Disposal of Assets Act but by the cooperative's bylaws.

New clause on acquisition of a company or business by a cooperative

(160) Coops Africa and Credence Africa proposed Insert the following new clause--

Acquisition of a company or business by a cooperative.

(1) Any decision of a Cooperative that is seeking to acquire an existing company or business shall be approved at a General meeting by two thirds majority of members present and voting.

(2) A cooperative seeking to acquire a company or business shall submit the investment memorandum and feasibility report and the minutes of the meeting

that approved the acquisition decision to the Commissioner or Director as applicable for approval before making the investment and the Commissioner or Director may impose such terms and conditions on the Cooperative society as the Director deems fit if the proposed investment is not likely to have any adverse effect on the safety and soundness of the Cooperative.

Rationale is the proposal seeks to enhance member oversight and decision making; preventing financial mismanagement and risky acquisitions; and balance regulatory oversight with cooperative autonomy

The Committee noted that Clause 60 (1) provides that acquisition of a majority shareholding of a company or any other entity shall be done at a general meeting with the entire membership. Further Clause 83 requires the approval of the general meeting when a cooperative seeks to invest in stock of any statutory body or in any limited liability company licensed by the Capital Markets Act. Clause 83 of the Bill provides for investment and securities approved by the Capital Markets. Clause 85 of the Bill provides for investments in companies by cooperatives. The approval for this is sought at a special meeting. The proposal seeks to allow cooperatives to acquire businesses or companies with the approval of two thirds members at a general meeting and further approval by the Commissioner and the Director.

The Committee **adopted** this proposal of 2/3rds members at General Meeting and dropped further approval by the Commissioner and Director.

New clause Partnerships, Joint Ventures with cooperatives, companies, NGOs and a member or section of membership of the cooperatives such that requires application of Cooperatives funds to those initiatives

(161) Coops Africa and Credence Africa proposed;

(1) Any decision requiring use of a Cooperatives funds for purposes of a proposed partnership, co-investment, cost sharing, or joint venture shall be approved at a general meeting by two thirds of members present and voting.

(2) The proposal for the partnership , co –investment, cost sharing or joint venture and the minutes of the general meeting that approved the proposal shall be submitted to the Director for approval prior to implementation and the Director may impose such terms and conditions on the Cooperative society as the Director deems fit if the proposed investment is not likely to have any adverse effect on the safety and soundness of the Cooperative

(3) An investment decision made and entered into by a cooperative without compliance with the rules set in this section and any other rules that may be set out by the Director through circulars shall be null and void and unenforceable against the cooperative in regards to recovery from the cooperatives in the event of the Cooperative's default.

(4) The Director, the members of the cooperative, or the Board of Directors of a cooperative may institute proceedings against any such person that derived a benefit from the transaction and such a claim shall amount to liquidated damages calculated as value of benefit that accrued 5% monthly interest from the date it was received.

(5) An officer of a cooperative society who violates the provisions of this regulation shall be liable to pay to the Director a financial penalty equivalent to the value of benefit derived from the transaction, or the value of the loss suffered by the cooperative or value of the transaction that was disbursed or a fine of 100,000 Kenya Shillings whichever is higher.

Rationale is the proposal seeks to enhance member control by safeguarding cooperative funds; strengthen oversight and investment governance; prevent unauthorized and risky financial commitments; hold beneficiaries accountable and ensure financial recovery; introduce financial penalties to deter mismanagement.

The Committee noted Clause 14 (2) required the Director to promote joint venture in cooperatives. Clause 9 (2) (l) provides that the Commissioner shall promote and develop frameworks for public private partnerships in Cooperatives.

Committee **Adopted** 2/3rds membership for general meeting, removed Director or Commissioner and Considered the penalty clauses.

New clause Establishment of County Cooperative Dispute Resolution (ADR) Committee

(162) Coops Africa and Credence Africa proposed the following;

There is established a **Cooperative Alternative Dispute Resolution (ADR) Committee consisting** of:

(a) Chairperson;

(b) Vice Chairperson; and,

(c) three other members

Provided that,

(a) the chairperson and vice-chairperson shall not be of the same gender;

(b) at least two of the members shall not be of the same gender.

(2) Members of the ADR committee shall be selected from interested applicants as prescribed under regulations made by under Act:

Provided that a person shall not be qualified as a member of the ADR Committee unless the person–

(a) has a minimum experience of not less than five years in co-operative management, business, law or business practice;

(b) satisfies the requirements of Chapter Six of the Constitution of Kenya;

(c) is not a Public or State officer in the cooperative sector;

(d) is not an official of a political party.

(3) The members of the ADR Committee shall –

(a) be appointed for a term of three years provided that no one shall serve for more than two consecutive terms; and

(b) serve on a part time basis.

Appointment of the Chairperson

Remuneration of the ADR Committee members

Functions of the ADR Committee

1) The Committee shall promote Alternative Dispute Resolution Mechanism (ADR), as the first line of action in resolving disputes in Cooperatives through facilitating negotiation, arbitration, mediation to achieve speedy and inexpensive resolution of disputes in the cooperative movement in the County.

(2) Other functions as shall be provided for by this Act and relevant rules.

Disputes to be handled by ADR Committee

1) A dispute for the purpose of this section shall include—
   a) a rejection of an application for registration of a cooperative;
   b) a cancellation of registration of a cooperative; or
   c) a claim in respect of a surcharge imposed against any person;
   d) a claim by a Sacco Society against a refusal to grant or a revocation of license or any other matter with the Authority;
   e) a claim by Commissioner for Cooperatives against a cooperative or an officer of a cooperative in respect of any surcharges, fines, or financial penalty imposed under this Act or any other written law;
   f) any claim by a cooperative or an officer of a cooperative in respect of any administrative action commenced or instituted or imposed by the Commissioner of Cooperatives.
   g) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
   h) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
   i) a claim by a Sacco against a refusal to grant or a revocation of license or any other due, from the Authority.

Procedures for filing disputes at ADR Committee

Rationale is the Kenyan Constitution Advocates and encourages Alternative Dispute Resolution.

The Committee **rejected** this proposal and directed that the provisions within the Bill are sufficient. Clause 145 of the Bill empower the Cooperative Tribunal to refer any matter filed or pending before it to an alternative dispute resolution mechanism. Clause 148 of cooperative self-regulation requires Apex Cooperative, Cooperative federations or secondary Cooperative with the approval of the Commissioner to develop and implement procedures for alternative dispute resolution in cooperatives. Clause 17 provides that the Intergovernmental Cooperatives Relations Technical Forum shall serve as an alternative dispute resolution forum for its members ie the Commissioner, the 47 county directors, chief executive officer of the Authority, the officer appointed by the Council of Governor and the representative of the Apex Cooperative. Clause 25 requires Apex Cooperatives to provide mechanisms for alternative dispute resolution.

(163) Trade Committee (AI) proposed Penalties should be incremental 1st penalty should not be too high. Second penalty should be increased.

CHAPTER FIVE: COMMITTEE'S ANALYSIS OF SUBMISIONS AND RESOLUTIONS ON PROPOSED AMENDMENTS

(164)The Committee having considered the bill and analyzed the submissions received made the following observation —

(1) **Long Title**, Committee adopted a proposal to amend the title to ensure it effectively addresses the regulatory and developmental needs of Cooperatives within Kenya's devolved governance structure, rather than solely focusing on bureaucratic offices

(2) On **Clause 2** under the definition, Committee proposed amendments to define:

'**Secondary Cooperative**' as **Intracounty secondary** cooperative as cooperative whose membership is intracounty primary cooperative and **Intercounty secondary** cooperative as cooperative whose membership is intercounty primary cooperatives

'**Primary Cooperative**' as whose membership is **intracounty primary** cooperative (operating within one county) and an **intercounty primary cooperative** (expanding across at least three counties with 500+ members per new county, initially registered as intracounty).

The Committee **adopted** the proposal to the definition **"bylaws"** as it will enrich the Bill, aligning it with Clause 37 and specifying registration authority distribution (Primary/Secondary - County Director; Apex/Federations - Commissioner).

'**levy fund**' as assets set aside from net surplus of cooperative for investment in fixed assets and liquid assets, shares, supporting working capital and settlement of liabilities

Committee resolved to define '**levy fund**' as the payment made by cooperatives under section 153

'**reserve fund**' as assets set aside from net surplus of cooperative for investment in fixed assets and liquid assets, shares, supporting working capital and settlement

of liabilities

define **diaspora**-based member" as a member who is a Kenyan citizen but is not resident in Kenya

replace the word '**County Director**' wherever it appears in the Bill to '**County Commissioner of Cooperatives**'. This will reflect a more directive role

The Committee also acknowledged the rationale to define "multipurpose" but **rejected** the definition due to its absence in the Bill. However, noted that Clause 21 requires Commissioner approval for Cooperatives with more than two objects

The Committee **rejected** the proposal of renaming **"Cooperative Technical Officer"** to "Cooperative Officer" The current name of Cooperative Technical officer does not confuse the public as stated by the stakeholder because the roles and responsibilities of the position are clearly defined and understood.

(1) On **Clause 7,** Committee **rejected** the proposal to create a Deputy Commissioner position on grounds that the proposed Bill already provides for the appointment of other Technical Officers in the Commissioner's office and the position of a Deputy Commissioner already exists within the Public Service. Committee resolved the Technical Officers in Commissioners office should have relevant academic qualifications in Cooperative management and practice and comply with Chapter Six of the Constitution. The Committee further resolved to provide a three-year transition period.

(2) On **Clause 8(1)** relating to the Vacancy in the of the Commissioner, the Committee **adopted** the proposal provide timeline for filling the vacancy and proposed acting appointment capped at 3 months (renewable once), maximum 6 months; otherwise, a new person must be appointed. Committee also proposed amendment to the position should be advertised three months prior to it becoming vacant and be filled within six months of it becoming vacant

(3) On **Clause 8(2)** Committee **adopted** the proposal to outline specific academic

competency of a Commissioner to have a Bachelor degree in Cooperative management with a minimum of twenty years' experience in senior management in public service of which 10 should be in the Cooperative sector in a position not lower than County Commissioner of Cooperatives and meet Chapter Six of the Constitution requirement with a term limit of **(5)**five years, renewable once, or until the statutory retirement date, whichever comes first.

(4) On **Clause 9** relating to functions of the Commissioner, the Committee **rejected** the proposal to delete clause **9(2)(b)** under justification the same is provided in clause 16. The two provisions can co-exist since one relates to the functions of the Commissioner while the other establishes the intergovernmental framework. Committee recommended retain both clause 9(2)(b) and Clause 16 for smooth implementation.

(5) Committee **adopted** the proposed amendment **on Clause 9(2)(c)** and resolved to amend the provisions to align it to the Constitutional delineation of roles. Committee noted that other than the Fourth Schedule to the Constitution that delineates the functions of County Governments National government, Gazette Notice no. 16472 dated 16th December, 2024 also delineates the functions. Under Cooperatives-County Governments are mandated to register primary and secondary Cooperatives

(6) Committee **rejected** the proposal to delete and replace Clause **9(2) (d)** with a new provision that would require the Commissioner to develop guideline for registration gazetted by the Cabinet secretary and resolved to provide for the delineation of functions under paragraph (d). Further, the Committee mandated the Cabinet Secretary to provide for a form of the Certificate of registration to ensure uniformity and legal validity

(7) The Committee **adopted** the proposal to insert new Clause **9(2) (e)** as it will ensure that County governments have access to the information. However, there is need to include the power to conduct inquiries thus recommended implementing Integrated Cooperative Management System

(8) Committee **rejected** the proposal to replace wherever the Commissioner name

appears in the Bill add "or Director as applicable" so as to read Commissioner or County Commissioner of Cooperative. The Committee observed that while the Bill delineates functions between the Commissioner and the County Commissioner of Cooperative, not all functions assigned to the Commissioner would be carried out by the County Commissioner of Cooperative. As such, amending the current provisions could introduce ambiguity. Committee therefore resolved to make amendments in the entire Bill to clarify the roles of the County Commissioner of Cooperative and those of Commissioner to ensure delineation of functions as per the Constitution and the Gazette.

(9) The Committee **adopted** the proposal to provide for delineation of the functions between the Commissioner and the respective County Commissioner of Cooperatives. Committee observed that it is necessary for the Commissioner to conduct inquiries in to intercounty primary, secondary Cooperatives, Cooperative Federations and Apex Cooperatives. However, inquiries in to the affairs of intracounty primary and secondary Cooperatives should done by the respective County Director of cooperatives

(10) On **Clause 12,** Committee **adopted** the proposal to amend the Clause to include that the technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice and in compliance with Chapter six of the Constitution. The Committee further resolved to provide a three-year transition period.

(11) On **Clause 13(1)** relating to Vacancy in the Office of County Commissioner of Cooperatives, Committee **adopted** the proposal to provide timeline for filling acting position and timeline for filling vacancy.

(12) **Clause 13(2),** Committee adopted the proposal the need to provide for the academic and experiential competencies to fill the position of County Commissioner of Cooperatives to have a Bachelor degree in Cooperative management with a minimum **(10)** ten years' experience in Cooperative management and practice and meets Chapter Six of the Constitution

requirement.

(13) On **Clause 14(1)** in relations to the Functions of the of Cooperative for Cooperatives, the Committee **adopted** the proposal to amend the clause to have the County Cooperative of Commissioner report to the County Executive Committee Member as one of his functions. The Committee resolved to maintain the County Director of Cooperatives but create a functional connection with the County Executive Committee member in charge of Cooperatives under subclause (2).

(14) On **Clause 14(2),** the Committee resolved to expand the roles by adding registration and maintenance of intracounty cooperative registers, enforcement and liquidation of non-compliant cooperatives, promotion of dispute resolution, deeper supervision of intracounty cooperatives, capacity building specifically for cooperative leaders, fostering partnerships, and enhancing data management and value addition; these amendments aim to address regulatory gaps, improve compliance enforcement, enhance governance specificity, and foster cooperative development at the intracounty level.

(15) **On Clause 14 (2) (d),** Committee **rejected** the proposal that recommends County Director to seek authority from the Commissioner to conduct inquiries regarding intra-County primary and secondary Cooperatives instead Committee proposed that County Commissioner should be granted explicit powers to independently conduct intra County primary and secondary Cooperatives inquiry

(16) On **Clause 14 (2),** Committee **adopted** the proposal to clarify the functional delineation between the Commissioner and County Commissioner of Cooperative. To achieve this, the Committee resolved to update this reflect with the Gazette Notice No. 16472 of 2024, ensuring compliance with Constitutional mandates and eliminating jurisdictional overlaps.

Committee **rejected** the call to delete paragraph (h) as this provision in the Bill seeks to ensure the growth of the sector by providing information and therefore this provision is necessary

(17) On **Clause 15,** Committee **adopted** the timeline proposed to be not later than **three months** after the end of the financial year for County Commissioner of Cooperative to prepare submit their annual report on the performance of their respective intracounty primary and intracounty secondary cooperative to the County Assembly, Commissioner of County Executive Committee.

On **Clause 16(1)** in regards to establishment of the intergovernmental Cooperatives Relations Technical Forum, the Committee **adopted** the proposal to amend Clause16(1) (b) that Forum to be Co-chaired between the Commissioner and the Chairperson of the Caucus of the County Executive Committee Members responsible for Cooperatives, this is because the Executive Power in the County government is vested in the County Executive Committee Members responsible. Furthermore, the Committee observed that the Forum should be conceptualized as being composed of technical officers, and therefore should not include either the Cabinet Secretary or County Executive Committee Members as part of its membership. Committee resolved in the absence of the Commissioner, the County Commissioners of Cooperatives shall nominate one of their own to chair the meeting of the Forum.

(18) **On Clause 20** in relations to Primary Cooperatives, Committee resolved to **reject** the proposal to do away with Cooperative structure noting that it's the best practice that will ensure order within the Cooperative sector. Committee proposed amendment to the Bill to accommodate producers that carry out all requirement

Committee further resolved to propose an amendment to provide for members intending to join two or more cooperatives must disclose their existing memberships to each new cooperative and, before applying for a loan, provide letters from all cooperatives confirming their financial liabilities.

(19) **On Clause 21** in relation to Prohibition against multiple objects in primary Cooperatives, Committee resolved to **adopt** the amendment to substitute Commissioner with County Commissioner of Cooperatives to handle the registration of intracounty primary and secondary Cooperatives. Committee

noted that this will ensure delineation of functions between the Commissioner at the National level and the County Commissioner of Cooperatives at the County level.

Committee **rejected** the proposal to amend the Clause to provide that Commissioner should not register a Cooperative with more than one activity and not objective. The Committee noted that the intention of the Bill was not to limit activities but objectives since several activities can be employed towards the attainment of one objective. Activities are the specific actions or tasks undertaken to achieve an objective. Objectives are broader and more strategic, while activities are more concrete and operational.

(20) **On Clause 22** under the objects of secondary Cooperatives, The Committee **rejected** the proposal to limit intracounty secondary Cooperatives to a single function, affirming that they can perform all listed functions if desired. Committee resolved to add word before

(21) **On Clause 23 (3)**, Committee **adopted** the proposal to amend the Bill to clarify the membership of Federative Cooperative to include both primary and secondary Cooperatives.

(22) **On Clause 24** in regards to Registration and subscription of the Apex Cooperative, Committee rejected the proposal to rename Apex Cooperative to Cooperation Federation as the Apex Cooperation within the Bill fit the description therefore no need to rename. Committee further adopted the proposed amendment to make subscription to the Apex Cooperative optional thus replace the word **'Cooperative shall'** with **'Cooperative May'**

(23) On **Clause 29,30,32,33,34,35,37,39** in relations to Registration, the Committee resolved to **adopt** the amendment to ensure that the registration of Cooperatives should be delineated between the Commissioner at the National level and the Directors at the County level. In addition, the Committee resolved to provide the timelines for registration of Cooperatives by both the County Commissioner of Cooperative and the Commissioner. Committee also adopted the proposed amendment to Bill to provide for clarity on the Membership of

Cooperative Federation and Apex Cooperative.

(24) On **Clause 36** in relations to Cooperative as body corporate and prohibition against dual registration, Committee adopted the proposal to delete subclause (2) that prohibits the registration of Cooperative under any other law as it limits the business models of the Cooperative that require multiple industry specific registration. Committee noted that there was need to allow for Cooperatives to get the necessary legal requirements to enable them serve their members effectively

(25) On **Clause 38** By laws of a Cooperative to be binding, Committee **adopted** the proposal and resolved to amend the Bill to include Nominee of Member. Committee noted that this will enrich the Bill.

(26) On **Clause 39** in regards to Appeal against refusal to register, the Committee **adopted** the proposal to provide timeline for filing an appeal from the date of receiving a notification of refusal and proposed **30 days to appeal**, this will provide an aggrieved party with a defined period within which they can exercise their right to lodge an appeal.

Committee **rejected** the proposal by the Ministry to include a first appeal to the Cabinet Secretary before the tribunal, the committee observed that the proposal to the tribunal was satisfactory.

(27) **On Clause 40 & 43** in relation to signature and mandatory usage of names, Committee proposed to add words "or County Commissioner of Cooperatives" immediately after the words "by the Commissioner". This is to provide delineation of functions.

(28) On **Clause 44** in relation to the Qualification for Membership, Committee **adopted** the proposal to include persons in diaspora as a member of Cooperative, this is because the qualifications for Membership do not lock out a person who is in the diaspora.

(29) On **Clause 47** Voting rights of Members, the Committee resolved to **reject** the proposal to amend the clause by deleting "shall" and replacing with

"may" noting that the right to vote should not be restricted. Committee proposed further to amend the Bill to include Board of Directors to provide for electronic voting by members of the cooperative and ensure members are facilitated to vote by secret ballot in the case of any matter requiring special resolution of two thirds (2/3) of the members.

(30) On **Clause 50** in regards to Obligations of a Member, Committee **rejected** the proposal to revise the Clause to affirm that a Cooperative member has the right to participate in meetings, vote in elections, be eligible for leadership roles, access cooperative services, and exercise other ownership rights, as these are inherent privileges of membership. Committee observed that that the proposal is covered under clause 49 of the Bill

(31) On **Clause 53 estimate** on income and expenditure, Committee **adopted** the proposal requiring Cooperatives and SACCO's particularly those with mostly Public Service Members, to maintain proper accounts, submit them for auditing, and publish financial statements for transparency, while also mandating additional financial reporting to the County Commissioner of Cooperatives to ensure greater accountability and transparency of the said Cooperatives

The Committee **adopted** the proposal to require that the estimates be provided to Members **21** prior to the date of the General meeting. Committee noted that specification of statutory timeline will enrich the Bill.

The Committee **adopted** the proposal of amending paragraph (e) to remove the County Commissioner of Cooperatives auditing function, Cooperatives are already mandated to conduct their own audits and submit reports, and the County Cooperatives of Cooperative may lack the capacity to audit all regulated Cooperatives in the County

Committee **adopted** the proposed amendment to include authentication of the accounts by the Chief Executive Officer provide for timeline for filling of returns as this will enrich the Bill

The Committee resolved to **reject** the proposal to provide for a risk management framework as one of the functions of the Board of Directors under clause 64 (1) is risk management

Committee further proposed new amendment to change enforcement authority by removing the County Commissioner of Cooperatives in favor of only the Commissioner as the authority to cancel general meetings for non-compliance, and significantly introduces the establishment of two new oversight offices the **National Audit Director** and the **County Audit Director** of Cooperatives with detailed provisions on their appointment, qualifications including(have a bachelor's degree in finance, accounting, or economics from a university recognized in Kenya, a minimum of ten years' experience in auditing or public finance management, meet the requirements of Chapter Six of the Constitution, and be a practicing member in good standing of a professional accounting body recognized by law), functions (mainly auditing and verification of cooperative accounts according to international standards), and a fixed five-year renewable terms to enhance auditing and oversight of cooperatives at both national and county levels.

This new proposal aims to strengthen audit and financial oversight mechanisms across various levels of cooperatives, ensuring more rigorous verification of audited accounts, improving transparency, accountability, and compliance with recognized auditing standards. It also seeks to professionalize and formalize the auditing function through appointed officials with specified qualifications and structured recruitment, thereby addressing gaps in financial governance and enforcement present in the original clause. Additionally, increasing the notice period enhances member engagement and preparedness for meetings. Overall, the amendments seek to cure weaknesses in financial monitoring, enforcement authority clarity, and cooperative governance standards.

(32) **On Clause 54** accounts and audit, Committee proposed amendment to expand the required financial documents cooperatives must prepare, including additional detailed reports tailored to specific types of cooperatives such as

SACCOs, member **produce,** transport, housing, and investment cooperatives. The proposal tends to extends responsibilities to include submitting these reports to newly established National and County Audit Directors for verification and certification, introduces penalties and offences for non-compliance and falsification, enhances auditing oversight processes, and empowers the Commissioner or County commissioner to impose stricter regulatory measures including board dissolution and supervisory interventions to ensure accountability and financial transparency. This amendment seeks to address gaps by providing more comprehensive, sector-specific financial reporting, strengthening audit verification and enforcement mechanisms, and improving governance and risk management frameworks within cooperatives.

(33) On **Clause 55** on Auditing, the Committee **adopted** the new additional proposals on Audit of Cooperatives in order to strengthened accountability and regulatory recourse and noted that under Clause 55 (12) of the Bill captures the removal of County Commissioner of Cooperatives who do not cause financial statements to be Audited. However, the Bill lacks offence provisions. The Committee resolved to have the Board of Directors held responsible for failure to cause an audit. In addition, the Committee resolved to empower the Commissioner and the County Commissioner of Cooperative to compel the holding of an Annual General Meetings.

(34) On **Clause 55** on Prohibition Against Side Selling, Committee resolved to **retain** Clause 154 of the Bill which requires the Cabinet Secretary to prescribe guidelines for use of collateral's for securing loans and mortgages in Cooperatives.

(35) On **Clause 56** in relations to General Meeting, Committee proposed an amendment to the Bill to provide that the Members should consider any reports on debt to equity ratio of the Cooperative. The Committee observed that members of the Cooperative should make their own decisions.

(36) On **Clause 56 and 57** General Meeting and Special General Meeting, Committee **adopted** the proposal to amend the Bill to provide for virtual

platforms or governance including online voting and member communication as this would enrich the Bill.

(37) On **Clause 57** in regards to Special General Meeting, The Committee **rejected** the proposal allowing members to convene a Special General Meeting with the Commissioner or director's written consent if interim officials fail to do so, noting that the Bill already provides for members to convene such meetings under subclause (2) if necessary.

(38) On **Clause 60(2)** in relations to Delegate system of representation, the Committee **adopted** the new proposed clause that seeks to have two thirds (2/3) of the membership approve the setting up of a subsidiary company and the additional approval of a Director to prevent privatization of cooperative assets. The Committee also noted the Bill under clause 60 (2) requires for the discussion of formation of a subsidiary company to a primary cooperative to be discussed in a physical general meeting of the cooperative. Further, under clause 83, investment in subsidiaries is to be approved at a general meeting

(39) On **Clause 61(1)** in regards to Board Composition, the Committee acknowledged that the Apex Cooperative, as a National body representing all cooperatives in the Country, requires special consideration to expand its board for broader representation, and thus adopted the proposal to amend the Bill granting the Commissioner discretion to increase the Board of Directors to a maximum of 15 members, ensuring inclusion of key cooperative types such as producer, housing, savings and credit, savings and investment, transport, work, and consumer cooperatives within the membership.

(40) On **Clause 61(2)** in regards to Term Limits of board members, Committee to amend the Bill by introducing a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

The Committee **rejected** the proposal to amend the Bill to provide for annual Director appraisals by the Commissioner/County Director or supervisory board, noting that the Annual General Meeting already functions as a Board performance review.

The Committee **rejected** the proposal amend the Bill to provide for independent Directors to mentor and oversee elected Directors, noting that the Bill already establishes a supervisory Board for this purpose.

(41) On **Clause 63** in relations to Eligibility to the Board of Directors The Committee **rejected** the proposal to prohibit Board Members and senior management from political engaging in political activities, noting that Cooperative Board Members receive no pay only expense reimbursements and that excluding political officeholders from board positions would be discriminatory, though employees could be restricted per their contracts, provided such terms are specified during recruitment rather than mandated by law.

Committee proposed to amend the Bill to provide for qualifications of Board member to have a minimum post- secondary level of education certificate and practice from recognized university in Kenya in cooperatives management unless exempted by the Cabinet Secretary or by the County Executive Committee member in accordance with regulation

Committee noted the proposals by the Ministry to amend paragraph (c), (f), (i), (j), (k), and (m) which includes replacing terms, expanding criminal offenses, increasing penalties, and addressing incapacity. Committee resolved to **adopt** changes to (i), (j), (k), and (m) while noted that (c) and (f) had already been implemented by the National Assembly and that the incapacity Clause applies to board disqualification but not electoral eligibility.

(42) On **Clause 64**, in regards the responsibilities of the Board, Committee **adopted** the proposal amendment of the board of directors to provide for a crisis management plan, development and implementations of data protections and data survey

The Committee **rejected** the proposal to require the Board of directors to consult with the nomination committee before the recruitment of a Chief Executive Officer (CEO), the nomination committee's role is limited to assessing board director suitability, not conducting executive hiring processes

The Committee **rejected** the Ministry's proposal to include terms of reference in the governance policy or board charter instead of the Bylaws, arguing that it was unclear who would be responsible for drafting them

(43) On **Clause 65**, Supervisory Board and its duties, Committee **rejected** the proposal amend the Bill to establish an internal audit function reporting directly to the Supervisory Board. Committee noted that Clause 65(1)(d) already requires the Supervisory Committee to review internal audits, and each Cooperative should instead incorporate this function within its existing administrative structure. Committee resolved the Bill should provide for delineation of function

(44) On **Clause 66(3)(c)** in regards to Nomination, the Committee **adopted** the proposal and resolved to amend Clause 66(1) to require that the Board of Directors or Supervisory Board to seek general meeting approval for nominations and mandate that recruitment advertisements and the names of the Nomination Committee, be published in at least one major daily newspaper of nationwide circulation and on social media.

The Committee **rejected** the proposal to include nomination Committees in the transitional clauses, arguing that since these Committees are appointed annually, there is no need for transitional provisions.

The Committee **rejected** the proposal requiring the nomination Committee to conduct extensive background checks on candidates, noting that its role is limited to vet potential candidate on professional and moral suitability

The Committee **rejected** the proposal to limit the nomination Committee to Cooperative Members and have vetting conducted by the County Commissioner of Cooperatives, CEO, and current Board. Committee observed that Board

Members could not vet themselves or vet persons who are likely to succeed them without perception of conflict arising. Committee noted that the nomination committee's composition is already approved by members in a general meeting.

(45) On **Clause 67(9)(a)** in relations to Amalgamation of Cooperatives, Committee **adopted** the proposal to dissolve amalgamating Cooperatives except in mergers by absorption (to rescue distressed Cooperatives). The Cooperatives that opt to amalgamate should be dissolved and registered afresh as new entities.

(46) On **Clause 69,** Charge over members produce, Committee resolved to **reject** the proposal to amend subclause (5) to read a member may elect to be paid directly less any liabilities to the Cooperative through a manual or electronic system as this subclause referred is not within the Bill. This will promotes accountability, reduces risks of default, and facilitates smoother cooperative operations and fair member relations

Committee proposed to amend the Bill to allow a cooperative engaged in disposing members' produce to enter contracts binding members to sell specified produce quantities or pay liquidated damages for breaches, with such debts secured as charges on the member's immovable property, and requires new members to disclose any existing contracts of this nature upon applying for membership.

(47) On **Clause 73(1)** under Failure to Remit Deductions, the Committee **adopted** the proposed amendments that the County governments should issue demand notices for primary and secondary Cooperatives. The National government should issue agency notices for all Cooperatives including primary and secondary cooperatives upon recommendation by the County governments within 7 days. The proposal is in line with the functional delineation.

(48) The Committee **rejected** the proposal amend the Clause to mandate employers to deduct and remit SACCO loan repayments, noting that existing provisions already require compliance if requested by the employee without violating the one-third rule, and that the Bill already includes sanctions for non-remittance of deducted amounts

(49) On **Clause 81**, Restriction on giving loans, Committee observed that the Bill does not provide for the procedure through which members of the board of directors or the employees of the Cooperatives can access loans within the Cooperatives. Committee therefore, resolved to amend the Clause to provide for insider lending.

The Cooperative employees and board members cannot act as guarantors for loans from their cooperative, limits loans or credit facilities to them to a maximum of 10% of the cooperative's gross loan portfolio, requires loan terms to be consistent with those for other members without favoritism, prohibits them from participating in decisions on their own loans, mandates monthly insider lending reports to the Commissioner, and empowers the Commissioner to require repayment, impose interest, and remove employees who fail to comply, with these provisions applying irrespective of any related legal prosecutions.

(50) On **Clause 82**, under Restriction on Borrowing, the Committee **adopted** the proposal and resolved that any borrowing by the cooperative, must be approved by the general meeting and ratification of the Commissioner or County Commissioner of Cooperatives. The Committee further resolved to provide a threshold of debt to equity of 30% and require a debt management report be issued to members. The Committee agreed that any issue of borrowing decision should come from members of the Cooperative with approval of two-thirds **(⅔)** of members. Committee rejected the delegate proposal as the delegate member decision will be like an elite capture.

(51) On **Clause 83** in relation to Investment of Cooperative Funds, the Committee **adopted** the proposal of two-thirds **(⅔)** member approval, regulatory pre-approval for investments (feasibility reports required and finally cap to 25% of share capital for non-core real estate investments to safeguard liquidity and member interests thus limits speculative investments. The Committee rejected the proposal to have additional approval from the Commissioner or Director.

Committee further **adopted** the proposal to provide for clear guidelines on

permissible investments for Cooperatives, including restrictions on high risk investments and resolved to amend the Bill to provide for separate account with independent signatories for Cooperative that wishes to engage in housing as an investment in order Prevent diversion of funds from core loan services. Committee resolved the CS to develop clear a policy documents shall provide regulations for the investments of funds under a Cooperative.

(52) On Clause **85(1)(b)** under Investment in Companies, the Committee **adopted** the proposed amendment requiring a two-thirds (⅔) majority shareholder approval through ballot voting for acquisitions, while removing the additional approval previously needed from the County Commissioner of Cooperatives.

Committee further proposed amendment to the Bill to provide for Cooperative to participate in Public Private Partnership

(53) **New clause on acquisition of a company or business by a cooperative, Committee rejected** the proposal to amend the Bill by creating an independent Cooperative Regulatory Authority to oversee all Cooperative sectors by merging SASRA into it noting that SASRA has been instrumental in ensuring that SACCOs are well regulated. Committee recommended SASRA role to be expanded without creating a new body. Subsume SACCO's Act and rename SASRA as the Cooperative Regulatory Authority.

(54) **New clause** Establishment of County Cooperative Dispute Resolution (ADR), Committee **rejected** the proposal to introduce a new clause to establish Alternative Dispute Resolution (ADR), noting that Clause 145, 148, 17, and 25 of the Bill already provide sufficient alternative dispute resolution mechanisms through the Cooperative Tribunal, self-regulation by cooperatives, the Intergovernmental Cooperatives Relations Technical Forum, and Apex Cooperatives.

(55) On **Clause 86** under the Declaration of Bonus, the Committee **rejected** the reintroduction of Cooperative Officers, noting that the Bill already establishes the Commissioner for Cooperative Development and County

Directors with staff (Clauses 6, 7, 11, 12) to enforce governance, while Clauses 86 and 87 ensure financial accountability through audited dividend distributions and mandatory reserve funds.

The Committee **rejected** the proposal my Ministry of Cooperative to amend the Bill by deleting "accumulated" and "surplus," as doing so could allow cooperatives to pay dividends and bonuses from non-surplus funds, potentially leading to borrowing for such payments.

(56) On **Clause 86** under declaration and payment of bonus, The Committee proposed amendment to require cooperative members, based on the board's recommendation and considering the cooperative's liabilities, to determine the annual percentage of net surplus to deposit into the reserve fund, while adding that the reserve fund must not exceed 1.05 times the cooperative's liabilities at the time of the general meeting

(57) On **Clause 94** under the receiver to give notice of appointment, Committee proposed amendment to require anyone obtaining an order to appoint a receiver or manager of a cooperative's property to notify the Commissioner or County Commissioner of Cooperative within seven days for registration, and that upon ceasing to act, the receiver or manager must notify the Commissioner or County Commissioner of Cooperative and the High Court again, ensuring proper communication and record-keeping with all relevant authorities.

(58) **On Clause 98** in relations to Inquiry by Commissioner, the Committee **adopted** the proposal to split jurisdiction to avoid overlap and clarifies roles where the Commissioner handle Federations, Apex and Diaspora Cooperatives and County Governments handles Primary and Secondary Cooperatives. Committee observed functional delineation should be maintained even in inquiries, inspections and surcharges. In addition, the Committee recommend that it would be important to allow for members of a Cooperative to retain the power to move the Commissioner or County Director to carry out an inquiry.

First tier inquiry for primary and secondary to the Director. Then the member

of the cooperative to write to Commissioner to intervene. Commissioner not to intervene on his own motion without consulting the director

(59) On **Clauses 99** Power to surcharge officers of a Cooperative, Clause 100 Appeal against a surcharge order and Clause 101 on Recovery of surcharge, the Committee **rejected** the proposal to replace the word may with shall to make surcharges mandatory since surcharge is only imposed at the end of an inquiry hence not possible to make it mandatory. However, the Committee proposed a policy be made to on the surcharge payable, the penalty to the commissioner or director who fails to enforce a surcharge, the enforcement measures to be undertaken should the surcharge not be paid.

The Committee **adopted** the proposal and resolved to provide that an order for a surcharge shall be made within twenty-one (21) days.

The Committee **adopted** the proposal that the Commissioner or County Commissioner of Cooperatives should act within a specific period and provide reasons for not acting

Committee **adopted** the proposal to amend clauses 99, 100, and 101 to specify that the National Audit Director Commissioner for Cooperatives is responsible for surcharge enforcement for diaspora, federative, and apex cooperatives, while the County Commissioner of Cooperatives is responsible for surcharge enforcement for primary and secondary cooperatives and ensure that both National and County governments have equal and clearly defined responsibilities in enforcing financial recovery in Cooperatives under their jurisdiction.

Committee proposed to amend the Bill by adding a new section 101A that provided the National or County Audit Director to apportion inquiry expenses between the cooperative, members or creditors requesting the inquiry, and officers involved, with their decision being final and any awarded expenses recoverable as a civil debt.

Committee stated it is important to note that a person liable to pay a surcharge has a right to appeal to the tribunal and then the High Court.

The Committee **adopted** the proposal to require the Commissioner to refer cases of criminal culpability to the DCI for further action, this will strengthen whose enforceability in the past has not been effective by ensuring accountability for wrongdoing.

The Committee **rejected** the proposal to amend the Bill to hold Board Members personally liable for financial losses resulting in gross negligence or mismanagement with clear penalties, noting that existing provisions already require member approval for investments and allow the Commissioner or Director to surcharge board members for financial mismanagement or breach of trust.

(60) **On Clause 105 under the** Timeline for liquidation. Committee **adopted** the proposal and resolved to amend the Bill to provide for a period of 6 months within in which liquidation should take place.

Committee proposed further amendment to Clause 105 to allow the National or County Audit Director, after an inquiry or member petition, to recommend the dissolution and deregistration of a cooperative, with the Commissioner or county commissioner able to suggest remedial actions and, upon non-compliance, file a liquidation petition in the High Court; if liquidation is ordered, the High Court appoints a liquidator who notifies the relevant commissioner and proceeds with liquidation. It also revises appeal procedures to go through the High Court and Court of Appeal instead of the Cooperative Tribunal, and updates authority references from the Commissioner to the High Court and respective commissioners throughout the clause.

(61) On **Clause 106** Cancellation of registration, the Committee **adopted** the proposal and resolved to amend the subclause, empowering both the Commissioner and the Director to cancel or dissolve non-compliant cooperatives within their respective jurisdictions while reducing the allowable noncompliance period from ten to five years, deeming a ten-year period is too long.

(62) On **Clause 109** on the Appointment of the liquidator, Committee resolved

to propose an amendment replace the Cooperative Technical Officer role with a with a requirement of at least five years' experience in Cooperative Management and inclusion of a person enlisted in the Attorney General's pool of liquidators

(63) On **Clause 110** on the Qualification of a liquidator, the Committee **adopted** the proposal to amend the Bill to replace the Cooperative technical officer role with a requirement of at least five years' experience in Cooperative management and inclusion of a person enlisted in the Attorney General's pool of liquidators, as it will enrich the Bill.

(64) On **Clause 123** in relations to the establishment of the Cooperative Tribunal, the Committee adopted the proposal and resolved to amend the Bill to expand membership from 7 to 9 Members and include County Government representations for broader representation. Committee observed that there was need ensure competitive recruitment and resolved to amend the clause include the additional expertise in finance or dispute resolution to members of the Tribunal. Committee **rejected t**he proposal to have nominees forwarded to the JSC by the CoG or CS.

The Committee **adopted** the proposal to include a provision requiring the Tribunal **Chairperson** to be an advocate of the High Court of Kenya with at least seven years' experience and include verification of good standing with other professional bodies for other members in the Tribunal in order to aligns with best practices and strengthens the Bill.

(65) On **Clause 125** on the Remuneration and Term of office for members of the Cooperative Tribunal, Committee **adopted** the proposal and resolved to Increase the term from t**hree** years to **five** years renewable once. This will align the term of this tribunal to the likes of the Tax and Rent whose term is **five years**.

(66) On **Clause 127** in relations to Vacancy in the Office of Cooperative Tribunal, Committee **adopted** the proposal to add new clause to include death and resignation of member in writing as the formal vacancy triggers (vacancy

arises automatically).

(67) On **Clause 128** Under Jurisdiction of the Cooperative Tribunal, the Committee **rejected** the proposal to have disputes involving public servants handled by the Public Service Commission, stating that the Cooperative Tribunal with a right of appeal to the High Court is better suited to resolve such regulatory disputes.

The Committee **adopted** the proposal to expedite hearings for governance and financial disputes and resolved amend the Bill to provide for conclusion of matters/cases referred to the Tribunal be concluded within **six** months, as it would enhance the Bill.

(68) On **Clause 131** Orders by the Cooperative Tribunal, The Committee **adopted** the proposal and resolved to amend the Bill and to provide for publications of the decisions of the Tribunal on their website to ensure public access of the order and judgement.

(69) On **Clause 146** in relation to Procurement and Disposal of in Cooperatives, the Committee resolved **adopted** the proposal to amend the Bill by having procurement guidelines for Cooperatives developed by the intergovernmental cooperatives relations technical forum and gazetted by the Cabinet Secretary, rather than applying the Public Procurement Act, while maintaining fairness, transparency, and competitiveness in line with Cooperative Bylaws.

(70) On **Clause 152** under the remuneration to officers and members of Cooperatives, Committee proposed amendment to simplify the penalty for offences to a fine not exceeding fifty thousand shillings, imprisonment up to one year, or both, and if the offence involves contravention of subsection (1), the person must repay any remuneration or payments received from the cooperative, with default treated like failure to pay a tribunal-imposed fine.

(71) On **Clause 153** under Cooperatives Development Fund, Committee proposed amendment to establish the National Co-operative Development

Fund and the County Co-operative Development Fund to support cooperative development through education, training, research, and related activities. Both Funds are governed by respective Boards of Trustees appointed by the Cabinet Secretary (national) and Governors (county), with members drawn from cooperative representatives and experts meeting specific qualifications. The Boards are corporate entities with powers to sue, acquire property, borrow, and contract. The Funds receive revenue mainly from levies on cooperatives, donations, and grants, and must keep audited accounts while investing surplus funds securely. The Boards' expenses are capped and subject to approval processes. Chief Executive Officers of the Funds are competitively recruited, with defined qualifications and terms. Members of the Boards serve staggered three-year terms renewable once and may be removed under specified conditions. The Funds' activities, disbursements, and accounts are transparent, with public access to records subject to a fee, and quarterly reports submitted to the Commissioner. The National Fund's headquarters is in Nairobi, while the County Funds are based at county headquarters, with secretariat support provided by the Ministry in charge of Treasury. This framework is designed to enhance cooperative capacity building and resource management at both national and county levels.

(72) **On Clause154-** Include a paragraph on the regulation to include what certificate of registration will look like

(73) On **Clause 157** in relations to the Other Powers of the Commissioner, the Committee **adopted** the proposal and resolved to amend the provision to clarify functional delineation between the Commissioner and the County Commissioner of Cooperatives.

(74) On **Clause 158** in relations to Other Powers of the County Commissioner of Cooperatives, Committee **adopted** the proposal Powers should remain with the County Commissioner of Cooperatives (for day-to-day oversight), but the County Commissioner of Cooperatives reports to the County Executive Commissioner.

(75) On the **Reintroduction of Cooperative Officers** for supervisions, the Committee **rejected** the proposal as the supervision role are already split between the Commissioner and County Director.

(76) On the **Reintroduction of the Ministry of Cooperatives**, the Committee **rejected** the proposal to reinstate a dedicated Ministry of Cooperatives as the current structure (Ministry of Cooperatives & MSMEs) is sufficient.

(77) On the **New Clause of Cooperative Regulatory Authority** (Insider Lending Rules), the Committee **adopted** the proposal of strict rules on loans to directors/employees, however the Bill does not currently regulate loans. Committee proposed expansions of SASRA's (Savings and Credit Cooperative Societies Regulatory Authority) role (Act) is necessary without creating a new body. Subsume SACCO's Act and rename SASRA as the Cooperative Regulatory Authority (General review of SASRA the policy is essential.)

(78) On **New Clause Acquisition and Disposal of Assets**, the Committee **adopted** the proposal to mandate Cooperatives to develop procurement policies with a system that is fair, equitable, transparent competitive and cost effective. Committee noted that Clause 146 already requires fair procurement, but cooperatives can follow their bylaws instead of the Public Procurement Act.

(79) On **New Clause under the Acquisition of a Company/Business by a Cooperative**, the Committee **adopted** the proposal that it will require 2/3 majority member approval for acquisitions but dropped the need for Commissioner/County Commissioner of Cooperative approval.

(80) On **New Clause under the Partnerships/Joint Ventures Using Cooperative Funds**, the Committee **adopted** the requirement of 2/3 member approval but removed Director/Commissioner involvement. All proposed Penalty clauses were considered. This will enhance member control by safeguarding cooperative funds; strengthen oversight and investment governance; prevent unauthorized and risky financial commitments; hold beneficiaries accountable and ensure financial recovery; introduce financial penalties to deter mismanagement

(81) On **New Clause in relations to County** Cooperative ADR Committee, the Committee **rejected** the Establish a county-level ADR committee for cooperative disputes and retain the provisions as in the Bill. This is because of the existing mechanisms (Cooperative Tribunal, Intergovernmental Forum, Apex Cooperative ADR) suffice

(82) On **AI** Proposal on Penalties, the Committee **adopted** the proposal that the Penalties should be incremental (start low, increase for repeat violations).

CHAPTER SIX: COMMITTEE RECOMMENDATIONS

The Committee having considered the Cooperatives Bill, 2023 (National Assembly Bills No. 7 of 2024) recommends that the House approves the Bill with below proposed amendments.

(1) Long Title

THAT Long Title of the Bill be amended because the existing framework for Cooperatives in Kenya are overly focused on bureaucratic offices, failing to adequately address the regulatory and developmental needs of Cooperatives within the country's devolved governance structure.

Justification: The Committee resolved to propose amendment that will aims to reform the system by shifting focus from bureaucratic processes to better support Cooperatives' growth and regulation, aligning with Kenya's devolved governance model. The Committee endorsed the proposal as an effective solution to these challenges.

(2) Clause 2 – Interpretation

THAT Clause 2 be amended –

'**Secondary Cooperative**' as **Intracounty secondary** cooperative as cooperative whose membership is intracounty primary cooperative and **Intercounty secondary** cooperative as cooperative whose membership is intercounty primary cooperatives

Committee resolved to propose amendment to define '**Primary Cooperative**' as whose membership is **intracounty primary** cooperative (operating within one county) and an **intercounty primary cooperative** (expanding across at least three counties with 500+ members per new county, initially registered as intracounty).

The Committee also acknowledged the rationale to define "**multipurpose**" but **rejected** the definition due to its absence in the Bill. However, noted that Clause 21 requires Commissioner approval for Cooperatives with more than two objects

The Committee **adopted** the proposal to the definition "bylaws" as it will enrich the Bill, aligning it with Clause 37 and specifying registration authority distribution (Primary/Secondary - County Director; Apex/Federations - Commissioner).

The Committee **rejected** the proposal of renaming **"Cooperative Technical Officer"** to **"Cooperative Officer"** The current name of Cooperative Technical officer does not confuse the public as stated by the stakeholder because the roles and responsibilities of the position are clearly defined and understood.

Committee **adopted** the proposal to define word '**levy fund**' and proposed to provide new definition of 'levy fund' as assets set aside from net surplus of cooperative for investment in fixed assets and liquid assets, shares, supporting working capital and settlement of liabilities

Committee resolved to define '**levy fund**' as the payment made by cooperatives under section 153

Committee resolved to provide new definition of '**reserve fund**' as assets set aside from net surplus of cooperative for investment in fixed assets and liquid assets, shares, supporting working capital and settlement of liabilities

Committee proposed to replace the word '**County Director**' wherever it appears in the Bill to '**County Commissioner of Cooperatives**'. This will reflect a more directive role

Committee resolved to define **diaspora**-based member" as a member who is a Kenyan citizen but is not resident in Kenya

Justification: The Committee proposed amending the definitions to eliminate ambiguity in cooperative classification, ensure consistent legal interpretation, and enhance regulatory clarity by clearly specifying the roles of County Directors and the

Commissioner in bylaws registration.

(3) **Clause 7-Staff of the Office of the Commissioner**

That Clause 7 be amended to create the Office a Deputy Commissioner.

Justification: Committee resolved to **reject** the proposed amendment and retain the Bill as it on the ground that the proposed Bill already provided for the appointment of other technical officers in the Commissioner's office and the position of a Deputy Commissioner already exists within the Public Service. Committee resolved the technical officers in Commissioners office should have relevant academic qualifications in Cooperative management and practice and comply with Chapter Six of the Constitution. The Committee further resolved to provide a three-year transition period .

(4) **Clause 8(1) – Vacancy in the Office of the Commissioner7 be**

THAT Clause 8 (1) be amended to set a time limit for acting appointments and mandate a permanent appointment if the vacancy exceeds the set time.

Justification: The Committee resolved to propose an amendment **to set a 6-month limit** for acting appointments (initial 3 months, renewable once) and mandate permanent appointment if the vacancy exceeds 6 months to **prevent prolonged acting roles,** ensuring stable leadership and accountability.

(5) **Clause 8(2) – Commissioner's Qualifications**

THAT Clause 8(2) be amended to outline **specific academic/experiential competencies** for the Commissioner.

Justification: The Committee resolved to propose an amendment to outline specific academic competency of a Commissioner to have a Bachelor degree in Cooperative management with a minimum of twenty years' experience in senior management in public service of which 10 should be in the cooperative sector in a position not lower

than county commissioner of cooperatives and meet Chapter Six of the Constitution requirement with a term limit of **(5)**five years, renewable once, or until the statutory retirement date, whichever comes first.

(6) Clause 9(2)(b) – Commissioner's Functions

THAT Clause 9(2) (b) **be retained** alongside Clause 16 (intergovernmental framework).

Justification: The Committee resolved to retain Clause 9(2)(b) as it defines the Commissioner's **operational functions,** while Clause 16 establishes **coordination mechanisms**. Both are complementary.

(7) Clause 9(2) Registration of Cooperative

THAT Clause 9(2) (c) be amended to align it to Constitutional delineation of roles.

Justification: The Committee resolved to propose an amendment that will delineate the functions and align with Fourth Schedule to the Constitution and Gazette Notice no. 16472 dated 16th December that delineates the functions of County Governments and National government where County Governments are mandated to register primary and secondary Cooperatives and National Government are mandated to register the federal and Apex Cooperative.

(8) Clause 9(2)(d)-Registration

THAT Clause 9(2) (d) be deleted and replace it with new provisions that will task the Commissioner to develop guideline for registration.

Justification: The Committee resolved to reject this proposal and mandated the Cabinet Secretary to provide for a form of the Certificate of registration to ensure uniformity and legal validity.

(9) Clause 9(2)(e) – Access to Information

THAT Clause 9(2)(e) be **amended –**

(a) Insert a new subclause granting counties access to cooperative data.

(b) Empower the Commissioner to **conduct inquiries** via an integrated management system.

Justification: The Committee resolved to introduce a new subclause that will grant Counties access to Cooperative data and conduct inquiries via an integrated management system to **promote** transparency and strengthen regulatory oversight through data-sharing. Committee also resolved to provide for delineation of the functions between the Commissioner and the respective County Commissioner of Cooperatives. Committee observed that it is necessary for the Commissioner to conduct inquiries in to intercounty primary, secondary Cooperatives, Cooperative Federations and Apex Cooperatives. However, inquiries in to the affairs of intracounty primary and secondary Cooperatives should done by the respective County Director of cooperatives

Committee **rejected** the proposal to replace wherever the Commissioner name appears in the Bill add "or Director as applicable" so as to read Commissioner or Director. The Committee observed that while the Bill delineates functions between the Commissioner and the Director of Cooperatives, not all functions assigned to the Commissioner would be carried out by the Director. As such, amending the current provisions could introduce ambiguity. Committee therefore resolved to make amendments in the entire Bill to clarify the roles of the Director and those of Commissioner to ensure delineation of functions as per the Constitution and the Gazette.

The Committee **adopted** the proposal to provide for delineation of the functions between the Commissioner and the respective County Directors of Cooperatives. Committee observed that it is necessary for the Commissioner to conduct inquiries in to intercounty primary, secondary Cooperatives, Cooperative Federations and Apex Cooperatives. However, inquiries in to the affairs of intracounty primary and secondary Cooperatives should done by the respective County Director of cooperatives.

(10) <u>Clause 12-Staff of the office of the County Director for Cooperatives</u>

THAT Clause 12 be amended to include qualification for Technical officer.

Justification: The Committee resolved to propose amendment to the Bill that will include that the technical officers appointed under subsection (1) shall have relevant

academic qualifications, competencies and experience in Cooperative management and practice and in compliance with Chapter six of the Constitution. The Committee further resolved to provide a three-year transition period.

(1) **Clause 13(1) – Vacancy in County Commissioner of Cooperatives**

THAT Clause 13(1) **be amended** by Setting timelines for filling vacancies without requiring County Executive Committee (CEC) approval for acting appointments.

Justification: Committee resolved to propose an amendment of filling of vacancies without requiring County Executive Committee (CEC) approval for acting appointments will reduces bureaucratic delays in critical appointments.

(2) **Clause 13(2) – Vacancy in the office of the County Commissioner of Cooperatives**

THAT Clause 13(2) **be amended** by setting qualification for County Director position acting appointments.

Justification: Committee resolved to propose an amendment the need to provide for the academic and experiential competencies to fill the position of County Commissioner of Cooperatives to have a Bachelor degree in Cooperative management with a minimum 10 years' experience in cooperative management and practice and meets Chapter Six of the Constitution requirement.

(3) **Clause 14(1) - Functions of County Director for Cooperatives**

THAT Clause 14(1) be amended to include the County Executive Committee Member in oversight responsibilities.

Justification: Committee resolved to propose an amendment to have the Director report to the County Executive Committee Member as one of his functions. The Committee resolved to maintain the County Director of Cooperatives but create a functional

connection with the County Executive Committee member in charge of Cooperatives under subclause (2).

(4) **Clause 14(2) - County Director's Functions**

THAT Clause 14(2) retain the original provisions without modification.

Justification: Committee resolved retain original provisions as preserves essential management functions necessary for effective Cooperative administration, avoids unintended consequences that might arise from proposed changes, maintains operational continuity in cooperative oversight, and protects against regulatory gaps that could emerge from eliminated functions.

(5) **Clause 14(2)(c) & (d) - Specific County Director Functions**

THAT Clause 14(2)(c) & (d) retain the original provisions and adopt the proposals by Council of Governors.

Justification: Committee resolved to retain original provisions and adopt the proposals by Council of Governors to balance stability and improvement by keeping core functions while incorporating Governors' input, respects intergovernmental cooperation through the adoption of the Council of Governors' recommendations, ensures practical implementation by maintaining proven operational frameworks, and facilitates cooperative development through incremental improvements rather than disruptive changes.

(6) **Clause 14(2) - Alignment with Gazette Notice 16472 of 2024**

THAT Clause be amended to update provisions to reflect Gazette Notice No. 16472 of 2024 and Clearly delineate functions between Commissioner and County Director.

Justification: Committee resolved to propose an amendment to update provisions to reflect Gazette Notice No. 16472 of 2024 and clearly delineate functions between Commissioner and County Director. This will ensure legal consistency with the current regulatory framework, prevents jurisdictional overlaps through clear role definition,

enhances operational efficiency by eliminating ambiguity in responsibilities, implements functional delineation as per constitutional and statutory requirements.

(7) **Clause 15-Annual Report by the county director for Cooperatives**

THAT Clause 15 be amended to provide timeline to prepare and submit annual performance report

Justification: Committee resolved to propose an amendment for not later than three months after the end of the financial year for County Commissioner of Cooperative to prepare submit their annual report on the performance of their respective intracounty primary and intracounty secondary cooperative to the County Assembly, Commissioner of County Executive Committee. This will ensure timely accountability and transparency in the performance of intracounty primary and secondary cooperatives.

(8) **Clause 16(1) – Intergovernmental Forum**

THAT Clause 16(1) be amended to allow Forum to be co-chaired **by** the Commissioner and Chairperson of the caucus of the County Executive Committee Member. Further County Executive Committee be allowed to nominate representatives if need be.

Justification: Committee resolved to propose an amendment to allow Forum to be Co-Chaired by the Commissioner and the Chairperson of the caucus of the County Executive Committee Member. By allowing County Executive Committee to nominate representatives if need be, aligns with devolution by ensuring the County Governments' Executive role in Cooperative Governance.

(9) **Clause 20 –Primary Cooperatives**

That Clause 20 be amended to accommodate producers and **retain the** Cooperative structure.

Justification: Committee resolved to propose amendment to the Bill that will accommodate producers that carry out all the requirement and retain the Cooperative structure as it's the best practice that will ensure order within the Cooperative sector.

Committee further resolved to propose an amendment to provide for members intending to join two or more cooperatives to disclose their existing memberships to each new cooperative and, before applying for a loan, provide letters from all cooperatives confirming their financial liabilities.

Clause 21 -Functions of the Inter-Governmental Cooperatives Relations Technical Forum

That Clause 21 be amended to provide for delineation of function.

Justification: Committee resolved to propose amendment to substitute Commissioner with County Commissioner of Cooperatives to handle the registration of intracounty primary and secondary Cooperatives to align with delineation of functions between the Commissioner at the National level and the Directors at the County level.

Committee **rejected** the proposal to amend the Clause to provide that Commissioner should not register a Cooperative with more than one activity and not objective. The Committee noted that the intention of the Bill was not to limit activities but objectives since several activities can be employed towards the attainment of one objective. Activities are the specific actions or tasks undertaken to achieve an objective. Objectives are broader and more strategic, while activities are more concrete and operational.

(10) Clause 22 –Objects of secondary Cooperatives

That Clause 21 retain objects of Secondary Cooperatives.

Justification: Committee resolved to retain clause as it in the Bill to avoid limiting secondary Cooperative to a single function as they can perform more than one function.

(11) Clause 23 (3)-Objects of Cooperative federations

That Clause 23 (3) be amended to clarify Federative Cooperative Membership.

Justification: Committee resolved to propose amendment to clarify the membership of Federative Cooperative to include both primary and secondary Cooperatives.

(12) Clause 24-Registration and subscription to the Apex Cooperative

THAT Clause be amended to specify subscription to Apex.

Justification: Committee resolved to propose amendment to make subscription to the Apex Cooperative optional.

(13) Clause 29,30,32,33,34,35,37,39 – Provisional Registration

THAT Clause **29,30,32,33,34,35,37,39** be amended to provide timeline for registration of Cooperatives by both the Directors and the Commissioner and clarity on the Membership of Cooperative Federation and Apex Cooperative.

Justification: The Committee resolved to propose an amendment to introduce 30-day registration deadline by the Director at County level for primary and secondary, and the Commissioner at National level to register Apex and Federation in order to streamline **efficiency** and prevent backlog in registrations. (delineation of function between the Commissioner at the National level and the Directors at the County level).

(14) Clause 36-Cooperative as a body corporate and prohibition against dual registration

That Clause 36 be amended to provide for multiple industry registration.

Justification: The Committee resolved to propose an amendment to subclause (2) that prohibits the registration of Cooperative under any other law as it limits the business models of the Cooperative that require multiple industry specific registration. Committee noted that there was need to allow for Cooperatives to get the necessary legal requirements to enable them serve their members effectively.

(15) Clause 38-By-laws of a Cooperative to be binding

That Clause 38 be amended to include Nominee Member.

Justification: The Committee resolved to propose an amendment to include Nominee of Member as it will enrich the Bill.

(16) **Clause 39 – Appeals Against Refusal to Register**

THAT Clause 39 be amended to set a window period within which one can appeal after refusal notification.

Justification: Committee resolved to propose an amendment to set **30-day window** to appeal after refusal notification **to provides legal certainty** for aggrieved parties.

Committee **rejected** the proposal by the Ministry to Include a first appeal to the Cabinet Secretary before the tribunal, the committee observed that the proposal to the tribunal was satisfactory.

(17) **Clause 40 & 43- Signature by the Commissioner and mandatory usage of names**

THAT Clause be amended to include both the Commissioner and the County Commissioner of Cooperatives

Justification: This will provide delineation of functions and prevent jurisdiction overlap.

(18) **Clause 44-Qualification for Membership**

That Clause 44 be amended to expand qualification for Membership to include persons in diaspora.

Justification: The Committee resolved to propose an amendment to include persons in diaspora as a member of Cooperative, this is because the qualifications for Membership do not lock out a person who is in the diaspora.

(19) **Clause 47 Voting rights of Members**

That Clause 47 retain the word 'shall'.

Justification: Committee resolved to reject the proposal to delete "shall" and replace it with "may" noting that the right to vote should not be restricted.

Committee proposed further to amend the Bill to include Board of Directors provide for electronic voting by members of the cooperative and ensure members are facilitated to vote by secret ballot in the case of any matter requiring special resolution of two thirds (2/3) of the members.

(20) <u>Clause 53 &54 Accounts and Audit.</u>

That Clause 54 be amended to require Cooperatives and Sacco's with majority members from public service to maintain good audit and account records.

Justification: Committee resolved to propose amendments to require Cooperatives and Sacco's, particularly those with mostly Public Service Members, to maintain proper accounts, submit them for auditing, and publish financial statements for transparency, while also mandating additional financial reporting to the Director of Cooperatives to ensure greater accountability and transparency of the said Cooperatives.

The Committee resolved to amend Clause 53, stipulating that estimates must be provided to members at 21 before the date of the General Meeting.

Committee further proposed new amendment to change enforcement authority by removing the County Director in favor of only the Commissioner as the authority to cancel general meetings for non-compliance, and significantly introduces the establishment of two new oversight offices the **National Audit Director** and the **County Audit Director** of Cooperatives with detailed provisions on their appointment, qualifications including(have a bachelor's degree in finance, accounting, or economics from a university recognized in Kenya, a minimum of ten years' experience in auditing or public finance management, meet the requirements of Chapter Six of the Constitution, and be a practicing member in good standing of a professional accounting body recognized by law), functions (mainly auditing and verification of cooperative accounts according to international standards), and a fixed five-year renewable terms to enhance auditing and oversight of cooperatives at both national and county levels.

Justification: This new proposal aims to strengthen audit and financial oversight mechanisms across various levels of cooperatives, ensuring more rigorous verification of audited accounts, improving transparency, accountability, and compliance with recognized auditing standards. It also seeks to professionalize and formalize the auditing function through appointed officials with specified qualifications and structured recruitment, thereby addressing gaps in financial governance and enforcement present in the original clause. Additionally, increasing the notice period enhances member engagement and preparedness for meetings. Overall, the amendments seek to cure weaknesses in financial monitoring, enforcement authority clarity, and cooperative governance **Clause** 54 standards.

(21) <u>Clause 54- accounts and audit</u>

THAT clause 54 be amended to provide for Cooperatives to prepare detailed reports

Justification: Committee resolved to propose amendment to expand the required financial documents cooperatives must prepare, including additional detailed reports tailored to specific types of cooperatives such as SACCOs, member produce, transport, housing, and investment cooperatives. The proposal tends to extends responsibilities to include submitting these reports to newly established National and County Audit Directors for verification and certification, introduces penalties and offences for non-compliance and falsification, enhances auditing oversight processes, and empowers the Commissioner or County commissioner to impose stricter regulatory measures including board dissolution and supervisory interventions to ensure accountability and financial transparency. This amendment seeks to address gaps by providing more comprehensive, sector-specific financial reporting, strengthening audit verification and enforcement mechanisms, and improving governance and risk management frameworks within cooperatives.

(22) <u>Clause 55(12)-Audit Requirements</u>

THAT Clause 55(12) be amended to -

1. Strengthen audit requirements for all cooperatives

2. Grant Commissioner authority to:
   - Impose penalties for audit non-compliance
   - Compel holding of AGMs when not conducted
3. Develop policy framework for:
   - Offence provisions for audit violations
   - Penalty structures and enforcement mechanisms

Justification: Committee resolved to propose an amendment on Audit Requirements to enhance financial accountability by closing gaps in audit enforcement, protects member interests through mandatory compliance, aligns with Clause 55(12) on director accountability for unaudited statements, establishes clear consequences for non-compliance via structured penalties, and ensures transparency by guaranteeing regular AGM's under Commissioner oversight. The Committee resolved to have the Board of Directors held responsible for failure to cause an audit. In addition, the Committee resolved to empower the Commissioner and the Director to compel the holding of an Annual General Meetings.

(23) <u>Prohibition Against Side Selling</u>

THAT Clause 55 be amended to provide for provisions to criminalize side-selling of produce/diverting funds tied to loans and provide % fines on produce value violations and mandatory criteria for traders purchasing from members.

Justification: Committee resolved to propose an amendment on Prohibition Against Side Selling to protects Cooperative resources from fraudulent transactions, secures loan investments by preventing fund misappropriation, deters third-party exploitation through substantial financial penalties, maintains market integrity by regulating sales channels, and strengthens existing safeguards through enhanced collateral guidelines. Committee further resolved to **retain** Clause 154 of the Bill which requires the Cabinet Secretary to prescribe guidelines for use of collateral's for securing loans and mortgages in Cooperatives.

(24) <u>Clause 56 and 57 -General Meeting and Special General Meeting</u>

That Clause 56 & 57 be amended to provide for digital communication and consider provide members powers to make own decision

Justification: Committee resolved to propose an amendment to provide for digital platforms or governance including online voting and member communication as this would enrich the Bill.

Committee resolved to amend the Bill amendment to provide for Members to consider any reports on debt to equity ratio of the Cooperative. The Committee observed that members of the Cooperative should make their own decisions.

(25) Clause 60(2) - Delegate system of representation

THAT Clause 60(2) be amended to provide for membership approval of the setting subsidiary company.

Justification: Committee resolved to propose an amendment to have two thirds (2/3) of the membership approval on the setting up of a subsidiary company through general meeting and the additional approval of a Director to prevents asset privatization through rigorous approval processes, ensures democratic decision-making via a member super majority requirement, maintains operational transparency with a physical meeting mandate, aligns governance standards with existing investment protocols, and safeguards cooperative integrity from unilateral structural changes. Further, under clause 83, investment in subsidiaries is to be approved at a general meeting

(26) Clause 61(1) - Board Composition Standards

THAT Clause 60(1) **be amended** to provide for more representation in the Apex body.

Justification: The Committee resolved to propose an amendment to provide to increase the number of Board of Directors for the Apex Cooperative .Committee acknowledged that the Apex Cooperative, as a National body representing all cooperatives in the Country, requires special consideration to expand its board for broader representation, and thus amending the be Bill to grant the Commissioner discretion to increase the Board of Directors to a maximum of 15 members, ensuring inclusion of key cooperative

types such as producer, housing, savings and credit, savings and investment, transport, work, and consumer cooperatives within the membership.

Clause 61(2) – Board Term Limits

THAT Clause **61(2)** be amended to provide for term limit for Board Members

Justification: Committee resolved to propose to introduce a rotation system that replaces the automatic single additional full term, ensuring that only one third of the directors with the longest service since the last election retire and become eligible for re-election at any one time, thereby promoting staggered board turnover to maintain continuity and retain experience instead of replacing the entire board at once.

Clause 63& 64 -Board Members Eligibility and responsibility

THAT Clause 63 be retained to allow senior board member engage in political activities if they wish & clause 64 be amended to provide for crisis and data survey plan.

Justification: Committee resolved to **reject** the proposal on clause 63 to prohibit Board Members and senior management from political engaging in political activities, noting that Cooperative Directors receive no pay only expense reimbursements and that excluding political officeholders from board positions would be discriminatory, though employees could be restricted per their contracts, provided such terms are specified during recruitment rather than mandated by law.

Committee proposed to amend the Bill to provide for qualifications of Board member to have a minimum post- secondary level of education certificate and practice from recognized university in Kenya in cooperatives management unless exempted by the Cabinet Secretary or by the County Executive Committee member in accordance with regulation

Committee resolved to amend paragraph (c), (f), (i), (j), (k), and (m) which includes replacing terms, expanding criminal offenses, increasing penalties, and addressing incapacity. Committee resolved further resolved amend the changes to (i), (j), (k), and (m) while noted that (c) and (f) had already been implemented by the National

Assembly and that the incapacity Clause applies to board disqualification but not electoral eligibility.

Clause 64, Committee resolved to propose amendment to the Bill to task Board of Directors to provide for a crisis management plan, development and implementations of data protections and data survey.

(27) **Clause 66(3)(c) – Nomination Committee**

THAT Clause 66(3)(c) be amended to provide for how Nomination Committee is selected.

Justification: The Committee resolved to propose amendment to require that the Board of Directors or Supervisory Board to seek General Meeting approval for nominations and mandate that recruitment advertisements and the names of the Nomination Committee, be published in at least one major daily newspaper and on social media.

(28) **Clause 67(9)(a) - Amalgamation of Cooperatives**

THAT Clause 67(9)(a) be amended to provide for Cooperatives that opt to Amalgamate.

Justification: The Committee resolved to propose an amendment on Amalgamation of Cooperatives requiring dissolution and fresh registration for new entities. This will ensure legal clarity and facilitate the proper restructuring of amalgamated entities, promoting smoother transitions and organizational coherence. Additionally, they allow for the rescue of struggling Cooperatives through absorption, safeguarding member interests and sustaining cooperative viability.

THAT Clause 69 amend to all cooperatives engage in disposing members produce

Justification: This will allow Cooperative engaged in disposing members' produce to enter contracts binding members to sell specified produce quantities or pay liquidated damages for breaches, with such debts secured as charges on the member's immovable property, and requires new members to disclose any existing contracts of this nature

upon applying for membership. This promotes accountability, reduces risks of default, and facilitates smoother cooperative operations and fair member relations.

(29) Clause 73(1) - Failure to Remit Deductions

THAT Clause 73(1) be amended to be in line with functional delineation on issuance of demand notices.

Justification: The Committee resolved to propose amendment to provide for the County governments to issue demand notices for primary and secondary Cooperatives. The National government to issue agency notices for all Cooperatives including primary and secondary Cooperatives upon recommendation by the County governments within 7 days. The proposal is in line with the functional delineation. Committee **rejected** the proposal to mandate employers to deduct and remit SACCO loan repayments, noting that existing provisions already require compliance if requested by the employee without violating the one-third rule, and that the Bill already includes sanctions for non-remittance of deducted amounts.

(30) Clause 81 - Restriction on giving Loans

THAT Clause 81 be amended to provide for insider lending.

Justification: The Committee resolved to propose amendment provide for the procedure through which members of the Board of Directors or the employees of the Cooperatives can access loans within the Cooperatives.

The Cooperative employees and board members cannot act as guarantors for loans from their cooperative, limits loans or credit facilities to them to a maximum of 10% of the cooperative's gross loan portfolio, requires loan terms to be consistent with those for other members without favoritism, prohibits them from participating in decisions on their own loans, mandates monthly insider lending reports to the Commissioner, and empowers the Commissioner to require repayment, impose interest, and remove employees who fail to comply, with these provisions applying irrespective of any related legal prosecutions.

(31) **Clause 82 - Restriction on Borrowing**

THAT Clause 82 be amended to provide for conditions on borrowing

Justification: The Committee resolved to propose an amendment to require the Cooperative to publish its decision to take a loan in two newspapers of nationwide circulation and get the approval of the General meeting and ratification of the Commissioner or County director of Cooperatives to take the loan. The Committee further resolved to provide a threshold of debt to equity of 30% and require a debt management report be issued to members. The Committee agreed that any issue of borrowing decision should come from Members of the Cooperative with approval of 2/3 of members and not delegate member decision as it will be like an elite capture.

(32) **Clause 83 - Investment of Cooperative Funds**

THAT Clause 83 be amended to include a threshold for member approval on investment of Cooperative funds

Justification: The Committee resolved to propose an amendment of 2/3 Member approval, regulatory pre-approval for investments (feasibility reports required and finally cap to 25% of share capital for non-core real estate investments. To safeguard liquidity and member interests thus limits speculative investments. The Committee proposed further amendment to provide for clear guidelines on permissible investments for Cooperatives, including restrictions on high risk investments and resolved to amend the Bill to provide for separate account with independent signatories for Cooperative that wishes to engage in housing as an investment in order Prevent diversion of funds from core loan services. Committee rejected the proposal to have additional approval from the Commissioner or Director instead the Bill to provide for the CS to develop clear a policy documents shall provide regulations for the investments of funds under a Cooperative.

(33) **Clause 85(1)(b) - Investment in Companies**

THAT Clause 83 be amended to provide for approval for investment in Companies

Justification: The Committee resolved to propose an amendment to require

approval for majority share acquisitions of 2/3rd through ballot voting to investments in Companies and no additional approval by the Country Commissioner of Cooperative. Committee further resolved to amend the Bill to provide for Cooperative be allowed to participate in Public Private Partnership

(34) Clause 86 - Declaration of Bonus

THAT Clause 86 be retained in original provisions on declaration of bonus and reject reintroduction of Cooperative Officers to authorize payment.

Justification: The Committee resolved to reject the proposal to reintroduce Cooperative Officers to authorize payment. The existing oversight mechanisms are already captured in the Bill, including the role of County Directors (as outlined in Clauses 7 and 11), along with the approvals required at the Annual General Meeting (AGM) and robust audit processes, which provide sufficient safeguards to ensure accountability and proper governance. Introducing additional layers of oversight would create unnecessary bureaucracy, potentially slowing decision-making without adding meaningful value. The current framework strikes an appropriate balance between effective supervision and operational efficiency.

The Committee resolved to reject the proposal my Ministry of Cooperative to amend the Bill by deleting "accumulated" and "surplus," as doing so could allow cooperatives to pay dividends and bonuses from non-surplus funds, potentially leading to borrowing for such payments.

Committee resolved to propose amendment to require cooperative members, based on the board's recommendation and considering the cooperative's liabilities, to determine the annual percentage of net surplus to deposit into the reserve fund, while adding that the reserve fund must not exceed 1.05 times the cooperative's liabilities at the time of the general meeting

(35) Clause 94- Receiver to give notice of appointment

THAT Clause be amended to provide for timeline within which the receiver and giver of notice appointment to notify Commissioner or County Commissioner of

Cooperative

Justification: Committee resolved to propose amendment to require anyone obtaining an order to appoint a receiver or manager of a cooperative's property to notify the Commissioner or County Commissioner of Cooperative within seven days for registration, and that upon ceasing to act, the receiver or manager must notify the Commissioner or County Commissioner of Cooperative and the High Court again, ensuring proper communication and record-keeping with all relevant authorities.

(36) Clause 98 – Inquiry Jurisdiction

THAT Clause 98 amended to split jurisdiction on inquiry.

Justification: The Committee resolved to propose an amendment that splits jurisdiction to clarify enforcement responsibilities. Specifically, the Commissioner for Cooperatives will oversee surcharge enforcement for diaspora, federated, and apex cooperatives, while the Director of Cooperatives will handle enforcement for primary and secondary cooperatives. This change eliminates overlap and ensures clear role delineation under devolution.

The first-tier inquiry for primary and secondary cooperatives will be directed to the Director. If a Cooperative Member wishes to escalate the matter, they may request the Commissioner's intervention in writing. However, the Commissioner shall not intervene independently without first consulting the Director.

(37) Clause 99,100,101-Surcharge

THAT Clause 99,100,101 be amended to delineate the functions on surcharge.

Justification: The Committee resolved to propose an amendment to specify that the Commissioner for Cooperatives is responsible for surcharge enforcement for diaspora, Federative, and Apex Cooperatives, while the County Commissioner of Cooperatives is responsible for surcharge enforcement for Primary and Secondary Cooperatives. This

will ensure that both National and County Governments have equal and clearly defined responsibilities in enforcing financial recovery in Cooperatives under their jurisdiction.

Committee proposed amendment and resolved to amend clauses 99, 100, and 101 to specify that the National Audit Director Commissioner for Cooperatives is responsible for surcharge enforcement for diaspora, federative, and apex cooperatives, while the County Commissioner of Cooperatives is responsible for surcharge enforcement for primary and secondary cooperatives and ensure that both National and County governments have equal and clearly defined responsibilities in enforcing financial recovery in Cooperatives under their jurisdiction.

Committee proposed to amend the Bill by adding a new section 101A that provided the National or County Audit Director to apportion inquiry expenses between the cooperative, members or creditors requesting the inquiry, and officers involved, with their decision being final and any awarded expenses recoverable as a civil debt.

Committee stated it is important to note that a person liable to pay a surcharge has a right to appeal to the tribunal and then the High Court.

The Committee further resolved to propose an amendment to require the Commissioner to refer cases of criminal culpability to the DCI for further action, this will strengthen whose enforceability in the past has not been effective by ensuring accountability for wrongdoing.

(38) <u>Clause 105-Liquidation</u>

THAT Clause 105 be amended to provide for timeline for liquidation process and empower National Audit Director and County Audit Director in the Bill

Justification: The Committee resolved to propose an amendment specifying that liquidation must occur within six months. Additionally, the Committee decided to amend the Bill to empower the National or County Audit Director, following an inquiry or member petition, to recommend the dissolution and deregistration of a cooperative. The Commissioner or county commissioner may propose remedial actions, and if these are not met, file a liquidation petition with the High Court. Upon ordering liquidation,

the High Court will appoint a liquidator who must notify the relevant commissioner before proceeding with the liquidation. The amendment also revises appeal procedures to route through the High Court and Court of Appeal instead of the Cooperative Tribunal and updates all authority references from the Commissioner to the High Court and respective commissioners throughout the clause.

(39) Clause 109- Appointment of a Liquidator

THAT Clauses 109 be amended to specify the appointing authority for the Liquidator.

Justification: The Committee resolved to propose an amendment to provide for appointment of the Liquidator be done by the High Court.

(40) Clause 110 Qualification of a Liquidator

THAT Clauses 110 be amended to outline the required qualifications for the Liquidator

Justification: The Committee resolved to propose an amendment replace the Cooperative Technical Officer role with a with a requirement of at least five years' experience in Cooperative Management and inclusion of a person enlisted in the Attorney General's pool of liquidators.

(41) Clause 123 – Cooperative Tribunal

THAT Clause 123 be amended to expand membership representation in Tribunal.

Justification: The Committee resolved to propose an amendment to expand the membership from seven to nine (7 to 9) members, including representation from the County Government, to ensure broader participation in dispute resolution. Additionally, the Committee agreed to further amend the clause to require that members possess expertise in finance or dispute resolution.

Furthermore, it was resolved that the Tribunal's Chairperson must be an advocate of the High Court of Kenya with at least seven years of experience. The amendment also includes provisions for verifying the good standing of other Tribunal members with

relevant professional bodies. These changes align with best practices and strengthen the overall effectiveness of the Bill.

(42) Clause 125-Renumeration and Term of Office Members of the Cooperative Tribunal

THAT Clause 125 be amended to increase the term limit for the members of the Cooperative Tribunal.

Justification: Committee resolved to propose an amendment to increase the term from three years to five years renewable once. This will align the term of this tribunal to the likes of the Tax and Rent whose term is five years.

(43) Clause 127 -Vacancy in the Office of Cooperative Tribunal

THAT Clause 125 be amended to specify the conditions that qualify the Office of the Cooperative Tribunal to be declared vacant.

Justification: Committee resolved to propose an amendment introducing a new clause to formally recognize the death or resignation of a member (submitted in writing) as automatic triggers for vacancy.

(44) Clause 128 -Jurisdiction of the Cooperative Tribunal

THAT Clause 125 be amended to provide for timeline for conclusion of matters/cases referred to Tribunal.

Justification: Committee resolved to propose an amendment to provide for conclusion of matters/cases referred to the Tribunal be concluded within **six** months, as it would enhance the Bill

(45) Clause 131- Orders by the Cooperative Tribunal

THAT_Clause 131 be amended to provide for decisions made by the Tribunal be published.

Justification: Committee resolved to propose an amendment to provide for publications of the decisions of the Tribunal on their website to ensure public access of the order and judgement.

(46) Clause 146- Procurement and Disposal of in Cooperatives

THAT Clause 146 be amended to provide for Cooperatives developing their own procurement guideline.

Justification: Committee resolved to propose an amendment to allow Cooperatives to develop their own procurement guidelines. These guidelines will be drafted by the Intergovernmental Cooperatives Relations Technical Forum and subsequently gazetted by the Cabinet Secretary. This approach ensures that Cooperatives are not bound by the Public Procurement Act while still upholding principles of fairness, transparency, and competitiveness in accordance with Cooperative Bylaws.

(47) Clause 152-Remuneration to officers and members of Cooperatives

THAT Clause 152 be amended to simply penalty for offences

Justification: Committee proposed amendment and resolved to simplify the penalty for offences to a fine not exceeding fifty thousand shillings, imprisonment up to one year, or both, and if the offence involves contravention of subsection (1), the person must repay any remuneration or payments received from the cooperative, with default treated like failure to pay a tribunal-imposed fine.

(48) Clause 153 – Development Fund Allocation

THAT Clause 153 be amended to redistribute funds between the National Government and the County Government.

Justification: Committee resolved to propose an amendment to establish the National Co-operative Development Fund and the County Co-operative Development Fund to support cooperative development through education, training, research, and related activities. Both Funds are governed by respective Boards of Trustees appointed by the

Cabinet Secretary (national) and Governors (county), with members drawn from cooperative representatives and experts meeting specific qualifications. The Boards are corporate entities with powers to sue, acquire property, borrow, and contract. The Funds receive revenue mainly from levies on cooperatives, donations, and grants, and must keep audited accounts while investing surplus funds securely. The Boards' expenses are capped and subject to approval processes. Chief Executive Officers of the Funds are competitively recruited, with defined qualifications and terms. Members of the Boards serve staggered three-year terms renewable once and may be removed under specified conditions. The Funds' activities, disbursements, and accounts are transparent, with public access to records subject to a fee, and quarterly reports submitted to the Commissioner. The National Fund's headquarters is in Nairobi, while the County Funds are based at county headquarters, with secretariat support provided by the Ministry in charge of Treasury. This framework is designed to enhance cooperative capacity building and resource management at both national and county levels.

(49) Clause 154-Regulation

THAT Clause 154 be amended to provide for how certificate of registration will look like

Committee resolved to amend the Bill to provide for how the certificate of registration will look like. Clearly prescribed certificates also ensure compliance with legal requirements and strengthen trust among cooperative members and stakeholders

(50) Clause 157 – Other Powers of the Commissioner

THAT Clause 157 be amended to clarify the Commissioner's powers over Cooperative Federations.

Justification: The Committee resolved to propose an amendment to provide for delineation of functions to clarify the powers of the Commissioner as it ensures functional clarity in regulatory oversight of federations, avoiding jurisdictional conflicts.

(51) Clause 158 – Other Powers of the Director for Cooperatives

THAT Clause 158 should be amended to clarify the powers of the Director for Cooperatives over the County Executive Commissioner.

Justification: Committee proposed an amendment to clearly define the roles and responsibilities of the County Commissioner of Cooperative and the County Executive Commissioner. This clarification aims to uphold devolved governance while ensuring accountability to county leadership. While the Director retains day-to-day oversight, they will report to the County Executive Commissioner.

(52) Reintroduction of the Ministry of Cooperatives

THAT Bill be amended to introduction of the Ministry of Cooperatives as a standalone by stakeholders was rejected.

Justification: The Committee resolved to reject this proposal as the current Ministry of Cooperatives & MSMEs is sufficient for streamlined administration.

(53) New Clause – Establishment of County Cooperative Dispute Resolution (ADR),

THAT Bill be amended **to establish** County-level ADR.

Justification: Committee resolved to reject the proposal as existing mechanisms provided in the Bill (Cooperative Tribunal, Intergovernmental Forum, Apex ADR) are sufficient for dispute resolution.

(54) New Clause on acquisition of a Company or business by a Cooperative

THAT Bill be amended to create independent Cooperative Regulatory Authority to oversee all Cooperative sectors by merging SASRA into it.

Justification: Committee resolved to reject the proposal, acknowledging that SASRA has played a key role in effectively regulating SACCOs. Instead of establishing a new body, the Committee proposed an amendment to expand SASRA's mandate. This would involve subsuming the SACCOs Act under SASRA's framework and renaming

the institution as the **Cooperative Regulatory Authority** to better reflect its broader regulatory scope.

(55) **Proposal on Penalties**

THAT Bill be amended to provide for penalties to be incremental.

Justification: The Committee resolved to adopt the proposal for the incremental penalty (low for first offenses, higher for repeats) as it deters repeat violations while allowing corrective opportunities.

SIGNED.....DATE.....

HON. ISSA JUMA BOY, MP

CHAIRPERSON, STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Trade, Industrialization and Tourism
Annex 2	Committee Stage Amendments
Annex 3	The Cooperatives Bill, 2024 (National Assembly Bills No. 7 of 2024)
Annex 4	Advertisement as published in the *Daily Nation* and *Standard* newspapers on 5th March, 2025
Annex 5	Matrix of the submissions as considered by the Committee
Annex 6	Copies of stakeholder submissions on the Bill