REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (FIFTH SESSION)

THE NATIONAL ASSEMBLY

ORDERS OF THE DAY

THURSDAY, NOVEMBER 05, 2026 AT 2.30 P.M.

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Questions and Statements

8*. THE ALCOHOLIC DRINKS AND DRUGS CONTROL LAWS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 63 OF 2026)
(The Leader of the Majority Party)

First Reading

9*. MOTION – CONSIDERATION OF THE MEDIATED VERSION OF THE COOPERATIVES BILL (NATIONAL ASSEMBLY BILL No. 7 OF 2024)
(The Co-Chairperson, Mediation Committee on the Cooperatives Bill, 2024)

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150(3), this House **adopts** the Report of the Mediation Committee on the Cooperatives Bill (National Assembly Bill No. 7 of 2024), *laid on the Table of the House on Wednesday, 4th November 2026,* and **approves** the Mediated version of the Cooperatives Bill (National Assembly Bill No. 7 of 2024).

(The Mediated version of the Bill is published in the Notices)

10*. COMMITTEE OF THE WHOLE HOUSE

(i) The Kenya Judiciary Academy Bill (National Assembly Bill No. 42 of 2025)
(The Chairperson, Departmental Committee on Justice and Legal Affairs)

(ii) The Books and Newspapers (Amendment) Bill (National Assembly Bill No. 47 of 2025)
(The Chairperson, Parliamentary Broadcasting and Library Committee)

*...../11**

11*. THE TOURISM (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2026)
(The Leader of the Majority Party)

Second Reading

12*. THE TRADE DESCRIPTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2026)
(The Leader of the Majority Party)

Second Reading

13*. MOTION – REPORT ON INSPECTION VISITS TO CONSTITUENCY OFFICES IN NAKURU COUNTY
(The Chairperson, Committee on Members' Services and Facilities)

THAT, this House **adopts** the Report of the Committee on Members' Services and Facilities on inspection visits to Constituency Offices in Nakuru County, *laid on the Table of the House on Thursday, 11th June 2026*.

14*. THE KENYA INTELLECTUAL PROPERTY BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2026)
(The Leader of the Majority Party)

Second Reading

15*. MOTION – NINETEENTH REPORT ON THE AUDITED FINANCIAL STATEMENTS OF THE NG-CDF FOR CONSTITUENCIES IN NAIROBI AND KAJIADO COUNTIES FOR FYs 2013/2014 TO 2024/2025
(The Chairperson, Decentralized Funds Accounts Committee)

THAT, this House **adopts** the Nineteenth Report of the Decentralized Funds Accounts Committee on its consideration of the audited financial statements of the National Government Constituencies Development Fund (NG-CDF) for Constituencies in Nairobi and Kajiado Counties for the Financial Years 2013/2014, 2014/2015, 2015/2016, 2016/2017, 2017/2018, 2018/2019, 2019/2020, 2020/2021, 2021/2022, 2022/2023, 2023/2024 and 2024/2025, *laid on the Table of the House on Tuesday, 6th October 2026*.

16*. MOTION – THIRTEENTH REPORT ON EXAMINATION OF AUDITED FINANCIAL STATEMENTS FOR VARIOUS TECHNICAL AND VOCATIONAL COLLEGES AND TECHNICAL TRAINING INSTITUTES
(The Chairperson, Public Investments Committee on Governance and Education)

THAT, this House **adopts** the Thirteenth Report of the Public Investments Committee on Governance and Education on its Examination of audited financial statements of the following Technical and Vocational Colleges & Technical Training Institutes for the financial year 2021/2022, 2022/2023, 2023/2024 and 2024/2025, *laid on the Table of the House on Thursday, 9th April 2026* –

...../16*(Cont'd)

(i) Likoni Technical and Vocational College;
(ii) Riragia Technical and Vocational College;
(iii) Taita Taveta Technical and Vocational College;
(iv) Kakrao Technical and Vocational College;
(v) Kericho Township Technical and Vocational College;
(vi) PC Kinyanjui Technical and Training College;
(vii) Mathenge Technical Training Institute;
(viii) Nkabune Technical Training Institute;
(ix) Laisamis Technical and Training Institute; and
(x) Kisiwa Technical and Training Institute.

17*. MOTION – REPORT ON THE PEACE AND SECURITY ENGAGEMENT IN ISIOLO COUNTY

(The Chairperson, Committee on National Cohesion and Equal Opportunity)

THAT, this House **adopts** the Report of the Committee on National Cohesion and Equal Opportunity on the peace and security engagement in Isiolo County, *laid on the Table of the House on Wednesday, 1st July 2026*.

18*. MOTION – REPORT ON BUDGET IMPLEMENTATION MONITORING FOR THE FINANCIAL YEAR 2025/2026

(The Chairperson, Departmental Committee on Regional Development)

THAT, this House **adopts** the Report of the Departmental Committee on Regional Development on Budget Implementation Monitoring for the Financial Year 2025/2026 for the following State Departments, *laid on the Table of the House on Tuesday, 13th October 2026* –

(i) Vote 1032 – State Department for Devolution;
(ii) Vote 1033 – State Department for Special Programmes; and
(iii) Vote 1036 – State Department for ASALs & Regional Development.

Denotes Orders of the Day

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*...../Notices**

NOTICES

I. MEDIATED VERSION OF THE COOPERATIVES BILL (NATIONAL ASSEMBLY BILL NO. 7 OF 2024)

THE COOPERATIVES BILL, 2024

A Bill for

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 Commissioner for Cooperatives in each county government; to provide for promotion, registration, and regulation of Cooperatives; to provide for inter-governmental Cooperative relations; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Cooperatives Act, 2026. Short title.

2. In this Act, unless the context otherwise requires— Interpretation.

"members' produce" means any produce obtained by members of a Cooperative or marketed by a Cooperative including the produce of agriculture, animal husbandry, forestry, fisheries or handicrafts;

"annual general meeting" means an annual meeting for all members duly convened by the Cooperative to conduct ordinary business of a Cooperative;

"Apex Cooperative" means the Cooperative established at the national level of government to promote Cooperative development and represent the interests of Cooperatives locally and internationally;

"Authority" means the Sacco Societies Regulatory Authority established pursuant to the Sacco Societies Act;

"board of directors" means the governing body of a Cooperative elected or appointed by the members in accordance with this Act;

"bonus", in relation to a member of a Cooperative, means that member's share of the surplus of the Cooperative, which is divided amongst its members, calculated by reference to the proportion which that member's volume of business with the Cooperative bears to the total volume of business done by the Cooperative; *Cap.490B.*

"by-laws" means the internal rules made by a Cooperative registered under this Act;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for Cooperative development;

"capital" means the permanent members equity in the form of common stock and includes all disclosed reserves, retained earnings, grants or donations;

"Commissioner" means the Commissioner for Cooperative Development appointed under section 6;

"common bond" means similar socio-economic interests of members in a Cooperative;

"contributor" means a person liable to contribute to the assets of a Cooperative in the event of its being wound up and includes any other person deemed to be a contributor;

"Cooperative" means a Cooperative duly registered under this Act;

"Cooperative company" means a company incorporated under the Companies Act which is owned or controlled by one or more Cooperatives;

"Cooperative federation" means a Cooperative which draws its membership from primary or secondary Cooperatives in a particular value chain, business line or sub-sector;

"Cooperative technical officer" means an officer appointed by the Public Service Commission or a County Public Service Board for administration of this Act;

"Cooperative Tribunal" means the Tribunal established under section 134;

"county commissioner" means county commissioner of cooperatives;

No. 14 of 2008.

"county commissioner of cooperatives" means a public officer appointed by a County Public Service Board to be responsible for the promotion, regulation, supervision and development of Cooperatives in a county;

"county executive committee member" means the county executive committee member for the time being responsible for Cooperative development in a county;

"date of dissolution" means the date on which the Commissioner's order cancelling the registration of a Cooperative takes effect;

"deposit" means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the Cooperative to receive it at the risk of the Cooperative receiving it;

"diaspora-based member" means Fa Kenyan citizen not resident in Kenya;

"dividend", in relation to a member of a Cooperative, means that member's share of the surplus of the Cooperative which is divided amongst its members, calculated by reference to the proportion which that member's share capital bears to the total share capital of the Cooperative;

"employee" means any person who receives remuneration or payment for produce or service from employer;

"employer" means any person, firm or organization holding remuneration or payment for produce or service of a member of a Cooperative;

"holding Cooperative" means a non-trading Cooperative whose activities are limited to holding investments on behalf of its members;

"inter-governmental cooperative relations technical forum" means a technical forum established under this Act to coordinate Cooperative activities between the national government and county governments;

"limited liability" means the Cooperative shareholders' liability for debts of their Cooperative is restricted to their share subscriptions to the Cooperative;

"member" includes a person or a Cooperative joining in the application for the registration of a Cooperative, and a person or Cooperative admitted to membership after registration in accordance with the by-laws;

"nominee" means a person to whom a member's interest may be transferred to incase of death or total incapacitation;

"officer" in relation to a Cooperative, means a director or any other person, by whatever name or title he may be called or described, empowered under any Regulations made under this Act or by-laws of a Cooperative to carry out functions relating to the overall direction of that Cooperative or takes part in the general management thereof;

"personal representative" means any person who, under written law or custom, is responsible for administering the estate of a deceased person;

"primary Cooperative" means a Cooperative formed by individual persons for purposes of promoting members' common socio-economic needs and aspirations;

"promoters" means the persons who come together to initiate the formation of a Cooperative;

"Sacco" means a savings and credit Cooperative registered under Part IV of this Act;

"secondary Cooperative" means a Cooperative whose membership is restricted to primary Cooperatives;

"share" means the amount represented by a member's portion in the equity of a Cooperative as a co-owner;

"SICO" means a Savings and Investment Cooperative registered under this Act;

"special general meeting" means a general meeting, other than annual general meeting, of which a written notice with the date, time and place of the meeting has been given to each member;

"special resolution" means a resolution passed by two thirds of the members present and voting at a general meeting of a Cooperative;

"supervisory board" means an oversight board elected at a general meeting in accordance with this Act;

"trans-coop" means a Cooperative registered under this Act to undertake transport services;

"vulnerable member" means a member of a Cooperative who due to socio-economic factors is unable to effectively participate in the day-to-day activities of the Cooperative.

Objects of the Act.

3. (1) The object of this Act is to provide for a legal framework that promotes a sustainable and competitive cooperative sector for socio-economic development in a devolved system of governance.

(2) Without prejudice to the generality of subsection (1), the objects of the Act shall include to provide for–

(a) promotion, registration, regulation, and supervision of Cooperatives;

(b) uniform norms and standards in the registration, regulation, supervision and management of Cooperatives;

(c) responsibilities and functions of the national and county governments and their respective agencies;

(d) areas of concurrent jurisdiction in promotion, registration, regulation, and supervision of Cooperatives;

(e) inter-governmental relations framework for promotion, registration, regulation, and supervision of Cooperatives;

(f) a framework for consultation and co-operation amongst counties;

(g) a framework for consultation and co-operation between the national and county governments in the growth and development of Cooperatives; and

(h) a framework for good governance and ethical conduct in Cooperatives.

Guiding principles.

4. The implementation of this Act shall be guided by—

(a) the Cooperative principles of—

(i) voluntary and open membership;

(ii) democratic member control;

(iii) member economic participation;

(iv) autonomy and independence;

(v) education, training and information;

(vi) cooperation among Cooperatives; and

(vii) concern for the community; and

(b) national values and principles of governance provided under Article 10 of the Constitution.

Application.

5. (1) This Act *SHALL APPLY* to all Cooperatives in Kenya.

Cap.490B.

(2) A Cooperative that is registered under the Sacco Societies Act shall —

(a) comply with subsection (3); and

(b) conduct business, be licensed, be regulated and be supervised by the Sacco Societies Act.

(3) This Act shall apply in any case where there is any inconsistency on any matter between this Act and any other legislation.

PART II— ESTABLISHMENT OF THE OFFICES AND ADMINISTRATION OF THE ACT

Division 1— National Government Offices

Establishment of the Office of the Commissioner.

6. (1) There is established the Office of the Commissioner for Cooperative Development.

(2) The Office of the Commissioner for Cooperative Development shall be an office in the Public Service.

Staff of the office of the Commissioner.

7. The Public Service Commission shall appoint such number of technical officers to the office of the Commissioner, as may be necessary for the implementation of the provisions of this Act.

Vacancy in the office of the Commissioner.

8. (1) The Public Service Commission shall, whenever a vacancy arises in the position of the Commissioner, fill the vacancy through a competitive recruitment process.

(2) A person is not qualified for appointment as a Commissioner under subsection (1), unless the person has—

(a) a bachelor's degree in cooperative management, cooperative business or other related fields;

(b) a minimum of fifteen years' experience in senior management in the Public Service, five of which should be in the cooperative sector in a position not lower than county commissioner for cooperatives; and

(c) meets the requirements of Chapter six of the Constitution.

Functions of the Commissioner.

9. (1) The Commissioner shall be responsible for the maintaining a register of all cooperatives, growth, development and regulation of Cooperatives in Kenya.

(2) Despite the generality of subsection (1), the Commissioner shall—

(a) recommend to the Cabinet Secretary the formulation of a national policy framework and standards for the development and growth of Cooperatives;

(b) co-ordinate the implementation of an inter-governmental relations mechanism in the Cooperatives sector;

(c) maintain a national register of all Cooperatives;

(d) register apex cooperative in Kenya;

(e) establish and maintain an integrated cooperatives registration and management information system;

(f) promote and facilitate the registration of Cooperative federations and the Apex Cooperative;

(g) conduct inquiries into the affairs of Cooperatives in accordance with this Act;

(h) carry out supervision and inspections into the affairs of federations and the Apex Cooperative;

(i) carry out capacity building for county governments in matters relating to Cooperatives;

(j) develop and enforce good governance, ethics and integrity guidelines in Cooperatives;

(k) maintain a list of auditing firms authorized by the Commissioner to audit Cooperatives;

(l) register audited financial statements of Cooperatives;

(m) develop and promote adoption of uniform norms and standards for Cooperatives;

(n) promote and develop frameworks for public private partnerships in Cooperatives;

(o) collaborate with the relevant government agencies on matters relating to Cooperatives amongst county governments, and at the regional and international levels;

(p) establish and maintain a national Cooperative research and information centre; and

(q) perform such other functions as may be necessary for the implementation of this Act.

Annual reports by the Commissioner.

10. (1) The Commissioner shall prepare and submit financial and non-financial annual reports on the performance and activities of the Cooperatives to the Cabinet Secretary within six months after the end of the financial year.

(2) The Cabinet Secretary shall submit the reports under subsection (1) to Parliament within thirty days after receiving the reports.

Establishment of the Office of the National Auditor for Cooperatives.

11. There is established the Office of the National Auditor for Cooperatives.

Staff of the Office of the National Auditor for Cooperatives.

12. (1) The Public Service Commission shall appoint such number of technical officers to the Office of National Auditor for Cooperatives, as may be necessary for the implementation of the provisions of this Act.

(2) The technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in matters related to audit.

Vacancy in the Office of National Auditor for Cooperatives.

13. (1) The Public Service Commission shall, whenever a vacancy arises in the position of the National Auditor for Cooperatives, fill the vacancy through a competitive recruitment process.

(2) Without prejudice to the generality of subsection (1), a person is not qualified for appointment as a National Auditor for Cooperatives, unless the person has necessary academic qualifications, competencies and experience in audit.

Functions of the National Auditor for Cooperatives.

14. (1) The National Auditor for Cooperatives shall be responsible for reviewing the audit reports of cooperatives.

(2) Despite the generality of subsection (1), the National Auditor for Cooperatives shall—

(a) review reports on audited financial statements;

(b) report to the Commissioner on any matters arising from the audited financial statements under paragraph (a); and

(c) recommend to the Commissioner to take action to address any matters arising from the audit.

Annual report by the National Auditor for Cooperatives.

15. The National Auditor for Cooperatives shall prepare and submit to the Commissioner of cooperatives within five months after the end of the financial year, an annual report on the performance, activities and operations of the office and of the Cooperatives.

Division 2— County Government Offices

Establishment of the Office of the County Commissioner for Cooperatives.

16. (1) There is established in each county the Office of the County Commissioner for Cooperatives.

(2) The Office of the County Commissioner for Cooperatives shall be an office in the County Public Service.

(3) A person is qualified for appointment as a County commissioner for cooperatives, if the person has—

(a) a bachelor's degree in cooperative management or cooperative business;

(b) a minimum of ten years' experience in cooperative management and practice; and

(c) meets the requirements of Chapter Six of the Constitution.

Staff of the Office of the County Commissioner for Cooperatives.

17. (1) The County Public Service Board shall appoint such number of technical officers to the Office of County Commissioner for Cooperatives, as may be necessary for the implementation of the provisions of this Act.

(2) Three months prior to a vacancy arising, the County Public Service Board shall invite applications through advertisement in at least two daily newspapers of nationwide circulation.

(3) The County Public Service Board shall, within six months of a vacancy arising, fill the vacancy through a competitive recruitment process.

(4) The technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Cooperative management and practice.

Vacancy in the Office of County Commissioner for Cooperatives.

18. (1) The County Public Service Board shall, whenever a vacancy arises in the position of the County Commissioner for Cooperatives, fill the vacancy through a competitive recruitment process.

(2) Without prejudice to the generality of subsection (1), a person is not qualified for appointment as a County Commissioner for Cooperatives, unless the person has necessary academic qualifications, competencies and experience in Cooperative management and practice.

Functions of the County Commissioner for Cooperatives.

19. (1) The County Commissioner for Cooperatives shall be responsible for registration, growth, development and regulation of Cooperatives in the county.

(2) Despite the generality of subsection (1), the County Commissioner for Cooperatives shall—

(a) register all Cooperatives in the county;

(b) formulate and implement strategies, guidelines, and measures in cooperative matters in accordance with the national policy framework;

(c) carry out inspections into the affairs of Cooperatives in the county;

(d) supervise elections of Cooperatives within the county;

(e) enforce good governance in the management of Cooperatives in the county;

(f) provide external auditing services to Cooperatives in the county;

(g) carry out capacity building of Cooperatives in the counties;

(h) promote value addition, joint venture and adoption of appropriate technology in Cooperatives;

(i) establish and maintain a county Cooperative research and information centre;

(j) facilitate collaboration and linkages between primary and secondary Cooperatives;

(k) collect, collate, analyse, and disseminate data on the activities of Cooperatives in the county;

(l) develop strategies on the improvement of governance and growth of Cooperatives in the county;

(m) register audited financial statements of Cooperatives within a county; and

(n) perform such other functions as may be necessary for the implementation of this Act.

Annual report by the County Commissioner for Cooperatives.

20. The County Commissioner for Cooperatives shall prepare and submit to the county executive committee member and the Commissioner within three months after the end of the financial year, an annual report on the performance, activities and operations of the office and of the Cooperatives within the county.

(2) The county executive committee member shall submit the reports under subsection (1) to the respective county assembly within thirty days after receiving the reports.

Establishment of the Office of the County Auditor for Cooperatives.

21. There is established in each county the Office of the County Auditor for Cooperatives.

Staff of the Office of the County Auditor for Cooperatives.

22. (1) The County Public Service Board shall appoint such number of technical officers to the Office of County Auditor for Cooperatives, as may be necessary for the implementation of the provisions of this Act.

(2) The technical officers appointed under subsection (1) shall have relevant academic qualifications, competencies and experience in Audit.

Vacancy in the Office of County Auditor for Cooperatives.

23. (1) The County Public Service Board shall, whenever a vacancy arises in the position of the County Auditor for Cooperatives, fill the vacancy through a competitive recruitment process.

(2) Without prejudice to the generality of subsection (1), a person is not qualified for appointment as a County Auditor for Cooperatives, unless the person has necessary academic qualifications, competencies and experience in audit.

Functions of the County Auditor for Cooperatives.

24. (1) The County Auditor for Cooperatives shall be responsible for audit of Cooperatives in the county.

(2) Despite the generality of subsection (1), the County Auditor for Cooperatives shall—

(a) review the report on audited financial statements;

(b) report to the county commissioner of cooperatives on any matters arising from the audited financial statements under paragraph (a); and

(c) recommend to the county commissioner to take action to address any matters arising from the audit.

Annual report by the County Auditor for Cooperatives.

25. The County Auditor for Cooperatives shall prepare and submit to the County Commissioner of cooperatives within five months after the end of the financial year, an annual report on the performance, activities and operations of the office and of the Cooperatives within the county.

Division 3— Inter-Governmental Cooperatives Relations Technical Forum

Establishment of Inter-Governmental Cooperatives Relations Technical Forum.

26. (1) There is established an Inter-Governmental Cooperatives Relations Technical Forum as an unincorporated body consisting of—

(a) the Commissioner, who shall be the chairperson;

(b) the forty-seven county Commissioners for Cooperatives;

(c) the chief executive officer of the Authority;

(d) an officer appointed by the Council of Governors; and

(e) a representative of the Apex Cooperative who shall be an ex officio member.

(2) The Commissioner shall provide secretariat services to the Inter-governmental Co-operatives Relations Technical Forum, including designating an officer to serve as the secretary.

(3) The Commissioner shall provide adequate annual budgetary allocations, for the funding of operations of the Inter-governmental Co-operatives Relations Technical Forum, and implementation of its recommendations.

Functions of Inter-Governmental Cooperatives Relations Technical Forum.

27. The Inter-Governmental Cooperatives Relations Technical Forum shall be the platform for—

(a) consultation amongst county governments on Cooperative matters;

(b) consultation between the national and county governments on Cooperative matters;

(c) consideration of technical and policy proposals from Inter-Governmental Cooperatives Relations Technical Forum in the Cooperative sector;

(d) formulating Guidelines on the promotion and supervision of Cooperatives;

(e) alternative dispute resolution among the members under section 26(1) on any Cooperative matter that relates to consultation, administration and operation of Cooperatives; and

(f) performing any other matter as may be provided in any other written law or incidental to the growth and development of Cooperatives in Kenya.

Meetings of the Inter-Governmental Cooperatives Relations Technical.

28. The Inter-Governmental Cooperatives Relations Technical Forum shall meet at least twice in a year.

PART III – STRUCTURE OF COOPERATIVES IN KENYA

The Cooperatives four-tier structure.

29. The Cooperatives structure in Kenya shall comprise –

(a) primary Cooperatives;

(b) secondary Cooperatives;

(c) Cooperative federations; and

(d) the Apex Cooperative.

Primary Cooperatives.

30. (1) Subject to any other written law and without limiting the number and variety of primary Cooperatives, the following types of primary Cooperative may be registered in Kenya—

(a) producer Cooperatives;

(b) housing Cooperatives;

(c) savings and credit Cooperatives;

(d) savings and investment Cooperatives;

(e) transport Cooperatives;

(f) worker Cooperatives; and

(g) consumer Cooperatives.

(2) For purposes of this Act—

(a) a producer Cooperative shall be a Cooperative registered under this Act with the objects of production, processing, and marketing of members' produce.

(b) a housing Cooperative shall be a Cooperative registered under this Act with the objects of facilitating its members to acquire housing for the benefit of members;

(c) a savings and credit Cooperative shall be a Cooperative registered under this Act with the principal objects of mobilization of savings and granting of loans and advances to their members and connected purposes;

(d) a savings and investment Cooperative shall be a Cooperative registered under this Act with the objects of receiving funds from members strictly for making common investment of the funds on behalf of the members or a section of the members;

(e) a transport Cooperative shall be a Cooperative registered under this Act with the objects of organizing its members to operate public transport services and connected purposes;

(f) a worker Cooperative shall be a Cooperative registered under this Act with the objects of organizing workers or professionals to offer a specialized service or group of services; and

(g) a consumer Cooperative shall be a Cooperative registered under this Act with the objects of organizing consumers to acquire consumer goods and services in bulk or wholesale for sale to members at competitive costs and achieve economy of scale.

(3) A person may join two or more Cooperatives that do not share the same objectives or proposes.

(4) A person under subsection (1) shall—

(a) disclose membership and financial liability to a Cooperative registered under this Act to the Commissioner; and

(b) submit a letter from a Cooperative under paragraph (b)confirming the nature and extent of financial liability,

to the Commissioner and to a Cooperative that a person applies to register as a member.

(5) A Cooperative may exchange information with another Cooperative on members registered to a cooperative who have non performing loans;

(6) A Cooperative may exchange information through credit reference bureaus established under section 31 of the Banking Act.

(7) A primary Cooperative may be formed by at least twenty persons.

(8) A primary Cooperative shall be formed by natural persons.

Prohibition against multiple objects in primary Cooperatives.

31. (1) A county Commissioner shall not register a primary Cooperative that has more than one objective under section 20(2).

(2) A person may apply to a county Commissioner to register a primary Cooperative with more than one objective under subsection (1).

(3) The Cabinet Secretary may make regulations generally for the better carrying into effect the provisions under subsection (2).

Objects of secondary Cooperatives.

32. (1) A secondary Cooperative shall have its objects as –

(a) aggregation and warehousing of produce of produce;

(b) provision of specialized services;

(c) processing and value addition;

(d) provision of wholesale credit to members;

(e) lobbying and advocacy;

(f) to market and organize for joint sale of affiliate members' produce;

(g) information and publicity; and

(h) education, training and capacity building.

(2) A secondary Cooperative shall comprise of membership of at least five primary Cooperatives.

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Objects of Cooperative federations.

33. (1) A Cooperative federation shall have its objects as to–

(a) establish standards for purposes of self-regulation;

(b) prescribe and enforce codes of conduct for its affiliates;

(c) carry out market research and disseminate its findings for the benefit of its members;

(d) provide education and training and provision of specialized services;

(e) advocate on behalf of its members in matters relating to Cooperative matters; and

(f) lobby the government at national and county levels on Cooperative matters for and on behalf of its affiliates.

(2) Despite the generality of subsection (1) –

(a) there shall be only one registered Cooperative federation at any given time within a specific value chain or business line; and

(b) a Cooperative federation shall not provide services which are in direct competition with its affiliates or members.

(3) A Cooperative federation shall comprise of membership of at least two secondary Cooperatives.

Registration and subscription to the Apex Cooperative.

34. (1) There is established an Apex Cooperative in Kenya which shall be registered in accordance with this Act and the Regulations made hereunder.

(2) Cooperatives shall subscribe to the membership of the Apex Cooperative.

(3) The Cabinet Secretary may, in consultation with the Apex Cooperative, prescribe the subscription fees payable under subsection (2) by the Cooperatives, including minimum or maximum rates of subscription, the frequency of such subscriptions, and the penalty for failure to make such subscriptions.

Role and functions of the Apex Cooperative.

35. The Apex Cooperative–

(a) shall be the custodian and champion of the statement of the Cooperative identity;

(b) shall represent and protect the interests of Cooperatives locally and internationally;

(c) shall lobby the government at national and county levels on Cooperative matters;

(d) shall promote Cooperative education, training, research and self-regulation within the Cooperatives;

Cap. 16.

(e) shall provide mechanisms and framework for alternative dispute resolution for Cooperative disputes;

(f) subject to compliance with the Advocates Act, shall provide a shared pool of legal services to its affiliates in matters relating to Cooperative disputes;

Cap.531.

(g) subject to compliance with the Accountants Act, shall provide shared pool of accounting and auditing services to its affiliates; and

(h) shall provide national platform for co-operation among Cooperatives.

Annual reports of the Apex Cooperative.

36. The Apex Cooperative shall prepare and submit to the general meeting of the Apex Cooperative, an annual report of its operations and activities, including its audited financial statements and the performance of its affiliate Cooperatives within four months after the end of its financial year.

Registration, regulation and operations of Apex Cooperative.

37. The Cabinet Secretary shall make regulations on registration, regulation, governance and management of the Apex Cooperative.

PART IV – REGISTRATION OF COOPERATIVES

Registration of limited liability Cooperatives.

38. Subject to the provisions of this Act, a Cooperative which has as its objects –

(a) the promotion of the welfare and economic interests of its members; and

(b) has incorporated in its by-laws the Cooperative principles prescribed in section 4 of this Act,

may be registered by as a limited liability Cooperative under this Act.

Application for registration.

39. (1) The County Commissioner shall register all cooperatives operating within a county.

(2) The Commissioner shall register an Apex Cooperative.

(3) A cooperative shall indicate at the point of registration whether it shall operate within a county or across two or more counties.

Procedure for registration.

40. (1) An application to register a Cooperative shall be made in the integrated cooperatives registration and management information system in the prescribed form and be signed –

(a) by ten persons representing at least twenty prospective members in the case of registration of a primary Cooperative;

(b) by at least five primary Cooperatives in case of registration of a secondary Cooperative; or

(c) by at least two secondary Cooperatives in case registration of a Cooperative Federation.

(2) Despite the provisions of subsection (1), there shall be only one Apex Cooperative at any given time in Kenya.

(3) The application in subsection (1) shall be accompanied by—

(a) a letter of no objection to the registration issued by the County Commissioner for Cooperatives of the county where it is proposed that the Cooperative head offices shall be located;

(b) an economic viability appraisal duly approved by the County Commissioner for Cooperatives of the county where it is proposed that the Cooperative head offices shall be located;

(c) copies of the proposed by-laws of the Cooperative, signed by the promoters and duly approved by the County Commissioner for Cooperatives, amongst other things providing–

(i) objects of the Cooperative;

(ii) registered physical offices;

(iii) the names of interim officials;

(iv) mode of submission of contributions;

(v) form of the Cooperative to be registered;

(vi) common bond or field of membership;

(vii) area of operations;

(viii) names of participants;

(ix) qualifications for membership and eligibility to the boards; and

(x) the prospective members' commitment to Cooperative principles and values.

(d) minutes of the pre-Cooperative meeting duly certified by the County Commissioner for Cooperatives providing amongst others names, identification numbers, addresses, telephone numbers and signatures of all the prospective members;

(e) in case of an employer-based savings and credit Cooperative, a letter from the employer indicating his commitment for check off remittances of the Cooperative deductions;

(f) the prescribed fee for registration of Cooperatives; and

(g) any other matter as may be prescribed in the Regulations.

(4) Prior to applying for registration, the promoters of a Cooperative shall –

(a) hold at least one meeting of the prospective members of the proposed Cooperative presided over by the County Commissioner for Cooperatives or the appointed representative in case of a primary or secondary Cooperative, where –

(i) the prospective members are sensitized on the Cooperative principles, values and ethical beliefs, members' rights and obligations and requirements for registration;

(ii) compliance upon registration; and

(iii) the common bond or field of membership of prospective members is determined.

(b) obtain a name reservation certificate from the Commissioner which shall be valid for a period of three months from the date of issuance.

(5) The provisions of subsection (4) shall apply in respect of an application for registration of a Cooperative federation to the extent that the meeting shall be presided over by the Commissioner or the appointed representative.

Restriction of registration of Cooperatives within the same common bond.

41. (1) The Commissioner or County Commissioner may not register a Cooperative under this Act where in the opinion of the Commissioner or County Commissioner there already exists or there is in existence a Cooperative drawing its membership from the same common bond or field of membership and undertaking same objectives as the proposed Cooperative.

(2) A person may apply to the Commissioner or County Commissioner for exemption of the requirements under subsection (1).

(3) The Cabinet Secretary may make regulations generally for the better carrying into effect the provisions under subsection (2).

Limitation on names of Cooperatives.

42. A Cooperative name shall not be registered if —

(a) it has the same as a name appearing in the national register of Cooperatives;

(b) it has a close phonetic resemblance to the name of a registered Cooperative;

(c) it differs from the name of another registered Cooperative only by the addition of the name of a place, locality or region within Kenya;

(d) it is identical to, or closely resembles, that of a name that has been reserved by the Commissioner for use in connection with a proposed Cooperative;

(e) it is identical to or closely resembles the name of one or more of the promoters;

(f) it is identical to or closely resembles, the name of a Cooperative that has been dissolved, or whose registration has been cancelled;

(g) the Commissioner or County Commissioner believes on reasonable grounds that its use would involve the commission of a criminal offence; or

(h) it is offensive, undesirable or contrary to public interest.

Registration of a Cooperative and its by-laws.

43. If the Commissioner or County Commissioner is satisfied that a Cooperative has complied with the provisions of this Act and any Regulations made thereunder and that its proposed by-laws are not contrary to this Act or any Regulations made thereunder, the Commissioner shall register the Cooperative and its by-laws under this Act within a period not exceeding thirty days from the date of verification.

Evidence of registration.

44. A certificate of registration signed by the Commissioner or County Commissioner shall be conclusive evidence that the Cooperative therein mentioned is duly registered, unless it is proved that such registration of the Cooperative has been cancelled or terminated.

Display of Cooperative certificate of registration.

45. (1) A copy of the certificate of registration bearing the number and date of registration shall be displayed at the head office of every Cooperative and a copy thereof shall be displayed at every branch and any other place of business of the Cooperative.

(2) The Board of Directors of a Cooperative who violate the provisions of subsection (1) commit an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding three years or both.

(3) Despite the penalty prescribed in subsection (2), where an officer of a Cooperative or a Cooperative violates the provisions of subsection (1) without any good reason, the Commissioner may after hearing such officer or Cooperative impose a financial penalty not exceeding the sum of fifty thousand shillings.

Change of name or loss of certificate.

46. (1) Where a Cooperative changes its name, the Commissioner or County Commissioner shall issue the Cooperative with a certificate of change of name bearing the new name of the Cooperative and the date of change of name.

(2) Where a certificate of registration of a Cooperative is lost or destroyed, the Cooperative shall apply to the Commissioner or County Commissioner, in writing, for the issuance of a replacement duplicate certificate of registration, and the Commissioner or County Commissioner shall issue a replacement duplicate certificate in such form and manner, and on such terms as conditions as may be prescribed.

Cooperative as body corporate and prohibition against dual registration.

47. (1) Upon registration, every Cooperative shall be deemed a corporate body by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to sue and be sued and to do all things necessary for the purpose of, or in accordance with, its by-laws.

(2) A primary Cooperative registered under this Act, shall—

(a) be composed of natural persons:

(b) not be registered under any other law.

Amendment of by-laws.

48. (1) A Cooperative, through a special resolution in a general meeting, may amend its by-laws, including the by-law which declares the name of the Cooperative.

(2) No amendment of the by-laws of a Cooperative shall be valid until the amendment has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Commissioner or County Commissioner in the prescribed manner.

(3) If the Commissioner or County Commissioner is satisfied that any amendment of the by-laws of the Cooperative is not contrary to this Act, the Regulations made hereunder and any other written law, the Commissioner or County Commissioner may register the amendment.

(4) The Commissioner or County Commissioner may, if satisfied, that an amendment under this section was effected pursuant to a misrepresentation or concealment of a material fact or fraud by the person applying for registration, he may cancel the amendment.

(5) An amendment which changes the name of a Cooperative shall not affect any right or obligation of that Cooperative or any of its members, and any legal proceedings pending may be continued by or against the Cooperative under its new name.

(6) Upon registering an amendment of the by-laws of a Cooperative, the Commissioner or County Commissioner shall issue to the Board of Directors a copy of the amendment certified by the Commissioner or County Commissioner, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(7) In this section—

"amendment" includes the making of a new by-law and the variation or revocation of a by-law, but excludes the variation of the registered address of a Cooperative where this form a part of the by-laws of such a Cooperative.

(8) A copy of the by-laws of a Cooperative or of an amendment of such by-laws certified by the Commissioner or County Commissioner shall be *prima facie* evidence for all purposes of the registration of such by-laws or such amendment.

By-laws of a Cooperative to be binding.

49. The by-laws of a Cooperative, shall, when registered, bind the Cooperative and the members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for the member and the member's personal representatives or nominees to observe all the provisions of the by-laws.

Appeal against refusal to register.

50. Any party aggrieved by the decision of the Commissioner or County Commissioner not to register the Cooperative and its by-laws or any amendments of its by-laws may appeal against the decision to the Cooperative Tribunal within thirty days of the decision.

Signature by the Commissioner or County Commissioner.

51. A document purporting to be signed by the Commissioner or County Commissioner shall be presumed to have been signed by Commissioner or County Commissioner until the contrary is proved.

Protection of Cooperative identity.

52. (1) Except as provided in this Act or any other written law, the word "Cooperative" or its derivatives shall form part of the name of every Cooperative, and the word "limited" shall be the last word in the name of every Cooperative.

(2) A person shall not use the word "Cooperative" or any of its derivatives or any other words indicating the transaction of Cooperative business or the equivalent, in the name, description or title under which it transacts business in Kenya or make any representation that the person transacts Cooperative business unless such person is duly registered under this Act.

(3) Where the Cooperative is registered as –

(a) a secondary Cooperative, the Cooperative shall incorporate the word "secondary" before the word Cooperative in its name; and

(b) a Cooperative federation, the Cooperative shall incorporate the word "federation" immediately after the word Cooperative in its name.

(4) A person who contravenes the provisions of this section commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.

Protection and restriction on the use of the name "Sacco".

53. (1) For purposes of this section, "Sacco business" has the meaning assigned to it under the Sacco Societies Act.

Cap.490B.

(2) Despite section 41, where a Cooperative is registered as a savings and credit Cooperative, the word "Sacco" shall form part of the name of every such Cooperative instead of the word "Cooperative", and the word "Limited" shall be the last word in the name of such Cooperative.

(3) A person shall not use the word "Sacco" or any of its derivatives or any other words indicating the transaction of Sacco business or the equivalent, in the name, description or title under which it transacts business in Kenya or make any representation that the person transacts Sacco business unless such person is duly registered as a savings and credit Cooperative under this Act.

(4) In addition to any penalty provided under the Sacco Societies Act, any person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both. *Cap. 490B.*

Mandatory usage of names in certain Cooperatives.

54. (1) Despite the provisions of section 41——

(a) where a Cooperative is registered as an investment Cooperative, the Cooperative shall——

(i) incorporate the words "savings and investment" immediately before the word "Cooperative" as part of its name; and

(ii) at all times use the said name or the acronym "SICO" or any of its derivatives or any other words indicating the transaction of investment Cooperative business or the equivalent, in the name, description or title under which it transacts business.

(b) where a Cooperative is registered as a transport Cooperative, the Cooperative shall –

(i) incorporate the word "transport" immediately before the word "Cooperative" as part of its name; and

(ii) at all times use the said name or the abbreviation TRANS-COOP or any of its derivatives or any other words indicating the transaction of transport Cooperative business or the equivalent, in the name, description or title under which it transacts business.

(c) where a Cooperative is registered as a housing Cooperative, the Cooperative shall –

(i) incorporate the word "housing" immediately before the word "Cooperative" as part of its name; and

(ii) at all times use the said name or any of its derivatives or any other words indicating the transaction of housing Cooperative business or the equivalent, in the name, description or title under which it transacts business.

(2) A Cooperative or an officer of a Cooperative who without lawful cause contravenes or causes a Cooperative to contravene the provisions of subsection (1) shall be liable to pay a penalty not exceeding fifty thousand shillings on being called upon by the Commissioner.

(3) Any person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.

PART V – RIGHTS AND LIABILITIES OF MEMBERS

Qualification for membership.

55. (1) A person other than a Cooperative shall not be qualified for membership of a Cooperative unless the person —

(a) has attained the age of eighteen years; and

(b) has employment, occupation or profession falling within the category or description of those for which the Cooperative is formed;

(c) has employment, occupation or profession falling within the category or description of those for which the Cooperative is formed and is based in outside the country; or

(d) is resident within, or occupies land within, the Cooperative's area of operation as described in the Cooperative's by-law.

(2) A Cooperative may become a member of a Cooperative, only with the approval of the members at a general meeting.

Limitation of holding share capital.

56. A member, other than a Cooperative, shall not hold more than one-fifth of the paid-up share capital of any Cooperative registered in Kenya.

Exercise of members' rights.

57. A member of a Cooperative shall not exercise any of the rights of a member unless the member has made such payment to the Cooperative in respect of membership, or has acquired such interest in the Cooperative as may be prescribed under this Act or under the by-laws of the Cooperative.

Voting rights of members.

58. (1) Each member of a Cooperative shall have one vote only in the affairs of the Cooperative, irrespective of the number of shares the member holds.

(2) Each Member of a Cooperative may vote virtually in a manner prescribed by Regulations under this Act.

(2) Each member of a Cooperative shall vote by secret ballot in the case of any matter requiring a special resolution of two thirds of the members under this Act.

(3) A Cooperative shall not classify or categorize its members into clusters or groups in such a manner as to restrict the members' rights of voting as provided in subsection (1).

(4) Despite subsection (1), a Cooperative which is a member of a secondary Cooperative, a Cooperative federation or the Apex Cooperative –

(a) shall have as many votes as may be prescribed by the by-laws of the secondary Cooperative, Cooperative federation or Apex Cooperative of which it is a member; and

(b) may appoint any such number of its representatives to the secondary Cooperative, Cooperative federation or Apex Cooperative, as may be allotted by the by-laws of the secondary Cooperative, Cooperative federation or Apex Cooperative as the case may be.

Transfer of shares.

59. (1) Any transfer or charge of a share or interest of a member in the capital of the Cooperative shall be subject to the conditions on maximum holding set out in section 58.

(2) A member may transfer shares by way of sale to another member of the same Cooperative.

(3) A Cooperative shall establish and maintain a digital platform for the sale and purchase of shares held by members of the Cooperative.

(4) The Cabinet Secretary shall make regulations generally for the better carrying into effect the provisions under subsection (3).

Rights of members.

60. (1) A member of a Cooperative shall —

(a) have a right to attend and participate in decisions made at all general meetings of the Cooperative and vote;

(b) be eligible for election to any organ of a Cooperative, subject to its by-laws and this Act;

(c) have the right to use all the facilities and services of the Cooperative, subject to the Cooperatives' by-laws; and

(d) have the right to access information relating to the Cooperative and its subsidiaries, including by-laws, internal Regulations, registers, minutes of general meetings, supervisory boards reports, financial statements, and statutory reports and any other information as may be prescribed by Regulations.

(2) The provisions of subsection (1)(d) shall apply in compliance with the Data Protection Act.

(3) Despite the generality of subsection (1), decisions relating to the following matters in respect to a Cooperative shall be exclusively discussed at a physical general meeting of the membership—

(a) dissolution of the Cooperative;

(b) amalgamation or division of a Cooperative; *Cap.411C.*

(c) formation of subsidiary companies;

(d) acquisition of a majority shareholding of a company or any other entity or a takeover of a company in which the Cooperative is a shareholder;

(e) liquidation or winding-up of a subsidiary company of the Cooperative;

(f) proposed change in the core business in respect of which the Cooperative was incorporated;

(g) borrowing by the Cooperative; or

(h) any other matter as the Cabinet Secretary may prescribe.

Obligations of a member.

61. A member of a Cooperative shall—

(a) observe and comply with all the Cooperative by-laws and decisions taken by the relevant organs of the Cooperative in accordance with the by-laws of that Cooperative;

(b) buy and pay up for shares or make any other payments provided for in the by-laws of the Cooperative; and

(c) meet the debts of the Cooperative in case of insolvency in accordance with the provisions of this Act and the by-laws of the Cooperative.

PART VI – DUTIES OF COOPERATIVES

Registered address of Cooperatives.

62. Every Cooperative shall have a physical registered address in Kenya, including postal and other electronic addresses to which notices and communications may be sent and shall send to the Commissioner and the County Commissioner notice of every change of address within one month of the change.

Cooperatives to keep a copy of the Act and by-laws at registered office.

63. Every Cooperative shall keep a copy of this Act and of the Regulations made thereunder and of its own by-laws and a list of its members, excluding details of nominees and shareholdings, at its registered office and shall keep them open for inspection by any member, free of charge, at all reasonable times during business hours.

Estimates of income and expenditure.

64. (1) For each financial year, the board of directors of a Cooperative shall cause to be prepared estimates of the Cooperative's income and expenditure including recurrent and capital estimates for approval by the general meeting held in accordance with this Act and the Cooperative's by-laws.

(2) Estimates of income and expenditure shall be provided to members fifteen days prior to the date of the general meeting through physical copies, posting on notice boards placed in conspicuous places or through other electronic means.

(3) A Cooperative or an officer of a Cooperative who without lawful cause fails to comply with subsection (2) shall be liable to a penalty of one hundred thousand shillings and the Commissioner or County Commissioner for Cooperatives may cancel the general meeting until the Cooperative complies.

Accounts and audits.

65. (1) Every Cooperative shall keep proper books of accounts which shall—

(a) be prepared in accordance with International Accounting Standards;

(b) reflect the true and fair state of the Cooperative's financial affairs; and

(c) explain the Cooperative's transactions including—

(i) all sums of money received and paid by the Cooperative and the reasons thereto;

(ii) all sales and purchases of goods and services by the Cooperative; and

(iii) all assets and liabilities of the Cooperative

(3) The books of accounts shall be kept at the registered office of the Cooperative or at such other place as may be determined by the Cooperative and shall at all times be available for inspection by members of its supervisory board and the auditor.

(4) It shall be the duty of every Cooperative to cause its financial statements to be audited at least once in every financial year by an auditor appointed under subsection (6).

(5) Each member of the Board of Directors who fail to cause an audit within the prescribed period commit an offence liable upon conviction to imprisonment for three years or a fine not exceeding five hundred thousand or both.

(6) The auditors of a Cooperative shall be appointed at the annual general meeting shall—

(a) be appointed from a list of auditors who are licensed by a body registered in Kenya .

(b) conduct an audit for maximum of three consecutive audits.

(7) Where at an annual general meeting, no auditor is appointed, the Commissioner or County Commissioner may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the Cooperative.

(8) The accounts referred to in subsection (3) shall—

(a) conform with International Financial Reporting Standards;

(b) include the following financial statements—

(i) statement of financial position;

(ii) statement of comprehensive income;

(iii) statement of changes in equity;

(iv) a cash flow statement; and

(v) notes to the accounts;

(c) be approved by the board of directors; and

(d) be authenticated by the chairperson and any two other members of the board of directors.

(9) An auditor shall not present the audited financial statements of a Cooperative to the members at a general meeting unless—

(a) the accounts of an apex cooperative have been approved by the National Auditor for Cooperatives in such form as may be prescribed;

(b) the accounts of a primary cooperative, a secondary cooperative or a cooperative federation have been approved by the County Auditor of Cooperatives in such form as may be prescribed; and

(c) in the case of Cooperatives to which the Sacco Societies Act apply, the accounts have been submitted and approved by the Authority in accordance with that Act.

(10) The auditor shall submit the audited financial statements to a general meeting within four months after the end of the accounting period and shall include the auditor's opinion as to whether or not the Cooperative's business has been conducted in accordance with the —

(a) provisions of this Act and any other written law governing the operations and activities of the Cooperative; and, whether the books of accounts kept by the Cooperative are in agreement therewith and give a true and fair view of the state of the affairs of the Cooperative; Cap, 490B

(b) Cooperatives principles, values and ethical beliefs;

(c) Cooperative's purpose and objects, by-laws, any other resolutions made by the Cooperative at a general meeting, and any directive or order issued by the Commissioner, the County Commissioner for Cooperatives or the Authority, as the case may be; and

(d) measures to improve performance.

(11) The Auditor shall, as part of the audit report submit a risk report.

(12) The auditor shall have the right to—

(a) attend any general meeting of the Cooperative and be heard on any matter which concerns the auditor and the auditor's opinion on the Cooperative's financial statements;

(b) receive all notices and other communications relating to any general meeting which a member of the Cooperative is entitled to receive;

(c) access, at all times, any accounting records, books or documents of the Cooperative as may be necessary for the purpose of carrying out the auditor's duties as an auditor and may at the time of the audit—

(i) summon any officer, agent or member of the Cooperative for the purpose of obtaining information on the transactions of the Cooperative or management of its affairs;

(ii) require the production of any book, document, cash or securities relating or belonging to the Cooperative by any officer, agent, trustee or member having custody of such book, document, cash or securities; or

(iii) demand such other information or explanation from any officer of the Cooperative as may be necessary for the performance of the duties of an auditor.

(13) Where a Cooperative has subsidiaries, the Cooperative shall consolidate its financial statements.

(14) Every Cooperative shall, at such time and in such form as may be prescribed, file with the Commissioner an annual return together with a certified true copy of the audited financial statements of the Cooperative for each period of twelve months.

(15) A cooperative shall submit the annual returns and audited financial statements under subsection (14) to the County Commissioner.

(16) The County Commissioner shall submit the audited statements under subsection (15) to the County Auditor of cooperatives for verification and review.

(17) The County Auditor of Cooperatives shall review the audited financial statements and submit a report to the County Commissioner certifying whether the statements disclose any matters that require further investigation.

(18) The County Commissioner shall submit the audited financial statements under subsection (17) to the Commissioner for record along with a report certifying whether the statements disclose any matters that require further investigation.

(19) The Commissioner shall submit the audited financial statements under subsection (18) to the National Auditor of Cooperatives for verification and review.

(20) The National Auditor of Cooperatives shall review the audited financial statements under subsection (19) and submit a report to the Commissioner and certify whether the statements disclose any matters that require further investigation.

(21) The Commissioner shall submit the audited financial statements under subsection (20) to the Cabinet Secretary for information and transmission to Parliament.

(22) The Cabinet secretary shall submit the audited financial statements under subsection (21) to Parliament along with a report on the status of governance of cooperatives in Kenya for consideration.

(24) Parliaments shall review the report of the audited financial statements and table a report for recommendation.

(25) Where a Cooperative fails to cause its financial statements to be audited within the prescribed period in respect of its business for the previous financial year, members of the board of directors shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Commissioner is satisfied that the failure was due to circumstances beyond their control.

(26) The County Commissioner for Cooperatives shall ensure that all primary and secondary Cooperatives within their respective counties comply with the provisions of this section.

(27) A document required to be filed under this section may be filed as a hard copy or as an electronic copy.

(28) The Commissioner or a county commissioner shall facilitate filing of records under subsection (14).

Production of books and other documents.

66. (1) An officer, agent, servant or member of a Cooperative who is required by the Commissioner or County Commissioner for Cooperatives or by any person authorized in writing by them to do so shall, at such place and time as they may be directed, produce all monies, securities, books, accounts and documents belonging to or relating to the affairs of such Cooperative which are in the custody of such officer, agent, servant or member.

(2) A person who fails to comply with subsection (1) commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months.

PART VII – GOVERNANCE OF COOPERATIVES

General meetings.

67. (1) Subject to the provision of this Act and any other written law, the supreme authority of a Cooperative shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters.

(2) In the first year after registration of a Cooperative, the general meeting shall be held not later than one month after receipt of the certificate of registration of the Cooperative and during such meeting, the members shall—

(a) elect the board of directors and supervisory board;

(b) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof;

(c) determine the maximum borrowing powers of the Cooperative;

(d) appoint the Cooperative's bankers and auditors;

(e) fix the value of indemnity for the officers of the Cooperative; and

(f) receive reports and decide upon such other matters as may be necessary for the conduct of the Cooperative's business.

(3) Where a Cooperative does not comply with subsection (2), a member of a Cooperative may write to the Commissioner or a county commissioner to convene a meeting under subsection (2), two months after receipt of the certificate of registration of the cooperative.

(4) A Cooperative that has complied with subsection (2) shall hold an annual general meeting within four months after the end of each financial year.

(5) A general meeting of a Cooperative shall be convened by giving at least fifteen days' written notice to the members.

(6) A notice under subsection (5) shall be shared to each member of a Cooperative at the physical address of the member and through a platform that is virtual and designated as an official platform for communicating with the members of a cooperative.

(7) At the annual general meeting of a Cooperative, members shall—

(a) consider and confirm the minutes of the last general meeting;

(b) consider any reports of the board of directors, supervisory board, the Commissioner or County Commissioner for Cooperatives or the Authority, as the case may be;

(c) consider and adopt audited financial statements;

(d) determine the manner in which any available surplus is to be distributed or invested;

(e) elect the board of directors and supervisory board members for the ensuing year;

(f) determine, where necessary, the maximum borrowing power of the Cooperative;

(g) consider and approve the annual estimates of income and expenditures for the ensuing year, including the recurrent and capital expenditures;

(h) consider any reports on debt to equity ratio of the cooperative when approving annual estimates;

(i) appoint, elect or approve members to the Cooperative's nomination committee for the ensuing year;

(j) fix the value of the indemnity for the officers of the Cooperative;

(k) appoint an auditor for the ensuing year; and

(l) transact any other general business of the Cooperative of which notice has been given to members in the manner prescribed in the by-laws of the Cooperative.

Special general meeting of a Cooperative.

68. (1) A special general meeting of a Cooperative may be convened –

(a) by the board of directors for the purpose of approving annual estimates or discussing any urgent matter which in the board of directors' opinion is in the interest of the Cooperative; or

(b) on receipt of a written notice for such meeting signed by such number of the members of the Cooperative as may be prescribed in the Regulations and stating the objects and reasons for calling the meeting.

(2) If the board of directors fails to convene a meeting within fifteen days of receiving the notice under subsection (1)(b), the members demanding the meeting may, upon written notification to the Commissioner or County Commissioner for Cooperatives, convene the meeting by giving notice to the other members of the Cooperative, stating the objects and reasons for the meeting and the fact that the board of directors have failed to convene the meeting.

(3) The Commissioner may convene a special general meeting of a Cooperative at which the Commissioner may direct the matters to be discussed at the meeting.

(4) The County Commissioner for Cooperatives may convene a special general meeting of a Cooperative in a county at which County Commissioner of Co-operatives may direct the matters to be discussed at the meeting.

(5) A notice under subsection (1) shall be shared to each member of a Cooperative at the physical address of the member and through a platform that is virtual and designated as an official platform for communicating with the members of a cooperative.

Presiding at general meetings.

69. (1) The chairperson, and in the absence of the chairperson, the vice-chairperson or such other person as may be prescribed in the by-laws of the Cooperative shall preside at a general meeting of a Cooperative.

(2) Despite the generality of subsection (1), the Commissioner or the County Commissioner for Cooperatives may preside at any meeting of a Cooperative convened pursuant to a directive of the Commissioner or the County Commissioner for Cooperatives, as the case may be.

Physical, virtual or hybrid general meetings.

70. A Cooperative shall hold its general meetings physically, virtually, or in a hybrid of virtual and physical meeting subject to compliance with such requirements as may be prescribed in the Regulations or by any other written law.

(2) A person who attends a virtual meeting or a hybrid of virtual and physical meeting shall keep the face visible throughout the meeting.

Membership and powers of the Board.

71. (1) Every Cooperative shall have a board of directors consisting of not less than five and not more than eleven members who shall be elected by members at the general meeting.

(2) (a) Every Apex Cooperative shall have -

(a) a board of directors consisting of eleven members who shall be elected by members at the general meeting; and

(b) a director who represents a sector of a primary cooperative under section 32.

(3) 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.

(4) The members of the board of directors shall elect a chairperson and a vice-chairperson from among their members.

(5) The board of directors shall be the governing body of the Cooperative and shall, subject to any direction from a general meeting or the by-laws of the Cooperative, direct the affairs of the Cooperative with powers to—

(a) enter into contracts;

(b) institute and defend suits and other legal proceedings brought in the name of or against the Cooperative; and

(c) do all other things necessary to achieve the objects of the Cooperative in accordance with its by-laws.

(6) In constituting its board of directors, a Cooperative shall ensure—

(a) that not more than two thirds of the directors are of the same gender in such manner and to such an extent as shall be provided in the Cooperative's by-laws;

(b) the appointment of two thirds of the directors is done at different times to ensure continuity in the governance of a Cooperative;

(c) there is regional representation in the composition of the board considering the Cooperative geographical location and field of membership; and

(d) the vulnerable members of the Cooperative are represented in such manner and to such an extent as shall be provided in the Cooperative's by-laws.

Payment of expenses.

72. (1) A member of the board of directors shall not receive remuneration in the form of a salary or any fixed or periodic payments for services a director gives to a Cooperative.

(2) A Cooperative may pay a director for expenses that a director incurs in the course of executing a duty to the benefit of the society and at such rates as the members shall approve during the general meeting.

(3) This section shall apply to a member of the Supervisory Board.

Eligibility to the board of directors.

73. (1) A person shall not be a member of a board of directors if that person —

(a) is not a member of the Cooperative;

(b) does not have a minimum of secondary level of education certificate, unless exempted by the Cabinet Secretary in the case of the Apex Cooperative or by the County Executive Committee member in case of a primary Cooperative, a secondary Cooperative or Cooperative federation within the respective county's jurisdiction:

Provided that this subparagraph shall not apply to Cooperatives in respect of which the Sacco Societies Act apply;

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(c) being a member of a Cooperative, which trades in goods or produce, trades either on the person's own account or some other person's account in the same type of goods or produce;

(d) has not, within thirty days of being elected, submitted a wealth declaration to the Commissioner or county Commissioner in the prescribed manner;

(e) has not within fourteen days of being elected filed indemnity with the Commissioner or county Commissioner in the prescribed manner;

(f) is an undischarged bankrupt;

(g) is of unsound mind;

(h) has been adversely named by the Commissioner or county Commissioner in an inquiry report or any inspection report for mismanagement or corrupt practices while a member of the board of directors;

(i) has been charged in a court of law with an offence relating to a breach of fiduciary duty;

(j) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding three months;

(k) has been convicted of any offence involving financial misconduct or is sentenced to imprisonment for a term exceeding three months

(l) has been convicted of an offence under this Act or Regulations made thereunder;

(m) has any debt owing to a Cooperative at the end of its financial year other than in respect of a loan under the provision of any Regulations made under this Act;

(n) is a person against whom any amount of money is due under a decree, decision or order or is pending recovery under this Act;

(o) has been a member of the supervisory board or the nomination committee or other management officers of the Cooperative for the three years preceding the election; or

(p) does not satisfy the provisions of Chapter six of the Constitution or any other written law.

(2) The provisions of this section relating to qualifications and disqualification of appointment of persons to the board of directors, shall apply to the qualifications and disqualifications of members of the supervisory board with such modifications as may be necessary.

Responsibilities of the board.

74. (1) The board of directors shall be responsible for strategy, risk management, internal controls, policy formulation and oversight of the Cooperative.

(2) The board of directors—

(a) shall competitively recruit and appoint a chief executive officer of the Cooperative, who shall be responsible for the day to day management of the affairs of the Cooperative; and

(b) may delegate any of its duties under this Act, the Regulations and the by-laws of the Cooperative to the chief executive officer or any officer of the Cooperative:

Provided that, nothing in this subsection shall absolve the board of directors from its responsibility to provide oversight over the affairs of the Cooperative.

(3) In the conduct of the affairs of a Cooperative, the board of directors shall exercise the prudence and diligence of ordinary persons of business and the directors shall be held, jointly and severally liable for any losses sustained through any of their acts which are contrary to the Act, Regulations, by-laws or the directions of any general meeting of the Cooperative.

(4) The board of directors may—

(a) constitute such committees of the board as may be necessary to perform its functions; and

(b) may delegate any of duties under this Act, the Regulations and the by-laws of the Cooperative to any of the committees.

(5) Despite the generality of the provisions of subsection (4) the—

(a) number of standing committees of the board shall not exceed four; and

(b) terms of reference of each committee shall be prescribed in the by-laws of the Cooperative.

Supervisory board and its duties.

75. (1) Every Cooperative shall have a supervisory board consisting of three members each elected at a general meeting for a period of three years and one member of the supervisory board shall retire annually and be eligible for re-election.

(2) The duties of the supervisory board shall include—

(a) verification of all transactions of the Cooperative;

(b) writing periodic reports of its findings to be tabled at board of director's meetings;

(c) presenting its reports to the general meeting;

(d) reviewing internal controls including the scope of the internal audit program, the internal audit findings, and recommend action to be taken by the board of directors and management;

(e) reviewing internal audit reports and their overall effectiveness, the scope and depth of audit coverage, reports on internal control and any recommendations and confirm that appropriate action has been taken;

(f) ensuring that accounting records and financial reports are promptly prepared to accurately reflect operations and results;

(g) reviewing management reports, and reports from the internal and external auditors concerning deviations and weaknesses in accounting and operational controls; and

(h) monitoring the ethical conduct of the Cooperative and considering the development of ethical standards and requirements, including –

(i) effectiveness of procedures for handling and reporting complaints;

(ii) reviewing any related party transactions that may arise within the Cooperative;

(iii) verifying that relevant plans, policies, and control procedures are established by the board of directors and properly administered;

(iv) investigating members' complaints and making recommendations for redress; and

(v) considering any matter of significance raised by members during the general meetings or by the Commissioner or the County Commissioner for Cooperatives or the Authority, as the case may be.

(3) The supervisory board shall prepare and submit quarterly reports to be presented to a joint meeting with the board of directors within thirty days after the end of each quarter.

(4) The supervisory board shall submit or cause to be submitted all quarterly reports of the supervisory board, together with comments and actions made by the board of directors, within thirty days, after presentation to the board of directors to the—

(a) County Commissioner for Cooperatives in case of primary cooperatives, secondary Cooperatives and Cooperative federations;

(b) Commissioner in case of the Apex Cooperatives; and

(c) Authority in case of Cooperatives in respect of which the Sacco Societies Act apply. Cap. 490B.

(5) The board of directors shall provide sufficient resources in the annual budgetary estimates to the supervisory board to enable it perform its functions including secretarial services.

(6) The internal auditor of the Cooperative shall report to and provide technical support to the supervisory board.

Nomination Committee.

76. (1) There shall be a nomination committee consisting of not less than three and not more than five persons in every Cooperative whose responsibility shall be to vet and clear potential persons for professional or moral suitability to be elected to the board of directors or supervisory board of a Cooperative.

(2) The nomination committee of a Cooperative shall be approved annually by the general meeting from persons nominated for such approval in accordance with its by-laws and electoral policy for the ensuing year.

(3) A person shall not be qualified for appointment as a member of the nomination committee if the person—

(i) is a member of the Cooperative;

(ii) has been a member of the supervisory board or nomination committee or other management offices;

(iii) is an undischarged bankrupt;

(iv) is of unsound mind;

(v) has been removed by Commissioner or County commissioner after being adversely mentioned in inquiry or inspection report;

(vi) has been convicted of breach of fiduciary duty;

(vii) has been convicted of dishonesty or sentenced to imprisonment exceeding six months;

(viii) has been convicted of an offence under this Act.

(4) A Cooperative shall, in constituting the nomination committee in its by-laws and electoral policy, ensure that the following persons are represented –

(a) County Commissioner for Cooperatives in whose jurisdiction the Cooperative is situated, who shall be the chairperson;

(b) Chief Executive Officer of the Cooperative who shall provide secretariat services; and

(c) 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.

PART VIII – AMALGAMATION AND DIVISION OF COOPERATIVES

Amalgamation of Cooperatives.

77. (1) Any two or more Cooperatives hereinafter referred to as amalgamating Cooperatives may, by special resolution in this section referred to as the preliminary resolution, resolve to amalgamate as a single Cooperative hereinafter referred to as the amalgamated Cooperative.

(2) A copy of the preliminary resolution shall be sent to the members and creditors of each of the amalgamating Cooperatives, and to other persons whose interests in any of the amalgamating Cooperatives will be affected by the amalgamation.

(3) Any member of any of the amalgamating Cooperatives may, notwithstanding any by-law to the contrary, by notice in writing given to the Cooperative, at least one month before the date specified as the date of amalgamation, intimate the intention not to become a member of the amalgamated Cooperative.

(4) Any creditor of any of the amalgamating Cooperatives may, despite any agreement to the contrary, by notice in writing given to such Cooperative at least one month before the date specified as the date of amalgamation, intimate the intention to demand the payment of any money due to the creditor.

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the concerned amalgamating Cooperative, not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless the person's claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution is passed, a further special general meeting of each of the amalgamating Cooperative shall be held to consider the preliminary resolution and any notices received under this section.

(7) At the special general meeting held under subsection (6) provision shall be made by a further resolution of the Cooperative (in this section referred to as the secondary resolution) for—

(a) the repayment of the share capital of any member who has given notice under subsection (3);

(b) the satisfaction of any claims by creditors who have given notice under subsection (4); and

(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) securing of their claims in such manner as determined or directed by the Commissioner or county commissioner:

Provided that, a member, creditor or other person shall not be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).

(8) Each amalgamating Cooperative may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.

(9) If, within such time as the Commissioner or county commissioner considers reasonable, the Commissioner or county commissioner is satisfied that the secondary resolutions of each of the Cooperatives amalgamating comply with the provision of this section, he may register the amalgamated Cooperative and its by-laws and thereupon—

(a) each of the amalgamating Cooperative shall stand dissolved and its registration cancelled;

(b) the registration of the amalgamated Cooperative shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating Cooperatives in the amalgamated Cooperative;

(c) the remaining members of the amalgamating Cooperatives shall become members of the amalgamated Cooperative and will be subjected to its by- laws; and

(d) any shareholders of the amalgamating Cooperatives or any other persons who have claims against the amalgamating Cooperatives and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against the amalgamated Cooperative.

(10) Where the Commissioner or county commissioner refuses the amalgamation of the amalgamating Cooperatives under subsection (9) such Cooperatives may appeal against such refusal to the Cooperative Tribunal.

(11) A county commissioner shall register all matters relating to amalgamation of a cooperative in in the county in the register maintained by the Commissioner.

Division of Cooperatives.

78. (1) A Cooperative hereinafter referred to as the existing Cooperative may, by special resolution (in this section referred to as the preliminary resolution, resolve to divide itself into two or more Cooperatives hereinafter referred to as the new Cooperatives.

(2) The preliminary resolution shall contain proposals for the division of assets and liabilities of the existing Cooperative among the new Cooperatives in which it is proposed to be divided and may

prescribe the area of operation of, and specify the members who will constitute each of the new Cooperatives.

(3) A copy of the preliminary resolution shall be sent to all the members and creditors of the existing Cooperative, and to all other persons whose interests will be affected by the division of the existing Cooperative.

(4) Any member of the existing Cooperatives may, notwithstanding any by-law to the contrary, by notice in writing given to the Cooperative within two months of the receipt of the copy of the preliminary resolution, intimate the intention not to become a member of any of the new Cooperatives.

(5) Any creditor of the existing Cooperative may, despite any agreement to the contrary, by notice in writing given to the existing Cooperative within two months after receipt of the copy of the preliminary resolution, intimate the creditor's intention to demand the payment of any money due to the creditor.

(6) Any other person whose interest will be affected by the division may, by notice in writing given to the existing Cooperative within two months of the receipt of the preliminary resolution, object to the division.

(7) After the expiry of three months after the date of the preliminary resolution, a further special general meeting of the existing Cooperative shall be held to consider the preliminary resolution and any notices received under this section.

(8) At a further special general meeting held under subsection (7), provision shall be made by a further resolution of the Cooperative for—

(a) the repayment of the share capital of any member who has given notice under subsection (3);

(b) the satisfaction of any claims by creditors who have given notice under subsection (4); and

(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) or the securing of their claims as the Commissioner or county commissioner may determine, or direct:

Provided that a member, creditor or other person shall not be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).

(9) The Cooperative may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution, with or without changes which in the opinion of the Commissioner or county commissioner are not substantial, and the decision of the Commissioner or county commissioner as to whether any changes are or are not substantial shall be final.

(10) If the Commissioner or county commissioner is satisfied within such time as he considers reasonable that the provisions of the secondary resolution and the provisions of this section have been complied with, he may, register the Cooperatives into which the existing Cooperative has been divided and the by-laws of such Cooperative and thereupon—

(a) the registration of the existing Cooperative shall stand dissolved;

(b) the registration of the new Cooperatives shall be sufficient to vest the assets and liabilities of the existing Cooperative in the new Cooperatives in the manner specified in the preliminary resolution, as confirmed;

(c) the remaining members of the existing Cooperative shall become members of one or other of the new Cooperatives, as is provided by the preliminary resolution, as confirmed; and

(d) any shareholders or creditors of the existing Cooperative and any other persons who have claims against the existing Cooperative and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against one or other of the new Cooperatives, as is provided by the preliminary resolution, as confirmed.

(11) Where the Commissioner or county commissioner refuses to approve the division of an existing Cooperative under subsection (9), the Cooperative may, in the prescribed form, appeal to the Cooperative Tribunal within thirty days of the communication to it of the refusal.

(12)A county commissioner shall register all matters relating to division of a cooperative in the county in the register maintained by the Commissioner.

PART IX – RIGHTS AND OBLIGATIONS OF COOPERATIVES

Charge over member's produce.

79. (1) A cooperative that has as one of the objects the disposal of produce of members may enter into a contract with a member, in the by-laws or in a separate document, binding the member to dispose of all produce of the member, or the amounts or descriptions stated in the contract, to or through the cooperative.

(2) A contract under subsection (1) may bind the member to produce the quantities stated in the contract and may provide for payment of a specific sum per unit of weight or other measure as liquidated damages for breach of the contract.

(3) A sum payable under subsection (2) is a debt due to the cooperative and is a charge on immovable property of the member, subject to registration under the relevant law, and on all stock then on that property.

(4) Any such contract as is mentioned in subsection (1) shall have the effect of creating in favour of the Cooperative a charge upon the proceeds of sale of all produce mentioned therein, whether existing or future.

(5) A Cooperative may, on the authority of a resolution passed in general meeting, pledge the produce deliverable by members under any such contract as is mentioned in subsection (1) as security for loans made to the Cooperative, in all respects as if it were the owner of the produce.

(6) A contract entered into under this section shall not be contested in any court or tribunal on the ground that it constitutes a contract in restraint of trade.

Fines for violation of by-laws.

80. (1) The by-laws of a Cooperative may, subject to this Act and Regulations made thereunder, provide for the imposition of fines, not exceeding one hundred thousand shillings, on its members for any infringement of its by-laws.

(2) A fine under subsection (1) shall not be imposed upon any member until written notice of intention to impose the fine and the reason therefore has been served on the member and the member has had an opportunity of showing cause why the fine should not be imposed and, if the member so desires, of being heard with or without witnesses.

(3) A fine under subsection (1) shall be a civil debt due to the Cooperative, and shall, without prejudice to any other means of recovery, be recoverable summarily.

(4) The whole or any part of such fine may be set off against any monies due to such member in respect of produce delivered by the member to the Cooperative.

(5) A new member shall not be taken to have infringed the by-laws of a Cooperative by reason of the member having failed to deliver produce to such Cooperative, if the failure was due to the fact that, before becoming a member of the Cooperative, the member had contracted to deliver such produce to some other person, and the contract had been disclosed in accordance with subsection (5).

(6) It shall be the duty of every person applying for membership of a registered Cooperative to disclose to the Cooperative particulars of all such contracts as are mentioned in subsection.

First charge over debts and assets.

81. (1) Subject to any other written law as to priority of debts where a Cooperative has—

(a) supplied to any member or past member any seeds or manure, or any animals, feeding stuff, agricultural or industrial implements or machinery or materials for manufacture or building;

(b) rendered any services to any member or past member; or

(c) lent money to any member or past member to enable the member to buy any such things as aforesaid or to obtain any such services;

the Cooperative shall have a first charge upon such things or, as the case may be, upon any agricultural produce, animals or articles produced therewith or therefrom or with the aid of such money.

(2) The charge shall subsist for such period as the loan or value of the services rendered by a Cooperative to a member shall remain unpaid.

First charge over members' share.

82. A Cooperative shall have a first charge upon the share or interest in the capital and on the deposits of a member or past member, and upon any dividend, bonus or accumulated funds payable to a member or past member, in respect of any debt due from such member or past member to the Cooperative, and may set off any sum credited or payable to such member, or past member in or towards the payment of any such debt.

Failure to remit the sum deducted.

83. (1) Where an employer of a person who is a member of a Cooperative, under the instructions of the employee, makes a deduction from the employee's remuneration or payment for produce for remittance to the Cooperative concerned but fails to remit the deductions within seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at a rate of not less than five per cent per month.

(2) The Commissioner or County Commissioner may, on behalf of the Cooperative, institute legal proceedings in the Tribunal for recovery of the sum owing under subsection (1) without prejudice to any other mode of recovery and such sum shall be a civil debt recoverable summarily.

(3) A County Commissioner for Cooperatives shall issue written notice to an employer who operates within the boundaries of a county for the sum owing under subsection (1).

(4) The Commissioner shall issue written notice to an employer who operates beyond the boundaries of a county for the sum owing under subsection (1).

(5) Where an employer does not respond to a notice issued under subsection (3), a County Commissioner for Cooperatives shall notify the Commissioner in writing of an employer who has not complied with a notice issued under subsection (3).

(6) The Commissioner or County Commissioner shall, by written notice, appoint any person, bank or institution to be an agent of the Cooperative for the purposes of collection and recovery of a debt owed to the Cooperative and that has not complied with a notice under subsection (3)."

(7) The agent shall pay the amount specified in the notice issued under subsection (3) out of any monies which may, at any time during the twelve months following the date of the notice, be held by the agent for the employer or are due from agent to the employer.

(8) Where an agent claims to be or to have become unable to comply with subsection (3) by reason of lack of monies held by or due from agent, the agent shall give a written notification to the Commissioner stating the reasons for the agent's inability and the Commissioner may—

(a) accept the notification and cancel or amend the notice accordingly; or

(b) if not satisfied with the reasons, reject the notification in writing.

(9) Where an agent fails to notify the Commissioner or County Commissioner or the notification is rejected, it shall be presumed that the agent has sufficient monies for the payment of the amount specified in the notice.

(10) Where an agent fails to pay the amount specified in the notice within thirty days from the date of service or the date on which any monies come into the agent's hands for or become due to the agent from the employer, the agent shall be liable for the amount specified in the notification as if he were the employer.

(11) In any proceedings for the collection or recovery of the amount specified in the notice, it shall not be a defence for the agent to claim lack of the monies

(12) Failure to comply with this section shall constitute an offence by the employer despite the employer facing prosecution under any other written law.

(13) In this section—

"employer" includes any person, firm or organization holding remuneration or payment for produce of a member of a Cooperative; and "employee" includes any person who receives remuneration or payment for produce from such persons or firm or organization.

Prohibition against attachment of

84. (1) Subject to section 82, the share or interest of a member in the capital of a Cooperative shall not be liable to attachment or sale under any decree or order of a Tribunal in respect of any debt

or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy shall not have any claim on such share or interest. member's share.

(2) Despite subsection (1), where a Cooperative is dissolved, the share or interest of any member who is adjudged a bankrupt under such law shall vest in the trustee in bankruptcy in accordance with such law.

85. (1) A member may at any time withdraw from a Cooperative by giving at least sixty days written notice to the board of directors of a Cooperative. Rights of withdrawing from membership.

(2) Upon giving notice of withdrawal from membership of a Cooperative, the member shall –

(a) be refunded any deposit held by the Cooperative on the member's behalf or any accrued interest on such deposits;

(b) be paid any accrued dividends to the member prior to the date of notice of withdrawal;

(c) have his shares continue to earn dividends in favour of the member or the members' nominee or transferee, whenever such dividends are declared; and

(d) be refunded any other sums of money held by the Cooperative on the member's behalf after deduction of any sum owed to the Cooperative in accordance with the Cooperatives by laws.

(3) A member who has given notice of withdrawal from membership of a Cooperative shall continue being a member of the Cooperative, until the members' share is transferred to another member or otherwise purchased by the Cooperative as an institutional capital.

(4) Where a Cooperative fails to make a refund of members' deposits or any other dues as provided in this section, the Cooperative shall be liable to pay a compound interest on the outstanding deposits or other dues to the member at the rate of five per centum per month for every month that the deposit or other dues remain unpaid.

(5) Where a Cooperative fails to refund a members' deposits or other dues, the Commissioner or County Commissioner may, at the request of any such aggrieved member, issue an agency notice to the bankers of the defaulting Cooperative to recover any such outstanding refunds or other dues together with any interest accrued thereon.

86. (1) The liability of a past member of a Cooperative shall be in respect of the debts of the Cooperative as they existed at the date when the member ceased to be a member and proceedings in respect thereof may be commenced within a period of two years from such date. Liability of past members.

(2) If the first audit of the accounts of such Cooperative after the member has ceased to be a member discloses that the Cooperative is solvent, the financial liability of such past member shall cease forthwith.

87. (1) On the death of a member, a Cooperative may transfer the share or interest of the deceased member to— Transfer of share or interest of deceased members.

(a) the person nominated in accordance with this Act or any Regulations made thereunder;

(b) if there is no person so nominated, such person as may be granted letters of administration or probate by a court of law; or

(c) in case (a) and (b) are not applicable, the share or interest of the deceased member shall be transferred to Unclaimed Financial Assets Authority established under section 39 of the Unclaimed Financial Assets Act.

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(2) A Cooperative shall pay all other monies due to the deceased member from the Cooperative to such nominee or personal representative, as the case may be.

(3) All transfers and payments made by a Cooperative in accordance with this section shall be—

(a) valid and effectual against any demand made upon the Cooperative by any other person; and

(b) paid within sixty days.

Evidence of member's interest in Cooperative.

88. (1) A register or list of members or of shares which is kept by a Cooperative shall be prima facie evidence of any of the following particulars entered therein—

(a) the date on which the name of any person was entered in such register or list, as a member;

(b) the date on which any such person ceased to be a member; and

(c) the number of shares held by any member.

(2) A copy of any entry in a book of a Cooperative regularly kept in the course of its business, shall, if certified in accordance with the Regulations made under this Act, be sufficient proof in any proceedings of the existence of such entry, and of the matters, transactions, and accounts, therein recorded.

Restriction on production of Cooperative books.

89. In any legal proceedings in which a Cooperative or liquidator is not a party, an officer of the Cooperative shall not be compelled to produce any of the Cooperative's books where the contents can be proved under section 88 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court or tribunal, for special cause, otherwise orders.

PART X – PROPERTY AND FUNDS OF COOPERATIVES

Application of Cooperative's property and funds.

90. The property and funds of a Cooperative shall only be applied for the benefit of the Cooperative and its members, in accordance with the provisions of this Act, the Regulations made hereunder and the by-laws of the Cooperative.

Restriction on giving loans.

91. (1) A Cooperative shall not give a loan or allow any credit, to any person other than a member, unless the by-laws of the Cooperative provide for giving a loan subject to a resolution passed at the general meeting of the Cooperative to that effect.

(2) An employee or member of the board of directors shall not act as a guarantor of any person with respect to a loan or credit facility advanced by that cooperative.

(3) Despite subsection (1), a Cooperative may grant loans or credit facility to an employee or board member which in aggregate do not exceed ten percent of its gross loan portfolio.

(4) Conditions for loan to employee or board member shall comply with all requirements for grants to other members and shall not be on more favourable terms.

(5) An employee or board member who has applied for a loan shall not be present while their application is being considered.

(6) This section shall apply despite any prosecution under any other law.

Restriction on borrowing.

92. (1) Subject to the approval of two thirds of its members at a general meeting, a Cooperative may receive loans of up to thirty percent of its equity from persons who are not members of the cooperative.

(2) The resolution of the Cooperative in subsection (1) shall be submitted to the Commissioner or a county commissioner, as the case may be.

(3) In this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan.

Investment of Cooperative's funds.

93. (1) Subject to the approval at a General Meeting, a Cooperative may invest or deposit its funds only—

(a) in the shares of any other Cooperative;

(b) in and upon such investments and securities as are for the time being authorized for the investment of trust funds under the Capital Markets Act;

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(c) with any bank licensed under the Banking Act;

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(d) in government securities;

(e) in its subsidiaries;

(f) in real estate, provided the Cooperative shall not invest in real estate not for its own accommodation more than twenty-five per centum of its share capital or hold more than twenty-five per centum of equity in the real estate investment; or

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(g) stock of any statutory body established in Kenya or in any limited liability company licensed and regulated under the Capital Markets Act.

(2) The limitation on investment in real estate shall not apply to a housing cooperative.

Investment in non-core activities.

94. (1) A Cooperative shall not invest more than twenty-five per centum of its funds or members' deposits in non-core activities.

(2) A Cooperative shall not invest in real estate not for its own accommodation more than twenty-five per centum of its share capital or hold more than twenty-five per centum of equity in the real estate investment.

(3) The limitation on investment in real estate shall not apply to a housing cooperative.

Investment in companies.

95. (1) A Cooperative may acquire or invest in the majority shares of one or more companies provided that –

(a) a special resolution of members in a general meeting is passed to authorise the acquisition or the investment;

(b) the acquisition or the investment is approved by the Commissioner or County Commissioner;

(c) the interests of the Cooperative shall be represented in the company by directors appointed by the board of the directors of the Cooperative; and

(d) the Cooperative shall prepare consolidated financial statements incorporating the operations of all its subsidiaries.

(2) A Cooperative having subsidiaries shall incorporate procedures and criteria for appointment of directors of its subsidiaries in its by-laws and in the articles of associations of the subsidiaries.

(3) A Cooperative having subsidiaries shall incorporate reporting procedures of its subsidiaries in its bylaws and in the articles of associations of the subsidiaries.

(4) The Cabinet Secretary shall enact Regulations on investment in companies including operations of holding Cooperatives.

Declaration and payment of bonus.

96. (1) Subject to this section, every Cooperative shall declare each year all bonuses due to members, but where the bonuses are required for re-investment by the Cooperative for capital development, or for the redemption of bonus certificates, the Cooperative shall issue bonus certificates to its members in lieu of cash payments, redeemable from a revolving fund established by the Cooperative for that purpose.

(2) A Cooperative shall not pay a dividend, bonus or distribute any part of its accumulated funds without a balance sheet and audited accounts and report disclosing the surplus funds out of which the dividend, bonus or distribution is to be made.

(3) A Cooperative shall pay a dividend at such rate as may be recommended by the board of directors and approved by the annual general meeting of the Cooperative.

Maintenance of reserve fund.

97. (1) Every Cooperative which derives surplus from its transactions shall maintain a reserve fund.

(2) A Cooperative may carry to the reserve fund such portion of the net surplus in each year as may be prescribed by Regulations made under this Act or by the by-laws of the Cooperative.

(3) A proportion of the reserve funds of a Cooperative as may be prescribed, shall be invested in liquid assets including cash and government securities.

(4) The reserve fund set up under this section shall be indivisible and no member shall be entitled to claim a specific share of it.

(5) Upon the dissolution of a Cooperative, the assets under the reserve fund shall be applied in the discharge of the liabilities of the Cooperative.

Distribution of net balance.

98. Subject to provisions of this Act, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the manner prescribed by Regulations made under this Act or by the by-laws of the Cooperative.

PART XI – CHARGES BY COOPERATIVES

Creating charge over Cooperative property.

99. A Cooperative may from time to time, charge the whole or any part of its property, if its by-laws expressly empower it to do so, subject to a special resolution by the general meeting.

Compliance of charges with applicable law.

100. A charge created by a Cooperative in accordance with section 99 of this Act shall comply with the provisions of the law applicable to the particular type of charge.

Registration of charges by the Commissioner.

101. (1) Every Cooperative shall register with the Commissioner, every charge created by it and the particulars thereof provided that—

(a) registration of a charge may be effected on the application of any person interested therein; or

(b) where registration is effected on the application of a person other than the Cooperative, such person shall be entitled to recover from the Cooperative the amount of any fees properly paid by the person to the Commissioner for such registration.

(2) If any Cooperative fails to send to the Commissioner for registration, the particulars of any charge created by it within a period of thirty days, then unless the registration has been effected by some other person within that period, the board of directors and the Chief Executive Officer of the Cooperative commits an offence and shall be liable to a fine not exceeding fifty thousand shillings for every day during which the default continues.

Register of charges.

102. (1) The Commissioner shall, with respect to each Cooperative, register in such form as may be prescribed by or under this Act, all charges requiring registration and shall enter in the register, with respect to every charge, the following particulars—

(a) if the charge is a charge created by the Cooperative, the date of its creation, and if the charge was a charge existing on property acquired by the Cooperative, the date of the acquisition of the property;

(b) the amount secured by the charge;

(c) summary of particulars of the property charged; and

(d) the persons entitled to the charge.

(2) The Commissioner shall issue a certificate under his hand of the registration of any charge registered under this Act, stating the amount secured and the certificate shall be conclusive evidence that the requirements of this Act as to registration of charges have been complied with.

(3) The register kept in pursuance of this section shall be open for inspection -

(a) by any interested person on payment of the prescribed fee; or

(b) by a county Commissioner at no fee.

(4) The Commissioner shall keep a chronological index in the prescribed form and containing the prescribed particulars, of the charges entered in the register.

Certificate of satisfaction of charges.

103. The Commissioner may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required, furnish the Cooperative concerned with a copy thereof.

Receiver to give notice of appointment.

104. (1) If any person obtains an order for the appointment of receiver or manager of the property of a Cooperative, or if the Commissioner appoints such a receiver or manager under any powers contained in any instruments, he shall, within seven days from the date of the order of the appointment under the said powers, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.

(2) Where any person appointed as a receiver or manager of the property of Cooperatives under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.

(3) Any person who defaults in complying with the requirements of this section, commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings for every day during which the default continues.

Cooperative to keep copy of instruments of charge at registered office.

105. Every Cooperative shall cause a copy of every instrument of a charge which is required by this Act to be registered, to be kept at the registered address of the Cooperative.

Register of particulars of charges.

106. (1) Every Cooperative shall keep, at its registered address a register of charges in which shall be entered all charges specifically affecting the property of the Cooperative and all floating charges on the property or assets of the Cooperative, giving in each case a short description of the property charged, the amount of the charge, and the name of the person entitled thereto.

(2) If any officer of a Cooperative knowingly omits, or permits the omission of, any entry required to be made in any register in pursuance of this section, the officer commits an offence and shall, on conviction be liable to a fine not exceeding fifty thousand shillings.

Right of members and creditors to inspect register of charges.

107. (1) The copies of the instruments creating charges and the register of charges shall be open to inspection by any creditor or member of the Cooperative, without a fee, subject to such reasonable conditions as the Cooperative may impose.

(2) A person who fails to comply with subsection (1) commits an offence and shall be liable upon conviction to—

(b) a fine not exceeding twenty thousand shillings for every day during which the refusal of permission continues;

(c) to imprisonment for a term not exceeding one year; or

(d) to both (a) and (b).

PART XII – INQUIRY, INSPECTION AND SURCHARGES

Inquiry by the Commissioner.

108. (1) Where it is established in an inquiry held under section 108 that any person who has taken part in the organisation or management of a Cooperative, or any past or present officer or member of the Cooperative —

(a) has misapplied, retained or become liable or accountable for any money or property of the Cooperative; or

(b) has committed the offence of misfeasance or breach of trust in relation to the Cooperative, and is liable upon conviction to imprisonment for a term of five years or a fine not exceeding one million shillings or the amount of the value of the property of the offence, whichever is higher, or to both,

the Commissioner or the county commissioner for cooperatives may, if he or she considers it appropriate, make an order requiring the person to repay or restore the money or property to the Cooperative together with interest, or to contribute such sum to the assets of the Cooperative by way of compensation.

(2) An order under subsection (1) shall be made within twenty-one days from the day the inquiry ends.

(3) All officers and members of the Cooperative shall produce such cash, accounts, books, documents and securities of the Cooperative, and furnish such information in regard to the affairs of the Cooperative, as the person holding the inquiry may require.

(4) The Commissioner or county Commissioner shall –

(a) report the findings of the inquiry at a general meeting of the Cooperative;

(b) give directions for the implementation of the recommendations of the inquiry report;

(c) where applicable, provide a copy of the report to the relevant County Commissioner for Cooperatives in case the inquiry relates to a Cooperative within the jurisdiction of a particular county; and

(d) provide a copy of the report to the Authority in case the inquiry relates to a Cooperative in respect of which the Sacco Societies Act applies. Cap.490B.

(5) Where the Commissioner or county commissioner is satisfied, after due inquiry, that the board of directors or the supervisory board of a Cooperative is not performing its duties properly, the Commissioner or county commissioner may—

(a) dissolve the board of directors or the supervisory board as the case may be; and

(b) cause to be appointed an interim board of directors consisting of not more than five members from among the members of the Cooperative for a period not exceeding ninety days.

(6) A person who contravenes subsection (2) commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand shillings for each day during which the offence continues.

(7) Despite subsection (6), where an officer or member of a Cooperative fails to produce records as required by the Commissioner or County Commissioner without any reasonable cause, the Commissioner may suspend or remove such officer from the service of the Cooperative or such member from membership of the Cooperative.

(8) A county commissioner shall consult and cooperate with a county commissioner where an inquiry is undertaken in a cooperative that has presence in one or more counties

Power to surcharge officers of a Cooperative.

109. (1) Where it is established in an inquiry held under section 108 that any person who has taken part in the organization or management of a Cooperative, or any past or present officer or member of the Cooperative –

(a) has misapplied, retained or become liable or accountable for any money or property of the Cooperative; or

(b) commits an offence of misfeasance or breach of trust in relation to the Cooperative,

the Commissioner or county commissioner may, if he considers it appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the Cooperative together with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of the Cooperative by way of compensation as the Commissioner deems just.

(2) This section shall apply despite that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted.

Appeal against surcharge order.

110. (1) Any person aggrieved by an order of the Commissioner or county commissioner under section 100 may, within thirty days, appeal to the Cooperative Tribunal.

(2) A party aggrieved by the decision of the Cooperative Tribunal may within thirty days' appeal to the High Court on matters of law.

Recovery of surcharge.

111. (1) Subject to section 99**,** an order made pursuant to section 98 for any monies to be repaid or contributed to a Cooperative shall be filed with the Cooperative Tribunal and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

(2) Without prejudice to the powers by the board of directors of a Cooperative to take action for recovery of the sum surcharged under section 98, the Commissioner, or county commissioner may on behalf of the Cooperative institute such action.

Inspection of books of indebted Cooperative.

112. (1) The Commissioner or the County Commissioner for Cooperatives, may, if they deem fit, on the application of a creditor of a Cooperative, inspect, or direct some persons authorized by the Commissioner or the County Commissioner for Cooperatives in writing to inspect, the books of the Cooperative, if—

(a) the creditor satisfies the Commissioner or the County Commissioner for Cooperatives that the debt is a sum then due, and has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the applicant deposits with the Commissioner or County Commissioner for Cooperatives such sum as security for the expenses of the inspection as the Commissioner or the County Commissioner for Cooperatives may require.

(2) The Commissioner or the County Commissioner for Cooperatives shall inform the creditor of the results of the inspection.

(3) Despite the generality of subsection (1), the –

(a) Cooperatives in respect of which the Sacco Societies Act shall be inspected in accordance with the provisions of the Sacco Societies Act;

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(b) powers of the Commissioner under this section shall apply with respect to the Apex Cooperative and Cooperative federations; and

(c) powers of the County Commissioner for Cooperatives shall apply with respect to the primary and secondary Cooperatives within their respective jurisdictions.

Expenses of inquiry and inspection.

113. (1) Where an inquiry, or an inspection is held or made under this Act, the Commissioner or the County Commissioner for Cooperatives may, by a certificate under the Commissioner's hand, make an order apportioning the expenses, or such part of the expenses as the Commissioner or the County Commissioner for Cooperatives considers proper, between the Cooperative, the members or creditor demanding the inquiry or inspection, and the officers or former officers of the Cooperative and the decision of the Commissioner or the County Commissioner for Cooperatives thereon shall be final.

(2) Any sum awarded by way of expenses under subsection (1) shall be a civil debt recoverable summarily on production of the certificate referred to in that subsection.

Routine inspection.

114. (1) Despite sections 108 and 112, the Commissioner or County Commissioner for Cooperatives may from time to time carry out impromptu inspection into the affairs of a Cooperative.

(2) The inspection reports prepared pursuant to subsection (1) may be presented to a joint meeting of the board of directors and supervisory board of the Cooperative for deliberation and implementation.

PART XIII— DISSOLUTION

Procedure for dissolution.

115. (1) If the Commissioner, after holding an inquiry under section 108 or receiving an application made by at least three fourths of the members of a Cooperative or receiving recommendations from the Authority or a County Commissioner for Cooperatives is of the opinion that the Cooperative ought to be dissolved, the Commissioner may, in writing, order the dissolution of the Cooperative and subsequent cancellation of registration.

(2) Where a Commissioner is of the opinion that the Cooperative ought to be dissolved, the Commissioner shall act on the recommendation of the National Auditor of Cooperatives.

(3) Where a County Commissioner is of the opinion that the Cooperative ought to be dissolved, the County Commissioner shall submit the opinion on a recommendation of a County of Audit of Cooperatives.

(4) The Cabinet Secretary shall, publish in the Kenya Gazette, an order to dissolve a Cooperative under subsection (1).

(5) An order under subsection (1) or a further order under subsection (8) shall not be valid until it complies with subsection (4).

(6) Any member of a Cooperative who feels aggrieved by an order under subsection (1) may, within two months after the making of such order, appeal against the order to the Cooperative Tribunal with further appeal to the High Court.

(7) Where no appeal is filed within the prescribed time, the order shall take effect on the expiry of that period, but where an appeal is filed within the prescribed time, the appeal shall not operate as a stay of the decision of the Commissioner, unless the High Court directs otherwise.

(8) Where the Commissioner makes an order under subsection (1), he shall make such further order as he thinks fit for the custody of the books and documents and the protection of the assets of the Cooperative.

(9) A Cooperative shall not be dissolved or wound up except by an order of the Commissioner.

Cancellation of registration.

116. (1) The Commissioner may, where a Cooperative has —

(a) less than the prescribed number of members;

(b) failed to file returns with the Commissioner or the County Commissioner for Cooperatives for a period of three years;

(c) for twelve consecutive months failed to undertake the objects and purposes for which it was registered; and

(d) deviated from undertaking the core mandate or business for which it was registered,

in writing, order the cancellation of its registration and dissolution of the Cooperative and the order shall take effect immediately.

(2) A County Commissioner of Cooperatives may recommend to the Commissioner to cancel and dissolve a cooperative that has not complied with the provisions of subsection (1) for a period of not less than ten years.

(3) A person aggrieved by an order of the Commissioner under subsection (1) may appeal against such order to the Cooperative Tribunal within thirty days of the order.

Effects of cancellation.

117. Where the registration of a Cooperative is cancelled, the Cooperative shall cease to exist as a corporate body from the date the order takes effect.

Liquidation of Cooperative whose registration is cancelled.

118. The procedure for liquidation of a Cooperative whose registration has been cancelled under section 115 or 116 is provided for under the First Schedule.

Appointment of a liquidator.

119. (1) If the registration of a Cooperative is cancelled under section 115 or 116, the Commissioner may appoint one or more persons to be the liquidator or liquidators of the Cooperative.

(2) The property of the Cooperative vests in the liquidator from and including the date on which the cancellation of registration took effect.

Qualification of a liquidator.

120. Subject to section 119, a person shall be qualified to serve as a Liquidator if that person is a member of a professional body for Cooperative practitioners or any other professional body designated by the Cabinet Secretary through Regulations.

Powers of a liquidator.

121. The liquidator shall, subject to this Act, have the following powers—

(a) to appoint a day, in the prescribed manner, before which the creditors whose claims are not already recorded in the books of the Cooperative shall state their claims for admission, or be excluded from any distribution made before they have proved them;

(b) to institute and defend suits and other legal proceedings by, and on behalf of, the Cooperative in the liquidator's name or office, and to appear before the relevant Tribunals as litigant in person on behalf of the Cooperative;

(c) to appoint professional or subject matter specialist to assist the liquidator in the performance of the liquidator's duties;

(d) to refer disputes to the relevant Tribunals in the prescribed manner;

(e) to determine from time to time the contributions to be made by the members and past members, and by the estates of deceased members of the Cooperative, to the funds of the Cooperative;

(f) to investigate all claims against the Cooperative, and subject to this Act, to decide questions of priority arising between claimants;

(g) to call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;

(h) to sell the movable and immovable property and rights of action of the Cooperative, by public auction or private contract with power to transfer the whole thereof to any person, Cooperative or company or to transfer the same in parcels;

(i) to carry on the business of the Cooperative as far as may be necessary for the proper liquidation of the affairs of the Cooperative;

(j) to determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;

(k) to take possession of the books, documents and assets of the Cooperative;

(l) to arrange for the distribution of the assets of the Cooperative in a convenient manner when a scheme of distribution has been approved by the Commissioner;

(m) to give such directions in regard to the disposal of the books and documents of the Cooperative as may appear to the liquidator to be necessary for winding up the affairs of the Cooperative;

(n) to compromise, with the approval of the Commissioner, any claim by, or against, the Cooperative; and

(o) to apply to the Commissioner for discharge from the duties of liquidator after completion of the liquidation proceedings.

(2) The liquidator shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far, as may be necessary, in the same manner as is provided in the case of a Tribunal under the Civil Procedure Act and Rules, in so far as such powers are necessary for carrying out the purposes of this section.

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Liquidation account of Cooperatives.

122. An account, to be called the Cooperatives Liquidation Account, shall be kept by the Commissioner with such bank as may be prescribed and shall be administered in the prescribed manner as may be provided for in Regulations.

Powers of Commissioner during liquidation.

123. (1) The liquidator shall exercise the powers subject to the guidance and control of the Commissioner and to any limitations imposed by the Commissioner, and the Commissioner may –

(a) rescind or vary any order made by the liquidator and make any new order he thinks proper;

(b) remove the liquidator from office and appoint a new liquidator in place of the removed liquidator;

(c) call for all books, documents and assets of the Cooperative;

(d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 121;

(e) exercise discretion to require accounts to be rendered to the Commissioner by the liquidator;

(f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the Cooperative;

(g) make an order for the remuneration of the liquidator;

(h) grant a discharge to the liquidator on application by the liquidator after completion of the liquidation proceedings;

(i) require any member or past member of the Cooperative and any trustee, banker, receiver, agent or officer of the Cooperative or any person whatsoever to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Commissioner shall direct, to the liquidator, any money, property, books or papers in such person's hands to which the Cooperative appears to be entitled;

(j) refer any dispute between a liquidator and any third party to the Cooperative Tribunal; and

(k) require the indemnification of the liquidator.

(2) The decision of the Cooperative Tribunal on any matter referred to it under subsection (1)(j) shall be binding upon the parties and shall be exercisable similar to an order made by the Commissioner under subsection (1)(a).

(3) Where any matter is referred to the Cooperative Tribunal under subsection (1)(j), the cost of the reference and award shall be in the discretion of the Cooperative Tribunal, who may direct to and by whom, and in what manner, those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid by any party thereof.

Conflict of interest in liquidation.

124. (1) The Commissioner shall comply with this section during a liquidation.

(2) In this section, "connected person" means

(a) a spouse, child, parent, sibling, business partner, employer, employee, agent, trustee, or proxy of the Commissioner or the liquidator.

(b) a member of the cooperative who is related to the Commissioner or the liquidator in the manner set out in subsection (16).

(c) a body corporate in which the Commissioner or the liquidator holds a direct or indirect beneficial interest.

(3) The Commissioner shall not appoint a person as liquidator if the person has a direct or indirect interest in the cooperative or in a person who may purchase an asset of the cooperative.

(4) The Commissioner shall not acquire an asset of the cooperative.

(5) The liquidator shall not acquire an asset of the cooperative.

(6) The Commissioner shall not purchase an asset of the cooperative.

(7) The liquidator shall not purchase an asset of the cooperative.

(8) The Commissioner shall not cause a sale of an asset of the cooperative to a connected person.

(9) The liquidator shall not cause a sale of an asset of the cooperative to a connected person.

(10) A sale of an asset of the cooperative to a connected person is void unless the Cooperative Tribunal approves the sale in advance.

(11) The Cooperative Tribunal shall approve a sale under subsection (10)—

(a) where an independent valuation of the asset from a valuer appointed by the Cooperative Tribunal.

(b) the Commissioner has published a notice of the proposed sale in the Gazette and on a website maintained by the Commissioner and on a website maintained by the Cooperative Tribunal for not less than thirty days.

(c) the Commissioner gives notice of the proposed sale to every member of the cooperative in a manner prescribed.

(12) The notice under subsection (11) shall state the asset, the identity of the intended purchaser, the valuation, and the reasons for the sale.

(13) A person who contravenes this section commits an offence.

(14) A court shall impose on a person convicted of an offence under this section a fine not exceeding five million shillings or imprisonment for a term not exceeding five years or both.

Appeal against order of liquidator or Commissioner.

125. A person aggrieved by any order or decision of the Commissioner or the liquidator under section 111 or section 114 as the case may be, may appeal against the order or decision to the Cooperative Tribunal within thirty days of the order or decision.

Enforcement of orders.

126. Subject to sections 113 and 114, any order or decision made under section 111 or section 113 on being filed in the Cooperative Tribunal may be enforced in the Cooperative Tribunal in the same manner as if the order or decision were an order or decision of the Tribunal.

Offences relating to liquidation of a Cooperative.

127. (1) The Third Schedule to this Act prescribes offences relating to conduct before and during liquidation and provides for criminal proceedings relating to those offences.

(2) If the liquidator of a Cooperative whose registration has been cancelled reasonably suspects that an offence specified in the Third Schedule has or may be committed during or before the liquidation of the Cooperative, the liquidator shall report the matter to the Commissioner.

(3) As soon as practicable after a suspected offence is reported in accordance with subsection (2), the Commissioner shall take such action as the Commissioner considers appropriate which may include prosecution of the offence.

PART XIV— SPECIAL POWERS OF THE COOPERATIVE TRIBUNAL TO SET ASIDE CERTAIN TRANSACTIONS

Power of the Cooperative Tribunal to set aside transaction

128. (1) In this section—

"relevant time" has the meaning given by section 120, "Cooperative Tribunal" means the Tribunal established under section 134.

that is under value.

(2) This section applies to a Cooperative that is under liquidation.

(3) If the liquidator reasonably believes that the Cooperative has at a relevant time entered into a transaction with a person at an undervalue, the liquidator may apply to the Tribunal for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Tribunal finds that the transaction was undervalued, it shall make an order setting aside the transaction and restoring the position to that which would have existed if the Cooperative had not entered into the transaction.

(5) For the purposes of this section and section 119, a Cooperative enters into a transaction with a person at undervalue if—

(a) the Cooperative makes a gift to the person or otherwise enters into a transaction with the person on terms that provide for the Cooperative to receive no consideration; or

(b) the Cooperative enters into a transaction with the person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the Cooperative.

(6) The Tribunal may not make an order under subsection (4) in respect of a transaction at an undervalue if it is satisfied—

(a) that the Cooperative that entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) that at the time when the Cooperative did so there were reasonable grounds for believing that it would benefit from the transaction.

Power of the Cooperative Tribunal to void preference.

129. (1) In this section, "relevant time" has the meaning as provided by section 128.

(2) If a Cooperative has at a relevant time given a preference to a person, the Commissioner or county commissioner may apply to the Tribunal for an order under subsection (3).

(3) Upon the hearing of an application made under subsection (2), and the Tribunal being satisfied that the Cooperative has at a relevant time given a preference to a person, it shall make an order voiding the act constituted by giving the preference and restoring the position that which would have existed if the preference had not been given.

(4) For the purposes of this section and section 118, a Cooperative gives a preference to a person if –

(a) that person is one of the Cooperative's creditors or a surety or guarantor for any of the Cooperative's debts or other liabilities; and

(b) the Cooperative does any act or allows an act to be done that (in either case) has the effect of placing the person in a position that, if the Cooperative were in insolvent liquidation, is better than the position the person would have been in had that act not been done.

(5) The Tribunal may not make an order under subsection (3) in respect of a preference given to a person unless it is satisfied that the Cooperative that gave the preference was influenced in deciding to give it by a wish to produce in relation to that person the effect referred to in subsection(4)(b).

(6) A Cooperative that has given a preference to a person connected with the Cooperative (otherwise than by being its employee) at the time when the preference was given is presumed, in the absence of evidence to the contrary, to have been influenced in deciding to give it by such a wish as is referred to in subsection (5).

(7) The fact that action has been taken in accordance with the order of a Tribunal does not, without more, prevent the doing or suffering of that action from constituting the giving of a preference.

Meaning of 'relevant time' in section 128 and 129.

130. (1) Subject to subsection (2), the time at which a Cooperative enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference is given —

(a) in the case of a transaction at an undervalue or of a preference that is given to a person who is connected with the Cooperative (otherwise than through being its employee), at a time during the two years immediately preceding the appointment of the liquidator; or

(b) in the case of a preference that is not such a transaction and is not so given, at a time during the six months immediately preceding that appointment.

(2) If a Cooperative enters into a transaction at an undervalue, or gives a preference at a time referred to in subsection (1)(a) or (b), that time is a relevant time for the purposes of sections 117 and 118 only if the Cooperative——

(a) is at that time unable to pay its debts; or

(b) becomes unable to pay its debts in consequence of the transaction or preference.

(3) The conditions in subsection (2) are, in the absence of evidence to the contrary, presumed to exist in relation to a transaction at undervalue that is entered into by the Cooperative with a person who is connected with it.

Orders under section 118 and 119 ancillary provisions.

131. (1) An order under section 128 or 129 with respect to a transaction or preference entered into or given by a Cooperative may, subject to subsection (2)—

(a) require property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the Cooperative;

(b) require the property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the Cooperative;

(d) require any person to pay, in respect of benefits received from the Cooperative, such amounts to the liquidator as the Tribunal may specify;

(e) provide for any surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be subject to such new or revived obligations to the person as the Tribunal considers appropriate;

(f) provide —

(i) for security to be provided for the discharge of an obligation imposed by or arising under the order;

(ii) or such an obligation to be charged on specified property; and

(iii) the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which a person whose property is vested by the order in the Cooperative, or on whom obligations are imposed by the order, is to be able to prove in the liquidation of the Cooperative for debts or other liabilities that arose from or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 117 or 118 may affect the property of, or impose an obligation on, a person whether or not the person is the one with whom the relevant Cooperative entered into the transaction, or the person to whom the preference was given.

(3) However, such an order—

(a) may not detrimentally affect an interest in property that—

(i) was acquired from a person other than the Cooperative; and

(ii) was acquired in good faith and for value, or detrimentally affect any interest that is derived from such an interest.

(b) may not require a person who received a benefit from the transaction or preference in good faith and for value to pay an amount to the liquidator, unless—

(i) the person was a party to the transaction; or

(ii) the payment is to be in respect of a preference given to that person at a time when the person was a creditor of the Cooperative.

(4) If a person has acquired an interest in property from a person other than the relevant Cooperative, or has received a benefit from the transaction or preference and, at the time of the acquisition or receipt, the person—

(a) had notice of the relevant surrounding circumstances and of the relevant proceedings; or

(b) was connected with, or was an associate of, either the relevant Cooperative or the person with whom that Cooperative entered into the transaction or to whom that Cooperative gave the preference,

then, for the purposes of paragraph (a) and (b) of subsection (3), the interest is presumed to have been acquired, or the benefit to have been received, otherwise than in good faith.

(5) For the purposes of subsection (4)(a), the relevant surrounding circumstances, in relation to a Cooperative, are —

(a) the fact that the Cooperative entered into the transaction at an undervalue; or

(b) the circumstances that amounted to the giving of the preference by that Cooperative, and subsection (6) has effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(6) For the purposes of subsection (5), a person has notice of the relevant proceedings if the person has notice of the fact that a liquidator has been appointed in respect of the Cooperative.

(7) Nothing in this section or sections 117 to 119 affects the availability of any other remedy, even in relation to a transaction or preference that the Cooperative had no power to enter into or give.

(8) Nothing in subsection (1) limits the Cooperative Tribunal's powers under sections 128 (4) and 129(3).

Power of the Cooperative Tribunal to set aside certain extortionate transactions.

132. (1) This section applies to a transaction to which a Cooperative is, or has been, a party to a transaction for, or involving, the provision of credit to the Cooperative.

(2) The Commissioner or county commissioner may apply to the Tribunal for an order under subsection (3) if the Commissioner believes that such a transaction-

(a) is or was extortionate; and

(b) was entered into during the three years immediately preceding the date on which the Cooperative entered administration or on which a liquidator was appointed in respect of the Cooperative.

(3) If, on the hearing of an application made by the Commissioner or county commissioner under subsection (2), the Tribunal is satisfied that the transaction is or was extortionate and was entered into within the period referred to in paragraph (b) of that subsection, it shall make one or more of the following orders—

(a) an order setting aside the whole or part of an obligation created by the transaction;

(b) an order otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) an order requiring a person who is or was a party to the transaction to pay to the Commissioner any amounts paid to that person by the Cooperative in accordance with the transaction;

(d) an order requiring a person to surrender to the Commissioner property held by the person as security for the purposes of the transaction; or

(e) an order directing accounts to be taken between the specified persons.

(4) For the purposes of this section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –

(a) the terms of it are or were, such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(5) A transaction with respect to which an application is made under subsection (2) is, in the absence of evidence to the contrary, presumed to be or to have been extortionate.

(6) The powers conferred by this section are exercisable in relation to a transaction concurrently with any powers exercisable in relation to the transaction as one at an undervalue.

Circumstances in which floating charge on a Cooperative undertaking or property to be invalid.

133. (1) Except as otherwise provided for by this section, a floating charge on a Cooperative's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of——

(a) an amount equal to the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the Cooperative at the same time as, or after, the creation of the charge;

(b) an amount equal to the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the Cooperative; and

(c) the amount of such interest (if any) as is payable on the amount referred to in paragraphs (a) or (b) in accordance with an agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(2) Subject to subsection (3), the time at which a floating charge is created by a Cooperative is a relevant time for the purposes of this section if the charge is created—

(a) in the case of a charge which is created in favour of a person who is connected with the Cooperative, within the two years immediately preceding the appointment of a liquidator in respect of the Cooperative; or

(b) in the case of a charge that is created in favour of any other person—at a time within the period of twelve months ending with the date of that appointment.

(3) If a Cooperative creates a floating charge at a time referred to in subsection (2)(b) and the person in favour of whom the charge is created is not connected with the Cooperative, that time is not a relevant time for the purposes of this section unless the Cooperative—

(a) is at that time unable to pay its debts; or

(b) becomes unable to pay its debts in consequence of the transaction under which the charge is created.

(9) For the purposes of subsection (1)(a), the value of any goods or services supplied as consideration for a floating charge is the amount in money that, at the time they were supplied, could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the Cooperative.

PART XV – SETTLEMENT OF DISPUTES

Establishment of the Cooperative Tribunal.

134. (1) There is established a tribunal to be known as the Cooperative Tribunal.

(2) The Cooperative Tribunal shall consist —

(a) a chairperson;

(b) two deputy chairpersons; and

(c) not less than six other members.

Appointment of members of the

Cooperative Tribunal.

135. (1) The chairperson and deputy chairperson of the Cooperative Tribunal shall be appointed by the Judicial Service Commission.

(2) The members of the Cooperative Tribunal shall be competitively recruited and appointed by the Judicial Service Commission.

(3) A person shall not be qualified for nomination as a member of the Cooperative Tribunal pursuant to subsection (2), unless that person –

(a) has a minimum experience of not less than ten years in cooperative management, law, finance or dispute resolution;

(b) is a member in good standing of the professional body responsible for the regulation of Cooperative professionals or relevant professional body; and

(c) satisfies the requirements of Chapter Six of the Constitution.

(4) Despite the generality of subsection (3), a person shall not be qualified for nomination as a member if that person is –

(a) a serving public or state officer; or

(b) an official of a political party.

Remuneration and term of office for members of the Cooperative Tribunal.

136. (1) The chairperson and the deputy chairperson shall be remunerated on such terms and conditions of service applicable to judicial officers or as may be set by the Salaries and Remuneration Commission.

(2) The members of the Cooperative Tribunal shall —

(a) be appointed for a term of a non renewable term of five years;

(b) serve on a part time basis; and

(c) be paid allowances at such sums and at such rates as may be determined by the Judicial Service Commission, in consultation with the Salaries and Remuneration Commission.

(3) The members of the Tribunal shall be appointed in a staggered manner so as to ensure that, at all times, at least one third of the members are in office

Gazettement of members of the Cooperative Tribunal.

137. All appointments to the Cooperative Tribunal shall be by notice in the Gazette issued by the Judicial Service Commission.

Vacancy in the office of Cooperative Tribunal.

138. The office of a member of the Cooperative Tribunal shall become vacant if the member —

(a) accepts any office the holding of which would make the member ineligible for the appointment or nomination to the office of a member of the Cooperative Tribunal;

(b) is removed from membership of the Cooperative Tribunal by the Judicial Service Commission after due inquiry for failure to discharge the functions of the office (whether arising from infirmity of body or mind or from any other cause) or for misconduct;

(c) fails to attend three consecutive sittings of the Cooperative Tribunal without reasonable cause;

(d) dies; or

(e) resigns in writing to the Judicial Service Commission.

Jurisdiction of the Cooperative Tribunal.

139. (1) A dispute shall be referred to the Cooperative Tribunal if it concerns the business, management, governance, activities or operations of a Cooperative and arises—

(a) between the Commissioner and a Cooperative;

(b) between the Commissioner and an officer of a Cooperative;

(c) between the County Commissioner for Cooperatives and a Cooperative;

(d) between the County Commissioner for Cooperatives and an officer of a Cooperative;

(e) between the Authority and a Cooperative;

(f) between the Authority and an officer of a Cooperative;

(g) among members, past members and persons claiming through members, past members and deceased members;

(h) between members, past members or deceased members, and the board of directors of the Cooperative, or any officer of the Cooperative;

(i) between the Cooperative and another Cooperative;

(j) between a Cooperative and an employer within the definition of this Act;

(k) between a liquidator and past members, creditors or other third parties; or

(l) between a Cooperative and any other third-party entities that are not a Cooperative concerning the Cooperative business.

(2) A dispute for the purpose of this section shall include—

(a) a claim in respect of a surcharge imposed against any person pursuant to this Act;

(b) a claim by a Sacco against a refusal to grant or a revocation of licence or any other matter with the Authority pursuant to the provisions of the Sacco Societies Act;

(c) a claim by the Commissioner or County Commissioner for Cooperatives or the Authority or liquidator 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; Cap.490B.

(d) any claim by a Cooperative against the Authority in respect of any administrative action commenced or instituted or imposed by the Authority pursuant to the Sacco Societies Act or any other written law;

(e) 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 or the County Commissioner for Cooperatives under this Act;

(f) claims by members, past members and persons claiming through members, past members and deceased members arising from breach or violation of contractual obligations;

(g) claims for any debt or refunds or deposits or any other due;

(h) a claim by a Cooperative against an employer for non-remitted deductions arising from an agreement between the Cooperative and the employer on remittance of deductions; and

(i) a claim by a Cooperative against a member, past members and persons claiming through members, past members and deceased members in respect to a breach or violation of contractual obligations.

(3) The Tribunal shall determine a dispute referred to it under this section within six months of the date of filing of the dispute.

Registries and sittings of the Cooperative Tribunal.

140. (1) The Chief Justice shall establish a Cooperative Tribunal registry in such number of counties, as the exigencies of the cases may demand from time to time; and in establishing such registries the Chief Justice may cluster a group of counties to be served by one registry.

(2) The Cooperative Tribunal shall hold its sittings in every place where the Cooperative tribunal registry is situated.

(3) Despite the generality of subsection (2), the Cooperative Tribunal shall sit on such days as shall be designated by the Deputy Registrar of the Cooperative Tribunal considering the number of cases filed in or pending before in each registry.

Proceedings of Cooperative Tribunal.

141. (1) The Cooperative Tribunal shall not be bound by the rules of evidence.

(2) The Cooperative Tribunal shall, upon an application made to it in writing by any party or a reference made to it by the Commissioner, County Commissioner for Cooperatives or the Authority or any member of the board of directors or supervisory board or officer of a Cooperative, on any matter relating to this Act, the Regulations made thereunder or the By-laws of the Cooperative, inquire

into the matter and make an award thereon, and every award made shall be notified by the Cooperative Tribunal to the parties concerned.

(3) The proceedings of the Cooperative Tribunal shall be open to the public except where the Cooperative Tribunal, for good cause, otherwise directs.

(4) The Chief Justice shall make rules of procedure of the Cooperative Tribunal.

Orders by the Cooperative Tribunal.

142. (1) The Cooperative Tribunal may—

(a) make such orders for the purposes of securing the attendance of any person at any place, the discovery or production of any document or the investigation of contravention of this Act as it deems necessary or expedient;

(b) take evidence on oath and may for that purpose administer oaths; or

(c) on its own motion may summon and hear any person as a witness.

(2) Where the Cooperative Tribunal enters judgment in terms of the award together with costs, it shall issue a decree which shall be enforceable as a decree of a Tribunal.

(3) If, after making an order, the Cooperative Tribunal discovers that the order was based on a misrepresentation or a concealment of a material fact by either party to the dispute, the Cooperative Tribunal may order the party convicted for the misrepresentation or concealment to pay the other party such sum as is, in the opinion of the Cooperative Tribunal, sufficient compensation for any damage or loss suffered by the party as a result of the misrepresentation or concealment.

(4) The Tribunal shall cause the orders and judgements issued under this section to be published on its website.

General offences at the Cooperative Tribunal.

143. (1) A person who—

(a) fails to attend to the Cooperative Tribunal after having been required to do so under section 142 (1)(a);

(b) refuses to take oath before the Cooperative Tribunal or to answer satisfactorily to the best of his knowledge and belief any question lawfully put to the person in any proceedings before the Cooperative Tribunal or to produce any article or document when required to do so by the Cooperative Tribunal;

(c) knowingly gives false evidence or information which he knows to be misleading; or

(d) at any sitting of the Cooperative Tribunal —

(i) wilfully insults any member or officer of the Cooperative Tribunal; or

(ii) wilfully interrupts the proceedings or commits any contempt of the Cooperative Tribunal,

commits an offence and shall be liable to a fine not exceeding fifty thousand shillings.

Unlimited jurisdiction of the Cooperative Tribunal.

144. The Cooperative Tribunal shall have unlimited geographical and pecuniary jurisdiction in matters of Cooperative disputes.

Quorum for the Cooperative Tribunal.

145. (1) For the purposes of hearing and determining any cause or matter under this Act, the chairperson or vice chairperson and other two members of the Cooperative Tribunal shall form a quorum.

(2) Despite subsection (1), the chairperson or vice chairperson of the Cooperative Tribunal acting alone shall have the exclusive jurisdiction to deal with temporary injunctions and any other interlocutory proceedings filed or commenced before the tribunal.

Benches of the Cooperative Tribunal.

146. (1) The chairman in consultation with the Deputy Registrar in charge of tribunals shall form benches of the Cooperative Tribunal which shall sit and preside over cases filed at each of the Cooperative Tribunal registry established under this Act.

(2) In establishing benches of the Cooperative Tribunal, the chairman in consultation with the Deputy Registrar may—

(a) consolidate cases registered in one Cooperative registry to be heard and determined in another registry taking into account the geographical locations and proximities of the registries; or

(b) direct one bench or more of the benches formed to sit in one or more places where the Cooperative registry is established guided by the principles of efficiency, ease of access and effective delivery of judicial services.

Conflict of interest at the Cooperative Tribunal.

147. A member of the Cooperative Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Cooperative Tribunal shall not take part in those proceedings.

Voting at the Cooperative Tribunal.

148. Any matter considered by the Cooperative Tribunal shall be decided by the votes of the majority of the members constituting the Cooperative Tribunal and voting, and the person presiding shall have a casting as well as a deliberative vote.

Powers of the chairperson exercised by vice chairperson.

149. Any power conferred or duty imposed by or under this Act on the chairperson may, unless a contrary intention appears, be exercised or performed by vice chairperson of the Cooperative Tribunal designated as such by the Judicial Service Commission, if the chairman is unable to exercise or perform that power or duty owing to illness or absence.

Appeal to High Court from the Cooperative Tribunal.

150. (1) Any party to the proceedings before the Cooperative Tribunal who is aggrieved by any order of the Cooperative Tribunal may, within thirty days of such order, appeal against such order to the High Court.

(2) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the order in question;

(b) remit the proceedings to the Cooperative Tribunal with such instructions for further consideration, report, proceedings or evidence as the Tribunal may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Cooperative Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Cooperative Tribunal.

(2) Any party to the appeal before the High Court who is aggrieved by any order of the High Court may, within thirty days of such order, appeal against such order to the Court of Appeal.

(3) Except as provided in the Constitution, the decision of the Court of Appeal arising from an appeal from the High Court shall be final.

Power to appoint Cooperative assessor at the Cooperative Tribunal.

151. The Chairperson of the Cooperative Tribunal may appoint any person with special skills or knowledge on Cooperative issues which are the subject matter of any proceedings or inquiry before the Cooperative Tribunal to act as an assessor in an advisory capacity, in any case where it appears to the Chairman that such special skills or knowledge are required for proper determination of the matter.

Contempt of Cooperative Tribunal.

152. (1) It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Cooperative Tribunal and the Cooperative Tribunal may punish any such person for contempt in accordance with the provisions of this Act or any other written law.

(2) Despite the generality of subsection (1), the provisions of the Contempt of Court Act shall apply in respect to contempt of the Cooperative Tribunal, in the same manner as if the Cooperative Tribunal was a Court. Cap.8F.

Appointment of Deputy Registrar of the Cooperative Tribunal.

153. (1) The Judicial Service Commission shall appoint a person qualified to serve a Deputy Registrar under the Judicial Service Act to serve as the Deputy Registrar of the Cooperative Tribunal, on such terms and conditions of service as are applicable to judicial officers. Cap.8A.

(2) The Deputy Registrar shall be responsible to the Judiciary for—

(a) proper day to day administration, management, functioning, operations and activities of the Cooperative Tribunal registries;

(b) formation of the benches of the Cooperative Tribunal; and

(c) any other matter assigned under this Act or any other written law.

Right of parties before Cooperative Tribunal.

154. Any person who is a party to the proceeding before the Cooperative Tribunal may appear in person or be represented by an Advocate.

Immunity of officers of the Cooperative Tribunal.

155. (1) The Chairman or other members of the Cooperative Tribunal or officer of the Cooperative Tribunal shall not be liable to be sued in a civil Tribunal for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Cooperative Tribunal, whether or not within the limits of their jurisdiction.

(2) A officer of the Cooperative Tribunal or other person bound to execute the lawful warrants, orders or other processes of the tribunal shall not be liable to be sued in any Tribunal for the execution of a warrant, order or process which would have been bound to be executed if within the jurisdiction of the Cooperative Tribunal issuing it.

Alternative Dispute Mechanism at the Cooperative Tribunal.

156. (1) The Cooperative Tribunal may refer any matter filed or pending before it for alternative dispute resolution in accordance with Article 159(2)(c) of the Constitution.

(2) For purposes of subsection (1), the Deputy Registrar shall prepare and maintain a list of persons qualified to serve as the Cooperative Tribunal annexed mediators.

PART XVI – GENERAL PROVISIONS

Procurement and disposal in Cooperatives.

157. (1) When a Cooperative contracts for goods or services or works; or contracts for the disposal of goods; the Cooperative shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as shall be enshrined in the Cooperative's by-laws.

(2) The Commissioner shall prescribe minimum guidelines on the standards and codes of conduct for purposes of procurement in Cooperatives taking into account the size and the complexity of businesses of the Cooperative.

Enforcement of Ethics and integrity in Cooperatives.

158. (1) Officers of a Cooperative shall be required to declare income, assets and liabilities as provided for in the Regulations.

(2) Cooperatives shall develop a code of conduct to set and maintain standards for acceptable behaviour in the cooperative business.

(3) Officers of a Cooperative shall not seek or occupy political office without exemption by the Cabinet Secretary.

Cooperative self-regulation.

159. (1) Subject to the provisions of this Act and any other written law, the Apex Cooperative, Cooperative federations or secondary Cooperatives may, with approval of the Commissioner or county commissioner, develop and implement –

(a) a procedure and appropriate system or mechanism of exercising self-regulation over its members or affiliates;

(b) a code of conduct for its members;

(c) procedure for alternative dispute resolution in Cooperatives;

(d) mechanism for sector shared common services; and

(e) guidelines on provision of services through virtual platforms.

(2) The Cabinet Secretary shall make Regulations for the implementation of the provisions of this section.

Credit information sharing.

160. (1) A Cooperative registered under this Act for purposes of undertaking any credit business shall, in the ordinary course of business and in such manner and to such extent as may for the time being be prescribed under any legislation governing credit information sharing in Kenya, exchange such credit information as prescribed in such legislation.

(2) No duty to which a Cooperative or any of its officers may be subject, shall be breached by reason only of the disclosure or sharing in good faith of any credit information under this section.

Inter-Cooperative borrowing.

161. (1) A Cooperative may borrow or lend to another Cooperative for purposes of covering temporary liquidity short falls or for on lending to its own members.

(2) Despite the generality of the provisions of subsection (1)—

(a) a Cooperative shall not borrow from another Cooperative in such sums as may exceed its borrowing powers or the prescribed limit for external borrowing;

(b) the board of directors of the both the borrowing and the lending Cooperatives shall approve the terms and conditions for the intended borrowing; and

(c) the terms and conditions of the borrowing or lending shall be approved by the Commissioner, County Commissioner for Cooperatives or the Authority, as the case may be.

(3) The Commissioner, County Commissioner for Cooperatives or the Authority as the case may be shall before approving an inter-Cooperative borrowing ensure—

(a) that the borrowing Cooperative has sufficient security to cover for the borrowing; and

(b) the borrowing is for the intended purpose.

(4) Subject to approval by the Commissioner or the Authority as the case may be, the Apex Cooperative or a Cooperative federation or a secondary Cooperative may establish a platform to facilitate inter-Cooperative borrowing.

(5) The Cabinet Secretary shall make Regulations for the better implementation of the provisions of this section.

Cooperative capital raising instruments.

162. Subject to this Act and any other written law, a Cooperative shall have the capacity to issue, trade in, purchase or sell capital raising instrument in its own name.

Remuneration to officers and members of Cooperative.

163. (1) No elected officer or member of a Cooperative shall receive any remuneration, salary, commission or any other payment from the Cooperative for services rendered to the Cooperative unless the Cooperative has, by a resolution passed at a general meeting, approved the payment of such remuneration, salary, commission or other payment.

(2) No officer or member of a Cooperative shall receive any remuneration, salary, commission or other payment from any person or body or association other than the Cooperative in respect of any business or transaction entered into by the Cooperative:

(3) Any officer or member of a Cooperative who receives any remuneration, salary, commission or other payment in contravention of this section commits an offence and shall on conviction be liable upon to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and such imprisonment; and

(4) If the offence in subsection (3) is in contravention of subsection (1), the person shall be ordered to repay the amount of the remuneration, salary, commission or other payment received from the Cooperative in addition to or in lieu of any other punishment, and default in such payment shall be dealt with in the same manner as default in paying a fine imposed by a Tribunal.

Cooperative Development Fund.

164. (1) There is established a fund known as the Cooperative Development Fund, in accordance with the Regulations prescribed by the Cabinet Secretary.

(2) The source of the Fund shall consist of contributions made by Cooperatives in the sums and rate as the Cabinet Secretary may prescribe.

(3) The application of the Fund established under subsection (1) shall be distributed as follows—

(a) fifty percent to the National Government; and

(b) fifty percent to the County Government.

(4) The objectives of the Fund shall be to promote the education, training, research, innovation, emerging technology and other related activities in the Cooperative sector in Kenya.

Regulations.

165. (1) The Cabinet Secretary may make Regulations for the better carrying out of the provisions and purposes of this Act.

(2) In particular, and without prejudice to the generality of subsection (1), the Regulations may—

(a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a Cooperative and the procedure to be followed;

(b) provide for procedure for digitization of Cooperative registration services linked to counties;

(c) provide for the ration applicable in sharing of revenues arising from registration of Cooperatives between the two levels of government;

(d) prescribe the matter in respect of which a Cooperative may or shall make by-laws, and the procedure to be followed in making, varying and revoking by-laws, and the conditions to be satisfied before making, varying or revoking by-laws;

(e) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and the payments to be made and the interest to be acquired before the exercise of the right of membership;

(f) prescribe the manner in which funds may be raised whether by means of shares or debentures or otherwise;

(g) prescribe the manner in which primary and secondary Cooperatives operating in more than one county shall be supervised by the relevant counties;

(h) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(i) provide for the role of the nomination committee in the appointment of presiding persons for Cooperative elections;

(j) provide for the appointment, suspension and removal of the board of directors, supervisory board and other officers, and for the procedure at meetings of board of directors' supervisory board, and for the powers to be exercised and the duties to be performed by the of board of directors, supervisory board and other officers;

(k) prescribe the accounts and books to be kept by a Cooperative;

(l) provide for the form of the financial statements to be prepared annually and any other statements and schedules relating thereto;

(m) provide for a criterion and issuance of annual compliance certificate to federation and the Apex Cooperatives by the Commissioner;

(n) provide for a criterion and issuance of annual compliance certificate to primary and secondary Cooperatives by the County Commissioner for Cooperatives;

(o) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and for the liabilities of past members;

(p) provide for the persons by whom and the form in which copies of entries in books of Cooperatives may be certified;

(q) provide for the inspection of documents and registers at the office of the Commissioner and County Commissioner of Cooperatives, and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;

(r) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares, of the register of shares;

(s) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to the provisions of this Act, for the nomination of a person to whom such interest may be paid or transferred;

(t) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing such member's affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;

(u) provide for the manner of formation and maintenance of reserve funds and the objects to which such funds may be applied and for the investments of any funds under the control of a Cooperative;

(v) prescribe the returns and other reports to be submitted by a Cooperative to the County Executive Committee Members, with a copy to the Commissioner or county commissioner;

(w) prescribe the fees to be paid on applications, registrations and other functions done by the Commissioner or county commissioner under this Act;

(x) prescribe the procedures to be followed in the liquidation of Cooperatives;

(y) prescribe procedures for appointment and operations of the receiver manager in Cooperatives;

(z) provide for Cooperatives that become insolvent to be placed under administration instead of liquidation if it appears that it may be possible for them to recover from their insolvency, which may include extension of the applications of such provisions of the Insolvency Act, relating to the administration of insolvent companies as the Cabinet Secretary considers appropriate and, in applying those provisions for that purpose, may make such modifications to them as may be necessary;

(aa) prescribe procedures for division of commodity Cooperatives with more than one bulking centre;

(bb) prescribe procedures to be followed in establishment of Cooperative companies and appointment of directors representing Cooperatives in these companies;

(cc) prescribe procedures for operations of holding Cooperatives;

(dd) develop prudential standards and market conduct for different categories of Cooperatives as per their sizes, types, business line or any other classification;

(ee) provide for establishment, funding and management of the Cooperative information and research centre;

(ff) prescribe guidelines for use of collaterals for securing loans and mortgages in Cooperatives;

(gg) prescribe Regulations for operationalization of a body for Cooperatives' professional practitioners;

(hh) in any case where the Cabinet Secretary is satisfied that a substantial number of members of any Cooperative are unacquainted with the English language, the Cabinet Secretary may cause any Regulations made under this section to be translated into a language with which such members are acquainted , and to be made known in a manner customary for the community to which such members belong including braille and sign language, provided that on any matter of interpretation the English version of the rules shall prevail.

(ii) provide procedure for establishment of Cooperative management and supervision fund;

(jj) provide for operationalization, and management of the Cooperative Development Fund;

(kk) provide for protocols for provision of Cooperative services through virtual platforms including meetings through webinar;

(ll) provide guidelines for affirmative action for the benefit of special interest groups of women, youth, persons with disability, and minority and marginalized communities in cooperatives;

(mm) provide for reporting requirements relating to savings and credit cooperatives and financial services cooperatives that include: classification of loans; loan provisioning and write-offs, delinquency ratio and credit risk assessment, liquidity and capital adequacy report, and investment portfolio statement detailing all cooperative investments, including securities, deposits, and real estate;

(nn) provide for reporting requirements relating to member produce cooperatives that include: production and inventory report on products and inputs, status of equipment and machinery, including operational efficiency, status of storage facilities and logistics infrastructure, and list of cooperative-owned agricultural land and its utilisation status;

(oo) provide for reporting requirements relating to transport cooperatives that include: list of fleet assets, including vehicles, maintenance schedules, and depreciation status, operational income and expenditure report, including fuel costs, repairs, and insurance expenses, loan

and lease obligations for fleet expansion and renewal, and compliance status with transport regulatory requirements;

(pp) provide for reporting requirements relating to housing cooperatives that include: property ownership report, including details of cooperative-owned land, buildings, and ongoing construction projects, membership subscription payments towards housing projects, loan obligations related to real estate development, occupancy and tenancy reports for rental cooperative properties;

(qq) provide for reporting requirements relating to investment cooperatives that include: 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, valuation report on investment properties and other assets, risk exposure analysis related to investments; and

(rr) prescribe other Regulations which under this Act may be prescribed.

Exemption.

166. (1) Despite the provisions of this Act, the Cabinet Secretary may, by notice in the Gazette —

(a) exempt any Cooperative from any of the provisions of this Act, subject to such conditions, exceptions or qualifications as the Cabinet Secretary may consider appropriate; or

(b) apply to any Cooperative any of the provisions of this Act subject to such modifications as the Cabinet Secretary may consider appropriate.

(2) The Cabinet Secretary shall cause to be published in the Gazette thirty days' notice of the intention to grant an exemption under subsection (1).

(3) Any person with an objection regarding an intended exemption under this section may make representations to the Cabinet Secretary within the period of the notice.

(4) The Cabinet Secretary may upon considering representations and objections made under this section, either—

(a) abstain from granting the intended exemption; or

(b) grant such exemption subject to such terms and conditions as may be appropriate.

Powers of the Cabinet Secretary and County Executive Committee Member.

167. (1) The Cabinet Secretary may at any time and on any matter direct the Commissioner as to the exercise of the powers and duties conferred upon the Commissioner for the better carrying out of the provisions of this Act.

(2) The County Executive Committee member may at any time and on any matter direct the County Commissioner for Cooperatives as to the exercise of the powers and duties conferred upon the County Commissioner for Cooperatives for the better carrying out of the provisions of this Act with regard to the Cooperatives within the County's respect jurisdictions.

Other powers of the Commissioner.

168. (1) Without prejudice to any other powers under this Act the Commissioner may—

(a) call for elections in any Cooperative;

(b) attend meetings of a Cooperative and require every Cooperative to send to the Commissioner at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;

(c) issue circulars and guidelines for the better administration of this Act;

(d) require that Cooperatives update their by-laws; and

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

(2) The Commissioner may in writing delegate any of his powers conferred upon him to an officer or any other person.

Other powers of the County Commissioner for Cooperatives.

169. Without prejudice to any other powers under this Act the County Commissioner for Cooperatives may—

(a) call for elections in any primary and secondary Cooperative within the geographical jurisdiction of the county;

(b) attend meetings of Cooperatives within their area of jurisdiction and require every Cooperative within their area to send to at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;

(c) issue circulars and guidelines for the better administration of this Act with respect to primary and secondary Cooperatives under their jurisdiction; and

(d) exercise such other powers consistent with this Act as may be prescribed.

Offences

170. (1) It shall be an offence under this Act if——

(a) a Cooperative or an officer or a member thereof, fails to do or to cause to be done any act or thing which is required by or under this Act or any Regulations made thereunder to be done;

(b) a Cooperative, or an officer or a member thereof, does anything which is prohibited by or under this Act or any Regulations made thereunder;

(c) a Cooperative, or an officer or a member thereof, wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Commissioner or the County Commissioner for Cooperatives, or any person duly authorized in that behalf, by the Commissioner or the County Commissioner for Cooperatives;

(d) a Cooperative or an officer or member thereof wilfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any Regulations made thereunder;

(e) any person wilfully and without reasonable excuse disobeys any summons, requirement or lawful order issued under this Act, or fails to furnish any return or information lawfully required from them by a person authorized to do so, or which they are required to furnish, by or under this Act or any Regulations made thereunder; or

(f) any person acts or purports to act as an officer of a Cooperative when not entitled to do so.

(2) Where a person contravenes any of the provisions of this Act or Regulations made under this Act –

(a) if it is a body corporate, commits an offence it shall be liable upon conviction to a fine not exceeding five hundred thousand shillings; and

(b) every director, member of supervisory board, employee or agent or other officer of a Cooperative or person commits an offence and liable upon conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term of not less than twelve months or to both such fine and imprisonment.

Distinction of Cooperatives from trade unions.

171. A Cooperative shall not be taken to be a trade union or operate as a trade union.

General penalty.

172. (1) A person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years, or to both.

(2) In addition to any penalty referred to in subsection (1), the Court may order or prohibit the doing of any act to stop a continuing contravention.

PART XVII—TRANSITIONAL PROVISIONS

Repeal of the Cooperative Societies Act.

Cap.490.

173. (1) The Co-operative Societies Act is hereby repealed.

(2) Despite the repeal of the Co-operative Societies Act—

(a) every Cooperative, and all By-laws of a Cooperative and any amendments thereof, registered under the repealed Act shall be deemed to have been registered under this Act;

(b) any register kept in pursuance of the repealed Act shall be deemed to be part of the register to be kept in pursuance of this Act;

(c) any document referring to a provision of the repealed Act shall be construed as referring to the corresponding provision of this Act; and

(d) any orders, directions, appointments and other acts lawfully made or done under any of the provisions of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been made or done under the corresponding provision of this Act and shall continue to have effect accordingly.

(3) Despite the generality of subsection (2), if anything is required to be done, performed or undertaken by any existing Cooperative or an officer of an existing Cooperative to secure compliance with this Act, then that thing will be done, performed or undertaken, within eighteen months after the commencement date.

(4) The Commissioner or the County Commissioner for Cooperatives as the case may be, shall issues circulars or guidance notes from time to time for the better carrying out of the provisions of subsection (3).

Amendment of Public Officer Ethics Regulations, 2003.

174. Upon the commencement of this Act –

(a) paragraph 7 of the Public Officer Ethics Regulations, 2003 shall stand repealed within twelve months;

(b) the persons serving as members of the Ethics Commission for Cooperatives established pursuant to paragraph 7 of the Public Officer Ethics Regulations, 2003 shall cease being members thereof within twelve months or upon the expiry of their tenure, whichever is earlier;

(c) any actions or proceeding initiated or pending or commenced by or before the Ethics Commission for Cooperatives established pursuant to paragraph 7 of the Public Officer Ethics Regulations, 2003, shall continue before the responsible Commissions as provided in this Act. L.N 6 of 2003.

Transition to the Office of the Commissioner and County Director for Cooperatives.

175. Upon the commencement of this Act—

(a) the person appointed by Public Service Commission to serve in the national government as the Commissioner for Cooperative Development shall be deemed to be the Commissioner for Cooperative Development for purposes of this Act;

(b) the person appointed by a County Public Service Board to serve within a county as the County commissioner for Cooperatives or as the technical head of Cooperative affairs within the county or by any other name called, shall be deemed to be the County Commissioner for Cooperatives for purposes of this Act; and

(c) the technical officers appointed to serve in the office of the Commissioner for Cooperative Development and County Director for cooperatives or the office of the technical head of cooperative affairs within the county or by any other name called shall be deemed to be technical officers in the office of the Commissioner or the County Commissioner for cooperatives for purposes of this Act and will be required to comply with the necessary academic qualification within three years.

County Assembly legislations.

176. (1) The County Assemblies may enact Cooperative legislations in respect of primary and secondary Cooperatives within the respective county jurisdictions, which is consistent with this Act.

(2) This Act shall prevail in case of any inconsistency between this Act and legislation enacted by a County Assembly in accordance with Article 191(3)(b) of the Constitution.

Transition of the members of, and proceeding before the Cooperative Tribunal.

177. Upon the commencement of this Act –

(a) the person serving as the Chairperson or the Vice-Chairperson of the Cooperative Tribunal established under the repealed Act, may continue to serve as such provided, that they meet the criteria and qualifications for appointment as such in accordance with this Act; and

(b) any proceedings that had commenced or pending before the Cooperative Tribunal established under the repealed Act prior to the commencement of this Act and every document prepared or issued shall continue in force as if it is pending before; or was commenced, prepared or issued under the Cooperative Tribunal established in this Act, only to the extent that the Cooperative Tribunal has jurisdiction as provided in this Act.

Transition of notices, orders,

178. Any notices, orders, directions, appointments or any other act lawfully made or done under section 58, 59, 60A, 65, 72, 73, 74, 75, 76, 78 and 79 of the repealed Act and in force immediately

before the commencement of this Act shall be considered to have been done under this Act and shall continue to have effect until received, cancelled or terminated. directions and appointments.

SCHEDULE
FIRST SCHEDULE (s.118)
LIQUIDATION OF COOPERATIVES

1. In this schedule, unless the context otherwise requires, — Interpretation.

"contributor", in relation to a Cooperative in respect of which a liquidator is appointed, means a member or past member of the Cooperative in respect of whom the liquidator has made a determination that the member or past member is liable to make a contribution to the funds of the Cooperative;

"deliver", in relation to documents or other property, includes surrender and transfer;

"inability to pay its debts", in relation to a Cooperative has the meaning given by paragraph 2; and

"past member" includes a deceased member.

2. (1) For purposes of this schedule a Cooperative is unable to pay its debts – Inability to pay debts.

(a) if a creditor (by assignment or otherwise) to whom the Cooperative is indebted for hundred thousand shillings or more has served on the Cooperative, by leaving it at the Cooperative's registered office, a written demand requiring the Cooperative to pay the debt and the Cooperative has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a judgment, decree or order of any Tribunal in favour of a creditor of the Cooperative is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Cooperative Tribunal that the Cooperative is unable to pay its debts as they fall due.

(2) A Cooperative is also unable to pay its debts for the purposes of this Schedule if it is proved to the satisfaction of the Cooperative Tribunal that the value of the Cooperative's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(3) The Regulations may increase or reduce the amount specified in subparagraph (1)(a).

3. After the Commissioner has cancelled the registration of a Cooperative under section 105 or 106— Disposition of property by Cooperative after commencement of liquidation.

(a) any disposition of the Cooperative's property;

(b) any transfer of shares, or alteration in the status of the Cooperative's members; and

(c) made after the cancellation is void, unless he Cooperative Tribunal otherwise orders.

4. After the registration of a Cooperative is cancelled under section 105 or 106, any attachment, sequestration, distress or execution instigated against the assets of the Cooperative is void. Attachment, sequestration, distress or execution instigated against the assets.

5. (1) When a liquidator is appointed in respect of a Cooperative, the liquidator may require' some or all of the persons to whom this paragraph applies to make out and submit to the liquidator a statement concerning the affairs of the Cooperative. Liquidator may require Cooperative to submit statement of affairs.

(2) The persons required to submit such a statement shall verify it by statutory declaration and shall include in it —

(a) such particulars of the Cooperative's assets, 'debts and liabilities as are prescribed by the Regulations for the purposes of this paragraph;

(b) the names and addresses of the Cooperative creditors;

(c) the securities (if any) held by them respectively;

(d) the dates when the securities were respectively given; and

(e) such further or other information as the liquidator may reasonably require.

(3) This paragraph applies to the following persons—

(a) those who are or have been officers of the Cooperative;

(b) those who have taken part in the formation of the Cooperative at any time during the twelve months before the cancellation of the Cooperative's registration;

(c) those who —

(i) are in the Cooperative's employment, or have been in its employment during that period; and

(ii) are in the liquidator's opinion capable of giving the information required.

(4) A prescribed person who is required under this paragraph to submit a statement of affairs to the liquidator shall, subject to subparagraph (5), do so within twenty-one days from and including the date on which notice of the requirement was given to the person by the liquidator.

(5) The liquidator may—

(a) at any time release a person from an obligation imposed on the person under subparagraph (1) or by subparagraph (2); or

(b) either when giving the notice referred to in subparagraph (4) or subsequently, extend the period referred to in that subparagraph.

(6) If the liquidator has declined to exercise a power conferred by subparagraph (5), the Cooperative Tribunal may, on the application of the Attorney General or a person who is dissatisfied with the liquidator's decision, exercise the power if it considers it appropriate to do so.

(7) A person who, without reasonable excuse, fails to comply with an obligation imposed by or under this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) If, after being convicted of an offence under subparagraph (7), a person, without reasonable excuse, continues to fail to comply with the relevant obligation, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) In this paragraph, "employment" includes employment under a contract for services.

Duty of the Commissioner to conduct investigations into failure of Cooperatives.

6. As soon as practicable after cancelling the registration of a Cooperative, the Commissioner shall conduct an investigation —

(a) if the Cooperative has failed, to discover why the Cooperative failed; and

(b) generally, to investigate the promotion, formation, business, dealings and affairs of the Cooperative.

Public examination of officers and past officers of a Cooperative.

7. (1) When a liquidator is appointed in respect of a co-operative, the liquidator may apply to the Cooperative Tribunal for the public examination of any person who—

(a) is or has been an officer of the Cooperative;

(b) has acted as provisional liquidator, liquidator or administrator of the Cooperative; or

(c) not being a person referred to in paragraph (a) or (b),

is or has been concerned, or has taken part, in the promotion, formation or management of the Cooperative.

(2) Unless the Cooperative Tribunal otherwise orders, the liquidator shall make an application under subparagraph (1) on receiving a written request to do so from—

(a) creditors of the Cooperative holding not less than one-half in value of the total amount of the Cooperative's debts; or

(b) contributor of the Cooperative holding not less than three-quarters of the voting rights at general meetings of the Cooperative.

(3) If, on the hearing of an application made under subparagraph (1), the Cooperative Tribunal is satisfied that a public examination of the person to whom the application relates is warranted, it shall

make an order directing such an examination to be held on a date and at a time and place specified in the order.

(4) On being served with a copy of an order made under subparagraph (3), the person concerned shall attend on the date and at the time and place specified in the order and be publicly examined –

(a) about the promotion, formation or management of the Cooperative; or

(b) about the conduct of its affairs, or conduct or dealings in relation to the Cooperative.

(5) The persons specified in subparagraph (6) may—

(a) participate in the public examination of a person under this paragraph; or

(b) may question the person concerning the matters referred to in subparagraph (4).

(6) The following persons are specified for the purpose of subparagraph (5) —

(a) the Commissioner;

(b) the liquidator of the Cooperative;

(c) the Authority;

(d) any person who has been appointed as special manager of the Cooperative's property or business;

(e) any creditor of the Cooperative who has submitted a proof; or

(f) any contributor of the Cooperative.

Consequences of failing to attend public examination.

8. (1) A person who without reasonable excuse, fails at any time to attend the person's public examination under paragraph 7 commits an offence of contempt on the Tribunal and is liable to be punished accordingly (in addition to any other punishment to which the person may be subject).

(2) If a person fails without reasonable excuse to attend the person's examination under paragraph 7, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying the examination, the Cooperative Tribunal may issue a warrant to be issued to a police officer or a prescribed officer of that Tribunal –

(a) for the arrest of that person; and

(b) for the seizure of any documents or property in that person's possession.

(3) In such a case, the Cooperative Tribunal may authorise the person arrested under the warrant to be detained in custody, and anything seized under it to be kept, in accordance with the directions of that Tribunal, until such time as that Tribunal orders.

Powers of the Cooperative Tribunal to halt Liquidation.

9. (1) When a liquidator is appointed in respect of a co-operative, the liquidator, the Commissioner or any creditor or contributor of the Cooperative, and on proof to the satisfaction of the Cooperative Tribunal that all proceedings in the liquidation ought to be halted, that Tribunal may make an order halting the liquidation proceedings, either permanently or for a specified period, on such terms as that Tribunal considers appropriate.

(2) Before making an order under subparagraph (1), the Cooperative Tribunal may require the liquidator to provide it with a report on any facts or matters that appear to the liquidator to be relevant to the application.

(3) The liquidator shall comply with such a requirement within such period as the Cooperative Tribunal specifies.

Payment of expenses of liquidation.

10. (1) If in the case of a Cooperative in respect of which a liquidator is appointed, the assets of the Cooperative are insufficient to satisfy its liabilities, the liquidator—

(a) may direct the expenses incurred in the liquidation to be paid out of the Cooperative's assets; and

(b) may direct that that payment be given such of priority as the liquidator considers appropriate.

(2) A direction under subparagraph (1) has effect irrespective of the provisions of this Act relating to preferential debts.

Power to arrest absconding contributor.

11. (1) This paragraph applies when the Commissioner has cancelled the registration of a co-operative.

(2) On the application of the Commissioner made either before or after the registration of the Cooperative is cancelled, the Cooperative Tribunal may, if satisfied on reasonable grounds that a contributor—

(a) is about to exit Kenya or otherwise to abscond; or

(b) has concealed or removed, or is about to conceal or remove, any of the contributor's property for the purpose of evading payment of calls,

issue a warrant authorizing the contributor to be arrested and the contributor's documents and moveable personal property to be seized.

(3) In such a case, the Cooperative Tribunal may authorize the person arrested under the warrant to be detained in custody, and anything seized under the warrant to be kept, in accordance with the directions of the Cooperative Tribunal, until such time as that Tribunal orders.

General provisions on Preferential debts.

12. (1) The liquidator of a Cooperative shall distribute the assets of the Cooperative available for the payment of creditors in accordance with the Second Schedule.

(2) Subparagraph (1) is subject to the provisions of this Schedule.

(3) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(4) If a person (whether or not a landlord or person entitled to rent) has distrained on the property of the Cooperatives during the three months immediately preceding the date on which a liquidator was been appointed, that property, or the proceeds of its sale, is charged for the benefit of the Cooperative with the preferential debts of the Cooperative to the extent that the Cooperative's assets are for the time being insufficient to satisfy them.

(5) If, because of a charge under subparagraph (2), a person surrenders property to the Cooperative or pays money to the Cooperative, the person ranks, in respect of the amount of the proceeds of sale of the property by the liquidator, or the amount money paid, as a preferential creditor of the Cooperatives, except as against so much of the Cooperative's property as is available for the payment of preferential creditors because of the surrender or payment.

(6) This paragraph does not limit the effect of paragraph 4.

Expenses of liquidation to have priority over claims under floating charge.

13. (1) The expenses of liquidating a co-operative, so far as the assets of the Cooperative available for payment of general creditors are insufficient to meet those expenses, have priority over any claims to property comprised in or subject to any floating charge created by the Cooperative and are to be paid out of any such property accordingly.

(2) In subparagraph (1), the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(a) the holders of debentures secured by, or holders of, the floating charge; and

(b) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made restricting the application of subparagraph (1), in such circumstances as may be prescribed by the Regulations, to expenses authorised or approved –

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them; or

(b) by the Cooperative Tribunal.

(4) References in this paragraph to the expenses of the liquidation are to all expenses properly incurred in the liquidation, including the remuneration of liquidator.

Power of liquidator to disclaim onerous property.

14. (1) The liquidator of a Cooperative may, by the giving such notice as may be prescribed by the Regulations, disclaim any onerous property and may do so even if the liquidator has taken control of it, tries to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this paragraph—

(a) an unprofitable contract; or

(b) any other property of the Cooperative that is unsalable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this paragraph –

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the Cooperative in or in respect of the property disclaimed; but

(b) does not, except so far as is necessary for the purpose of releasing the Cooperative from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer may not be given under this paragraph in respect of any property if –

(a) a person interested in the property has applied in writing to the liquidator, or a predecessor of the liquidator, requiring the liquidator or liquidator's predecessor to decide whether the property will be disclaimed or not; and

(b) twenty-eight days from and including the date on which that application, was made or such extended period as the High Court may allow, has expired without a notice of disclaimer having been given under this paragraph in respect of the property.

(5) A person who has sustained loss or damage in consequence of the operation of a disclaimer under this paragraph is a creditor of the Cooperative to the extent of the loss or damage and accordingly may prove for the loss or damage in the liquidation.

Special provisions relating to disclaimer of leaseholds.

15. The disclaimer under paragraph 14 of any property comprising a leasehold interest does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the Cooperative as under-lessee or mortgagee and either—

(a) an application under paragraph 18 (general powers of the Cooperative Tribunal in respect of disclaimed property) has not been made with respect to that property within fourteen days from and including the date on which the last notice served under this subparagraph was served; or

(b) if such an application is made that Tribunal makes an order directing the disclaimer to take effect.

Orders on fixtures, tenant's improvement etc.

16. (1) If the Cooperative Tribunal makes an order it may also, instead of or in addition to any order it makes under paragraph 18, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

(2) If, as a result of the disclaimer under paragraph 15 of land subject to a rent charge, the land vests by operation of law in a person, the person is not subject to any liability in respect of amounts becoming due under the rent charge except amounts that become due after the proprietor (or some person claiming under or through the proprietor) has taken possession or control of the land or has occupied it.

General Powers of the Cooperative Tribunal in respect of disclaimed property.

17. (1) The reference in sub-paragraph (1) to a person includes the State and to any a successor in title to the person.

(2) This paragraph and paragraph 19 apply to property that the liquidator of a Co-operative has disclaimed in accordance with paragraph 15.

(3) An application to the Cooperative Tribunal for an order under subparagraph (3) may be made by –

(a) any person who claims an interest in the disclaimed property; or

(b) any person who is under a liability in respect of the disclaimed property, other than a liability discharged by the disclaimer.

(4) On the hearing of an application made under subparagraph (2), the Cooperative Tribunal may make an order, on such terms as it considers appropriate, for the vesting of the disclaimed property in, or for its delivery to—

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to such a liability as is referred to in subparagraph (2)(b) or a trustee for such a person.

(5) The Cooperative Tribunal may make an order under subparagraph (3)(b) only if it appears to that Tribunal that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(6) The effect of an order made under this paragraph is to be taken into account in assessing for the purpose of paragraph 15(6) the extent of any loss or damage sustained by a person in consequence of the disclaimer.

(7) It is not necessary for an order under this paragraph vesting property in a person to be completed by transfer.

Powers of the Cooperative Tribunal in respect of leaseholds held by a Cooperative in liquidation.

18. (1) The Cooperative Tribunal may not make an order under paragraph 17 vesting a leasehold interest in a person claiming under the Cooperative as under lessee or mortgagee except on terms making the person –

(a) subject to the same liabilities and obligations as the Cooperative was subject to under the lease at the time of the liquidator 's appointment; or

(b) if that Tribunal considers appropriate subject to the same liabilities and obligations as the person would be subject to if the lease had been assigned to the person at that time.

(2) For the purposes of an order under paragraph 18 relating only to the part of the property comprising a lease, the requirements of subparagraph (1) apply as if the lease was the only property to which the order relates.

(3) If subparagraph (1) applies and no person claiming under the Cooperative as under lessee or mortgagee is willing to accept an order under paragraph 18 on the terms required under that subparagraph, the Cooperative Tribunal may make an order vesting the Cooperative's interest in the lease in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the Cooperative) to perform the lessee's covenants under the lease.

(4) The Cooperative Tribunal may vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the Cooperative, if subparagraph (1) applies and a person claiming under the Cooperative as under lessee or mortgagee declines to accept an order under paragraph 18, that person is excluded from all interest in the property.

Execution by creditor etc.

19. (1) If –

(a) a creditor –

(i) has issued execution against the property of a Cooperative; or

(ii) has attached any debt due to it; and

(b) a liquidator is subsequently appointed in respect of the Cooperative,

the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator unless the creditor has completed the execution or attachment before the commencement of the liquidation.

(2) However—

(a) a person who, under a sale conducted by the enforcement officer or other officer charged with the execution of the writ goods of a co-operative on which execution has been levied, purchases the goods in good faith acquires a good title to them as against the liquidator; and

(b) the Cooperative Tribunal may set aside the rights conferred on the liquidator by subparagraph (1) in favour of the creditor to such extent and subject to such terms as it considers just.

(3) For purposes of this Act—

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by its seizure or by any other event prescribed by the Regulations for the purposes of this paragraph.

Duties of judicial enforcement

20. (1) This paragraph applies if –

(a) a Cooperative's goods are taken in execution; and

officers charged with execution of writs and other processes involving Cooperative in liquidation.

(a) before their sale or the completion of the execution (whether by the receipt or recovery of the full amount of the levy) notice is served on the judicial enforcement officer charged with execution of the writ or other process that a liquidator has been appointed in respect of the Cooperative.

(2) If so required, the judicial enforcement officer concerned shall deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator.

(3) However, the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge.

(4) If, under an execution in respect of a judgement for an amount exceeding fifty thousand shillings, a Cooperative's goods are sold or money is paid in order to avoid sale, the judicial enforcement shall—

(a) deduct the costs of the execution from the proceeds of sale or the money paid; and

(b) retain the balance for not less than fourteen days.

(5) If, within that fourteen-day period –

(a) notice is served on the judicial enforcement officer to the effect that –

(i) an application for the liquidation of the Cooperative has been made been made;

(ii) a meeting has been convened at which there is proposed a resolution for voluntary;

(b) an order is made or a resolution passed,

that officer shall pay the balance to the liquidator, who is entitled to retain it, as against the execution creditor.

(6) The rights conferred by this paragraph on the liquidator may be set', aside by the Cooperative Tribunal in favour of the creditor to such extent and subject to such terms as that Tribunal considers appropriate.

(7) The Regulations may provide for the amount specified in subparagraph (4) to be increased or reduced.

21. (1) A person who is as against, the liquidator of a Cooperative entitled to the benefit or subject to the burden of a contract made with the Cooperative, may make an application for an order under subparagraph (2).

Power of the Cooperative Tribunal to rescind contracts entered into by Cooperative in liquidation.

(2) On the hearing of an application made under subparagraph (1), the Cooperative Tribunal may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as that Tribunal considers appropriate.

(3) Damages payable to a person under the order are provable by the person as a debt in the liquidation.

22. (1) A Cooperative in respect of which a liquidator is appointed shall ensure that –

Cooperative in liquidation required to state that it is in liquidations in all invoices, letters and other communications.

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the Cooperative, or a liquidator, of the Cooperative or a receiver or manager of the Cooperative's property; and

(b) each of the Cooperative's websites, states that the Cooperative is in liquidation.

(2) If the Cooperative fails to comply with a requirement under subparagraph (1), the Cooperative, and each officer of the Cooperative who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a Cooperative or any of its officers is convicted of an offence under subparagraph (2), the Cooperative continues to fail to comply with the relevant requirement, the Cooperative, and each officer of the Cooperative who is in default, commits a further offence on each day on which the failure

continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

Interest on debts to be payable if surplus permits.

23. (1) When a liquidator is appointed in respect of a Cooperative, interest is payable in accordance with this paragraph on any debt proved in the liquidation of the Cooperative's assets, including so much of any such debt as represents interest on the remainder.

(2) The liquidator shall, before applying any surplus remaining after the payment of the debts proved in the liquidation for any other purpose, apply the surplus in paying interest on those debts in respect of the periods during which they have been outstanding since the liquidator was appointed.

(3) All interest under this paragraph ranks equally whether or not the debts on which it is payable rank equally.

(4) The rate of interest payable under this paragraph in respect of a debt is the rate for the time being prescribed by the Regulations for the purposes of this paragraph.

Certain documents relating to Cooperative in liquidation to be exempt from stamp duty.

24. When a liquidator is appointed in respect of a Cooperative, the following documents are exempt from stamp duty—

(a) every transfer relating solely to freehold or leasehold property, or to any interest in, any real or personal property, that forms part of the Cooperative's assets and that, after the execution of the transfer, either at law of in equity, is or remains part of those assets; and

(b) every writ, order or other document relating solely to the property of the Cooperative, or to any proceeding relating to its liquidation.

Records of a Cooperative in liquidation to be evidence.

25. When a Cooperative is in liquidation, all records of the Cooperative and of the liquidator are evidence of the truth of all matters purporting to be recorded in them, until the contrary is proved.

Liquidator to lodge periodic statements with the Commissioner with respect to current position of liquidation.

26. (1) If the liquidation of a Cooperative is not completed within twelve months after its commencement; liquidator shall, at such intervals as may be prescribed by the Regulations and until the liquidation is completed, lodge with the Commissioner a statement containing the particulars so prescribed with respect to the proceedings in, and position of, the liquidation.

(2) A liquidator who fails to lodge a statement as required by subparagraph (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subparagraph (2), a liquidator continues to fail to lodge a statement as required by subparagraph (1), the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

Tribunal may order meetings to be held to ascertain wishes of creditors and contributors.

27. (1) The Cooperative Tribunal may—

(a) as to all matters relating to the liquidation of a Cooperative, have regard to the wishes of the creditors or contributors (as proved to it by any sufficient evidence); and

(b) if it considers appropriate, for the purpose of ascertaining those wishes –

(i) direct meetings of the creditors or contributors to be convened, held and conducted in such manner as that Tribunal directs; and

(ii) appoint a person to act as chairperson of any such meeting and report the result of it to that Tribunal.

(2) In the case of creditors, the Cooperative Tribunal shall take into account the value of each creditor's debt.

(3) In the case of contributories, the Cooperative Tribunal shall take into account the number of votes conferred on each contributor.

Judicial notice to be taken of documents of Cooperative Tribunal.

28. In all proceedings under this Schedule, all tribunals, all judges and persons acting judicially, and all officers of a tribunal, or employed in enforcing the process of a Tribunal or tribunal, are required to take judicial notice of——

(a) the signature of an officer of the Cooperative Tribunal; and

(b) the official seal or stamp of that Tribunal affixed to or impressed on any document made, issued or signed under a provision of this Act, or any official copy of such a document.

Affidavits required to be sworn for purposes of this Schedule.

29. (1) An Affidavit required to be sworn under or for the purposes of this Schedule may be sworn in Kenya –

(a) before any tribunal, judge or person lawfully authorised to take and receive affidavits; or

(b) before any of any diplomat representing the Government of Kenya in any place outside Kenya.

(2) All courts, tribunals, judges and other persons acting judicially are required to take judicial notice of the seal or stamp or signature of any such Tribunal, tribunal, judge, person or diplomat affixed to, impressed on, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Schedule.

Realising property of Cooperative in respect of which a liquidator is appointed.

30. (1) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(2) If a person has control over money, documents or other property to which the Cooperative appears to be entitled, the Cooperative Tribunal may require that person immediately, or within such period as that Tribunal may direct, to pay the money or deliver the documents or other property documents to the liquidator.

(3) Subparagraph (4) applies if the liquidator—

(a) seizes or disposes of property that is not property of the Cooperative; and

(b) at the time of seizure or disposal believes on reasonable grounds that the liquidator is entitled (whether under an order of that Tribunal or otherwise) to seize or dispose of that property.

(4) When this subparagraph applies, the liquidator—

(a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the liquidator's own negligence; and

(b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Duty of certain persons to cooperate with liquidator.

31. (1) When a liquidator is appointed in respect of a Cooperative, this paragraph applies to the following persons –

(a) those who are or have at any time been officers of the Cooperative;

(b) those who have taken part in the formation of the Cooperative at any time within the twelve months immediately preceding the effective date;

(c) those who are in the employment of the Cooperative, or have been in its employment (including employment under a contract for services) within that period, and are in the liquidator's opinion capable of giving the required information;

(d) those who are, or have within that period been, officers of, or in the employment of, another Cooperative that is, or within

period was, an officer of the relevant Cooperative.

(2) A person to whom this paragraph applies shall—

(a) give to the liquidator such information concerning the Cooperative and its promotion, formation, affairs or property as the liquidator may reasonably require; and

(b) appear before the liquidator at such times as the liquidator may reasonably require.

(3) A person who, without reasonable cause , fails to comply with a requirement imposed by this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) If, after being convicted of an offence under subparagraph (3), the person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is to fine not exceeding fifty thousand shilling for each such offence.

(5) In this paragraph, "employment" includes employment under a contract for services.

Lien or right in respect of the documents of Cooperative in documents.

32. (1) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(2) A lien or other right to retain possession of any of the documents of the Cooperative is unenforceable to the extent that its enforcement would deny possession of any of the documents to the liquidator.

(3) Subparagraph (2) does not apply to a lien on documents that confer a title to property and are held as such

Supply of utility services to Cooperatives in liquidation or under administration .

33. (1) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(2) If a request is made by or with the consent of the liquidator for the giving, after the date on which liquidator is appointed, of any of the supplies specified in subparagraph (3), the supplier—

(a) may make it a condition of the giving of the supply that the liquidator personally guarantees the payment of any charges in respect of the supply; but

(b) may not make it a condition for providing the supply, or take any action that has the effect of making it a condition for providing the supply, that any outstanding charges are to be paid in respect of a supply provided to the Cooperative before the effective date.

(3) The supplies referred to in subparagraph (2) are –

(a) a supply of gas by a gas supplier;

(b) a supply of electricity by an electricity supplier;

(c) a supply of water by a water supplier; and

(d) a supply of communications services by a provider of a public telecommunication or electronic communications service.

SECOND SCHEDULE

PREFERENTIAL DEBTS

Priority of payments to preferential creditors.

1. The debts of a cooperative in respect of which a liquidator is appointed are payable in the order of priority in which they are listed in paragraphs 2, 3 and 4.

First priority claims.

2. (1) The expenses of the liquidation have first priority and are payable in the order in which they are listed in subparagraph (2)(a) to (c).

(2) For the purposes of subparagraph (1), those expenses are as follows—

(a) the remuneration of the liquidator, and the fees and expenses properly incurred by the liquidator in performing out the duties imposed, and exercising the powers conferred, by or under this Act;

(b) to any creditor who protects or preserves assets of the Cooperative for the benefit of the creditors of the Cooperative by the payment of money or the giving of an indemnity —

(i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and

(ii) the amount of the costs incurred by that creditor in protecting and preserving those assets.

Second priority claims.

3. (1) After the claims referred to in paragraph 2 have been paid, claims in respect of the ollowing debts have second priority to the extent that they remain unpaid—

(a) all wages or salaries payable to employees in respect of services provided to the Cooperative during the four months before the date of appointment of the liquidator;

(b) any holiday payable to employees on the termination of their employment before that appointment or during the liquidation;

(c) any compensation for redundancy owed to employees that accrues before that appointment or during the liquidation; Cap.470.

(d) amounts deducted by the Cooperative from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act); Cap.234.

(e) any reimbursement or payment provided for, or ordered by the Industrial Tribunal under the Labour Institutions Act to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, in respect of wages or other money or remuneration lost during the four months before that appointment or during the liquidation; Cap.233.

(f) all amounts that are by any other written law required to be paid in accordance with the priority established by this clause paid by the buyer to a seller on account of the purchase price of goods.

(2) The total amount to which priority is to be given under any, or all, of subparagraphs (1)(a) to (e) may not, in the case of any one employee, exceed two hundred thousand shillings as at the commencement of the liquidation.

(3) The amount specified in subparagraph (2) is subject to adjustment as follows—

(a) subject to clause (d) the Cabinet Secretary shall, by order published in the Gazette, make an adjustment that has effect for the three-year period from and including 1st July 2015 and for each subsequent three-year period;

(b) subject to clause (d) the Cabinet Secretary shall make such an order within three months after the end of an adjustment period;

(c) each adjustment is required to reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings, calculated by reference to the last Employment Survey or similar employment index published by Kenya Bureau of Statistics or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey within the relevant adjustment period;

(d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, the Cabinet Secretary may not make an adjustment for that adjustment period;

(e) if, in accordance with clause (d), no adjustment is made, the Cabinet Secretary shall ensure that the next adjustment made for any later adjustment period reflects any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the adjustment period for which the subsequent adjustment is to be made;

(f) all adjustments are cumulative and are to be rounded to the nearest shilling with fifty cents being rounded to one shilling; and

(g) any correction to the quarterly employment survey on which an adjustment is based is to be disregarded until the adjustment that takes effect in the subsequent adjustment period, which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subparagraph.

(4) The amount specified in subparagraph (2), or that amount as adjusted under subparagraph (3), on the date of commencement of the liquidation, continues to apply to that liquidation regardless of any change to that amount that is prescribed after the date of commencement of the liquidation.

(5) In this paragraph—

"adjustment period" means the three-year period beginning on 1st July 2012 and each subsequent three-year period;

"employee" means a person employed by an employer for wages or a salary under a contract of service; and includes a home worker specified in of the Employment Act, 2007, but does not include a person who is, or was at any time during the twelve months before the appointment of the liquidator

of the Cooperative, a member of the committee of the Cooperative, or a nominee or relative of, or a trustee for, such a member;

"wages or salaries" in relation to an employee, includes—

(a) remuneration in the form of commission or payable for time or for piece work; and

(b) remuneration payable to an employee as holiday or sickness pay or in respect of absence from work for any other good reason.

Third priority claims.

4. After the claims referred to in paragraphs 2 and 3 have been paid, the claims in respect of the following debts have third priority to the extent that they remain unpaid—

(a) tax deductions made by the Cooperative under the pay as you earn rules of the income Tax Act; Cap 470.

(b) non-resident withholding tax deducted by the Cooperative under then Income Tax Act; Cap 470.

(c) resident withholding tax deducted by the Cooperative under the Income Tax Act; and Cap 470.

(d) duty payable within the meaning of section 2(l) of the Customs and Excise Act. Cap. 472.

Unsatisfied claims of the same priority to abate equally.

5. Claims having the same priority rank equally among themselves and, subject to any maximum payment level prescribed by or under any written law, are payable in full, unless the property of the Cooperative is insufficient to meet them, in which case they abate in equal proportions.

THIRD SCHEDULE (s. 126)

OFFENCES RELATING TO CONDUCT BEFORE AND DURING LIQUIDATION AND CRIMINAL PROCEEDINGS RELATING TO THOSE OFFENCES

Offence involving commission of fraudulent acts in anticipation of liquidation.

1. (1) This paragraph applies in relation to a Cooperative in respect of which a liquidator is appointed.

(2) An officer or past officer of the Cooperative commits an offence if, within the twelve months immediately preceding the appointment of the liquidator, the officer or past officer—

(a) concealed any part of the Cooperative's property to the value of fifty thousand shillings or more; or concealed any debt due to or from the Cooperative;

(b) fraudulently removed any part of the Cooperative's property to the value of fifty thousand shillings or more;

(c) concealed, destroyed, mutilated or falsified any document affecting or relating to the Cooperative's affairs or property;

(d) made any false entry in any document affecting or relating to the Cooperative's affairs or property;

(e) fraudulently parted with, altered or made any omission in any document affecting or relating to the Cooperative's affairs or property; or

(f) pawned, pledged or disposed of any property of the Cooperative that has been obtained on credit and has not been paid for.

(3) Subparagraph (3)(f) does not apply if the pawning, pledging or disposal was done in the ordinary course of the Cooperative's business.

(4) An officer or past officer of the Cooperative also commits offence—

(a) if, within the twelve months' period referred to in subparagraph (2), the officer or past officer has been privy to the doing by others of any of the acts referred to in clauses (c), (d) and (e) of that subparagraph; or

(b) if, at any time after the commencement of the liquidation, the officer or past officer—

(i) does any of the acts referred to in clauses (a) to (f) of that subparagraph; or

(ii) is privy to the doing by others of any of the acts referred to in clauses (c) to (e) of that subparagraph.

(3) In a prosecution for an offence under—

(a) clause (a) or (f) of subparagraph (2); or

(b) subparagraph (4) in respect of an act referred to in either of those two clauses, it is a defence to prove that the officer or past officer had no intention to defraud.

(4) If property is pawned, pledged or disposed of in circumstances that constitute an offence under subparagraph (2)(f), a person who takes in pawn or pledge, or otherwise receives, the property knowing it to have been pawned, pledged or disposed of in such circumstances, commits an offence.

(5) A person who commits an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(6) The Regulations may increase or reduce the amounts specified in subparagraph (2)(a) and (b).

Offences involving transactions to defraud creditors of Cooperative in respect of which liquidator is appointed.

2. (1) This paragraph applies in relation to a Cooperative in respect of which a liquidator is appointed.

(2) An officer or past officer of the Cooperative commits an offence if the officer or past officer—

(a) has made or caused to be made a gift or transfer of, or charge on, or has caused or connived at the levying of execution against, the Cooperative's property; or

(b) has concealed or removed any part of the Cooperative's property since, or within the two months preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the Cooperative.

(3) A person is not liable to be charged with an offence under subparagraph (2) if the conduct alleged to constitute the offence occurred more than five years before the commencement of the liquidation.

(4) In a prosecution for an offence under subparagraph (2)(a), it is a defence to prove that the officer or past officer did not, at the time of the alleged offence, have any intent to defraud the Cooperative's creditors.

(5) An officer or past officer of Cooperative who commits an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both.

Offences involving misconduct committed in course of liquidation of a Cooperative.

3. (1) This paragraph applies in relation to a Cooperative for which a liquidator is appointed.

(2) An officer or past officer of the Cooperative commits an offence if the officer or past officer—

(a) does not to the best of the officer's or past officer's knowledge and belief fully and truly disclose to the liquidator all of the Cooperative's property, and how and to whom and for what consideration and when the Cooperative disposed of any part of that property (except such part as has been disposed of in the ordinary course of the Cooperative's business);

(b) does not deliver up to the liquidator, or in accordance with the directions of the liquidator, all such part of the Cooperative's property as is under the control of the officer or past officer, and that the liquidator is required by law to deliver up;

(c) fails to deliver up to the liquidator (or as the liquidator directs) all documents under the control of the officer or past officer that belong to the Cooperative and that the officer or past officer is required by law to deliver up;

(d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator of that knowledge or belief as soon as practicable; or

(e) after the appointment of the liquidator, prevents the production of any document affecting or relating to the Cooperative's affairs or property.

(3) An officer or past officer also commits an offence if, after the liquidator is appointed, the officer or past officer attempts to account for any part of the Cooperative's property by means of fictitious losses or expenses.

(4) An officer or past officer is presumed, in the absence of evidence to the contrary, to have committed an offence under subparagraph (3) if the officer or past officer has made an attempt of the kind referred to in that subparagraph at a meeting of the Cooperative's creditors held within the twelve months immediately preceding the appointment of the liquidator.

(5) In a prosecution for an offence under subparagraph (2)(a), (b) or (c), it is a defence to prove that the officer or past officer had no intention to defraud.

Offence to falsify documents in relation to 4. (1) Cooperative in respect of which liquidator is appointed.

4. (1) This paragraph applies in relation to a Cooperative in respect of which a liquidator is appointed.

(2) An officer or contributor of the Cooperative commits an offence if, during the liquidation, the officer or contributor, with intent to defraud or deceive the Cooperative or any other person—

(a) destroys, damages, alters or falsifies a security or other document of the Cooperative; or

(b) makes or is privy to the making of a false or fraudulent entry in any record or other document of the Cooperative.

(3)A person who commits an offence under subparagraph (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, to both.

Offence to make material omission from statement relating to affairs of Cooperative in liquidation.

5. (1) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(2) An officer or past officer of the Cooperative commits an offence if, while the liquidator is appointed, the officer or past officer makes a material omission from a statement relating to the Cooperative's affairs.

(3) An officer or past officer of the Cooperative is also taken to have committed an offence under subparagraph (2) if, before the appointment of the liquidator, the officer or past officer has made any material omission from a statement relating to the Cooperative's affairs.

(4) In a prosecution for an offence under this paragraph, it is a defence to prove that the officer or past officer had no intention to defraud

(5) A person who commits an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment for twelve months, or to both.

Offence to make false representations to creditors of Cooperative in liquidation.

6. (1) This paragraph applies to a Cooperative in respect of which a liquidator is appointed.

(2) An officer or past officer of the Cooperative commits an offence if—

(a) the officer or past officer makes a false representation; or

(b) does any other fraudulent act, for the purpose of obtaining the consent of the Cooperative's creditors or any of them to an agreement relating to the Cooperative's , affairs or to its liquidation.

(3) An officer or past officer of the Cooperative is also to be taken to have committed an offence under subparagraph (2) if, before the commencement of the liquidation, the officer or past officer—

(a) made any false representation; or

(b) did any other fraudulent act, for the purpose of obtaining that consent.

(4) An officer or past officer who commits an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years, or to both.

Power of the Cooperative Tribunal to make orders against delinquent committee members, liquidators.

7. (1) This paragraph applies to the following persons—

(a) an officer or past officer of a Cooperative, that is in liquidation (whether by the Commissioner or voluntarily);

(b) a person who is or has acted as the liquidator of such a Cooperative;

(c) not being a person referred to in paragraph (a) or (b), a person who has been concerned in the promotion, formation or management of such a Cooperative.

(2) If, during the course of the liquidation of a Cooperative, it appears that a person to whom this paragraph applies has or may have—

(a) misapplied or retained, or become accountable for, money or property of the Cooperative; or

(b) committed misfeasance or a breach of any fiduciary or other duty in relation to the Cooperative, the Commissioner, the liquidator of the Cooperative or a creditor or contributor of the Cooperative may make an application to that Tribunal to conduct an examination under subparagraph (6).

(3) The reference in subparagraph (2) to misfeasance or a breach of any fiduciary or other duty in relation to the Cooperative includes, in the case of a person who has acted as liquidator of the Cooperative, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of the liquidator's functions as liquidator of the Cooperative.

(4) An application under subparagraph (2) may be made in relation to a person who has acted as liquidator of the Cooperative only with the leave of the Cooperative Tribunal given after the person has been released from the responsibilities of liquidator.

(10) A contributor may make an application under subparagraph (2) only with the leave of the Cooperative Tribunal.

(11) On the hearing of an application made under subparagraph (2), the Cooperative Tribunal may undertake an examination into the conduct of the person in relation to whom the application was made.

(12) If, at the conclusion of the examination, the Cooperative Tribunal finds that the person examined has engaged in conduct of a kind referred to in subparagraph (2), it may make an order compelling the person——

(a) to repay, restore or account for the money or property or any part of it, with interest at such rate as that Tribunal considers appropriate; or

(b) to contribute such amount to the Cooperative's assets as compensation for the misfeasance, breach of fiduciary or other duty as the Cooperative Tribunal considers fair and reasonable.

Power of the Cooperative Tribunal to make orders

8. (1) Liquidator of a Cooperative may make an application to the Cooperative Tribunal for an order under subparagraph (2) if –

against officers of Cooperative and others found to have participated in fraudulent trading by Cooperative.

(a) in the course of the liquidation of the Cooperative, the liquidator forms the view that a business of the Cooperative has been carried on with intent to defraud creditors of the Cooperative or creditors of any other person, or for any fraudulent purpose; and

(b) the liquidator believes that specified persons participated directly or indirectly in the business with the knowledge that the business was being carried on in that manner.

(2) If, on hearing an application made under subparagraph (1), the Cooperative Tribunal finds that the persons specified in the application did in fact participate (directly or indirectly) in a business of the Cooperative with the knowledge that it was being carried on in the manner referred to in subparagraph (1)(a), it may order those persons (or any of them) to make such contributions to the Cooperative's assets as the Cooperative Tribunal considers fair and reasonable.

(3) The persons specified in an application made under subparagraph (2) are entitled to be served with a copy of the application and to appear and be heard as respondents at the hearing of the application.

(4) If the Cooperative Tribunal makes an order against a person under subparagraph (2), it may also make an order disqualifying the person from—

(a) being or acting as a member of the committee of a Cooperative;

(b) being or acting as a liquidator, provisional liquidator or administrator of a Cooperative;

(c) being or acting as a supervisor of a voluntary arrangement approved by the Cooperative; or

(d) in any way (whether directly or indirectly) being concerned in the promotion, formation or management of a Cooperative, for such period, not exceeding fifteen years, as may be specified in the order.

Power of the Cooperative Tribunal to make orders against officers of Cooperative engaging in wrongful trading.

9. (1) This paragraph applies—

(a) to a Cooperative in respect of which a liquidator is appointed; and

(b) to a person who, at a time before the liquidator was appointed, was an officer of the Cooperative.

(2) For the purposes of this paragraph—

(a) a Cooperative is in insolvent liquidation if, at the time the liquidation commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation; and

(b) the person in respect of whom an application is made under subparagraph (3) is the respondent to the application.

(3) If, in the course of the liquidation of a Cooperative, it appears to the liquidator that a person to whom this paragraph applies knew or ought to have known that there was no reasonable prospect that the Cooperative would avoid being placed in liquidation, the liquidator may make an application to the Cooperative Tribunal for an order under subparagraph (5).

(4) The Cooperative Tribunal may hear an application made under subparagraph (2) only if the person in respect of whom the application was made has been served with a copy of the application.

(5) If, on the hearing of an application made under subparagraph (3), the Cooperative Tribunal may, if satisfied that, at the relevant time, the respondent knew or ought to have known that there was no reasonable prospect that the Cooperative would avoid being placed in insolvent liquidation, make an order declaring the respondent to be liable to make such contribution to the Cooperative's assets as that Tribunal considers appropriate.

(6) However, the Cooperative Tribunal may not make such an order if satisfied that the respondent took such steps to avoid potential loss to the Cooperative's creditors as the respondent ought reasonably to have taken.

(7) If the Cooperative Tribunal makes an order against a person under subparagraph (5), it may also make an order disqualifying the person from—

(a) being or acting as a member of the committee of a Cooperative or a director of a company;

(b) being or acting as a liquidator, provisional liquidator or administrator of a Cooperative;

(c) being or acting as a supervisor of a voluntary arrangement approved by the Cooperative; or

(d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a Cooperative or a company, for such period, not exceeding fifteen years, as may be specified in the order.

Supplementary provisions relating to proceedings under paragraphs 8 and 9.

10. (1) On the hearing of an application under paragraph 8 or paragraph 9 the liquidator may personally give evidence or call witnesses.

(2) If the Cooperative Tribunal makes an order under paragraph 8 or 9, it may make such further orders as it considers appropriate for giving effect to the order.

(3) In particular, the Cooperative Tribunal may—

(a) provide for the liability of any person under the order to be a charge –

(i) on any debt or obligation due from the Cooperative to the person; or

(ii) on any mortgage or charge or any interest in a mortgage or charge on assets of the Cooperative held by or vested in the person, or any other person on the person's behalf, or any other person who claims as an assignee from or through the person liable or any person acting on that person's behalf; and

(b) from time to time make such further order as may be necessary for enforcing a charge imposed under paragraph (a).

(4) For the purposes of subparagraph (3)(a)(ii),

"assignee"—

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but

(b) does not include an assignee for valuable consideration not including consideration by way of marriage given in good faith and without notice of any of the matters on the ground of which the order is made.

(5) If the Cooperative Tribunal makes an order under paragraph 8 or 9 in relation to a person who is a creditor of the Cooperative, it may direct that the whole or any part of any debt owed by the Cooperative to that person, and any interest on the debt, ranks in priority after all other debts owed by the Cooperative and after any interest on those debts.

(6) The Cooperative Tribunal can make an order under paragraph 8 or 9 even if the person concerned may be criminally liable in respect of matters giving rise to the making of the order.

Member of the committee of Cooperative in insolvent liquidation prohibited from being member of the committee of, or being involved with, any other Cooperative that is known by a prohibited name.

11. (1) This paragraph applies to a person if —

(a) a Cooperative is in insolvent liquidation on or after the commencement of this paragraph; and

(b) the person was a member of the committee of the Cooperative at any time during the twelve months immediately preceding the date on which the liquidation of the Cooperative commenced.

(2) For the purposes of this paragraph, a name is a prohibited name in relation to such a person if—

(a) it is a name by which the Cooperative was known at any time during that period of twelve months; or

(b) it is a name that is so similar to a name of the kind referred to in paragraph (a) as to suggest an association with the Cooperative.

(3) Except with leave of the Cooperative Tribunal, or in such circumstances as may be prescribed by the Regulations, a person to whom this paragraph applies shall not at any time during the five years from and including the date on which the liquidation of the Cooperative commenced—

(a) be a member of the committee of any other Cooperative that is known by a prohibited name;

(b) in any way directly or indirectly be concerned or take part in the promotion, formation or management of any such Cooperative; or

(c) in any way directly or indirectly be concerned or take part in the carrying on of a business carried on otherwise than by a Cooperative under a prohibited name.

(4) A person who contravenes this paragraph commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(5) A reference in this paragraph, in relation to a time, to a name by which a Cooperative is known is a reference to the name of the Cooperative at that time or to any name under which the Cooperative carried on business at that time.

(6) For the purposes of this paragraph, a Cooperative is in insolvent liquidation if, at the time the liquidation commences, the Cooperative's assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation.

Circumstances in which persons are personally liable for debts of a Cooperative.

12. (1) A person is personally responsible for all the relevant debts of a Cooperative if at any time the person—

(a) is involved in the management of the Cooperative in contravention of paragraph 11; or

(b) while is involved in the management of the Cooperative, acts or is willing to act on instructions given (without the leave of the Cooperative Tribunal by a person whom the person knows to be subject to a person to whom subparagraph (2) applies.

(2) Subparagraph (1) applies to the following persons—

(a) a person who is involved in the management of the Cooperative in contravention of paragraph 11;

Cap.486.

(b) a person who is subject to a disqualification order or disqualification undertaking, or to foreign restrictions, under Part X of the Companies Act, or

(c) a person who is subject to any other restriction or disability of a kind prescribed by Regulations made for the purpose of this section.

(3) If, because of subparagraph (1), a person is personally responsible for the relevant debts of a Cooperative, the person is jointly and severally liable for those debts with the Cooperative and any other person who, whether under this paragraph or otherwise, is so liable.

(4) For the purposes of this paragraph, the relevant debts of a Cooperative are—

(a) in relation to a person who is personally responsible under clause (a) of subparagraph (I), such debts and other liabilities of the Cooperative as are incurred at a time when the person was involved in the management of the Cooperative; and

(b) in relation to a person who is personally responsible under clause (b) of that subparagraph, such debts and other liabilities of the Cooperative as are incurred at a time when the person was acting or was willing to act on instructions given as referred to in that paragraph.

(5) For the purposes of this paragraph, a person is involved in the management of a co-operative if the person –

(a) is a member of the board of directors or supervisory board or is an officer of the Cooperative; or

(b) is concerned, whether directly or indirectly, or takes part, in the management of the Cooperative.

(6) For the purposes of this paragraph, a person who, is involved in the management of a Cooperative and has at any time acted on instructions given without the leave of the Cooperative

Tribunal by another person whom the person knew at that time to be a person to whom subparagraph (2) applies is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

Investigations during liquidation

13. (1) This paragraph applies to a Cooperative that is under investigation during liquidation.

(2) If the Cooperative Tribunal concludes that a person who was at the relevant time an officer or past officer, or member, of the Cooperative may have committed an offence in relation to the Cooperative for which the person is liable, the Cooperative Tribunal may either on the application of a person interested in the liquidation or on its own initiative direct the liquidator to report the matter to the Commissioner.

(3) If, while the Cooperative is being liquidated, it appears to the liquidator that a person who, at the relevant time was an officer or past officer, or a member, of the Cooperative, may have committed an offence in relation to the Cooperative for which the person is liable, the liquidator shall report the matter to the Commissioner.

(4) In making a report under subparagraph (2) or (3), the liquidator shall provide the Commissioner with –

(a) such information; and

(b) such access to and facilities for inspecting and taking copies of documents, as the Commissioner reasonably requires and the liquidator is able to reasonably give or provide.

(5) As soon as practicable after receiving a report under subparagraph (2) or (3) which establishes possibility of criminal liability, the Commissioner shall forward the report to the Directorate of Criminal Investigations for further investigation, together with —

(a) the information and documents (if any) given or provided in accordance with subparagraph (4); and

(b) such observations on the report, information and documents as the liquidator considers relevant.

(6) On receiving a report under subparagraph (5), the Directorate of Criminal Investigations shall investigate the matter concerned and such other matters relating to the affairs of the Cooperative as appear to the Directorate of Criminal Investigations to require investigation.

(7) For the purpose of an investigation under subparagraph (6), the Directorate of Criminal Investigations may exercise any of the powers conferred on inspectors by Part XXX of the Companies Act as if the Cooperative were a company.

Cap.486.

Investigation by Directorate of Criminal Investigations.

Cap.486.

14. (1) For the purpose of an investigation by the Directorate of Criminal Investigations under paragraph 13(6), a person has the same obligation to produce documents or give information, or otherwise assist the Directorate of Criminal Investigations, as the person would have in relation to an inspector appointed under Part XXX of the Companies Act.

(2) An answer given by a person to a question put to the person in exercise of the powers conferred by paragraph 13(7) may be used in evidence against the person.

(3) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) evidence relating to the answer may not be adduced; and

(b) questions relating to it may not be asked, by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(4) This paragraph applies to all offences other than an offence under sections 107 and 114 of the Penal Code.

Cap.63.

(5) If criminal proceedings are begun by the Director of Public Prosecutions following an investigation under paragraph 13(6), the liquidator and every officer and agent, and past officer and agent, of the Cooperative, other than the defendant shall provide the Director of Public Prosecutions and the Directorate of Criminal Investigations with such assistance in connection with the prosecution as the liquidator, officer or agent or past officer or agent is reasonably able to give.

(5) In subparagraph (5)—

"agent" includes any bank or advocate of the Cooperative and any person employed by the Cooperative as auditor, whether that person is or is not an officer of the Cooperative.

(7) If a person fails to provide assistance as required by subparagraph (5), the High Court may, on the application of the Director of Public Prosecutions or the Directorate of Criminal Investigations make an order directing the person to comply with that subparagraph.

(8) If the application is made with respect to a liquidator, the High Court may also make an order directing the costs to be borne by the liquidator personally.

(9) The High Court may not make such an order if it is established that the failure to comply was due to the liquidator having insufficient assets of the Cooperative to enable the liquidator to provide the required assistance.

II. THE KENYA JUDICIARY ACADEMY BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2025)

Notice is given that the Chairperson of the Departmental Committee on Justice and Legal Affairs intends to move the following amendments to the Kenya Judiciary Bill, 2023 at the Committee stage—

LONG TITLE

THAT, the Bill be amended by deleting the long title and substituting therefor the following new long title—

AN ACT of Parliament to give effect to Article 172(1)(d) of the Constitution by establishing the Kenya Judiciary Academy to prepare and implement programmes for continuing education and training of judges, judicial officers and judicial staff on behalf of the Judicial Service Commission and for connected purposes

CLAUSE 3

THAT, Clause 3 of the Bill be amended by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) establish the Academy as a center of excellence in matters relating to continuing education and training of judges, judicial officers and judicial staff on behalf of the Commission;

CLAUSE 4

THAT, Clause 4 of the Bill be amended—

(a) in subclause (2) by deleting the word "of" appearing immediately after the word "doing" in paragraph (d) and substituting therefor the word "or"; and

(b) by deleting subclause (4) and substituting therefor the following new subclause—

(4) Despite the provisions of subsection (3), the Commission may establish campuses of the Academy in any other county.

CLAUSE 5

THAT, Clause 5 of the Bill be amended by—

(a) deleting the opening statement and substituting therefor the following new opening statement—

5. The Academy shall, on behalf of the Commission—

(b) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) prepare and implement programmes for the continuing education and training of judges, judicial officers and judicial staff;

(c) deleting paragraph (b).

CLAUSE 6

THAT, Clause 6 of the Bill be amended—

(a) in subclause (1), by deleting the word "on" appearing immediately after the word "vest" in the opening statement and substituting therefor the word "in"; and

(b) in subclause (3), by deleting the expression "(2)" appearing immediately after the word "subsection" and substituting therefor the expression "(1)".

CLAUSE 7

THAT, Clause 7 of the Bill be amended—

(a) by deleting the marginal note and substituting therefor the following marginal note—

Powers of the Board.

(b) by deleting subclause (1)

(c) in subclause (3), by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) make policy and provide oversight over the Academy;

CLAUSE 8

THAT, Clause 8 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—

(2) The Board may establish such committees as may be necessary for the effective performance of its functions.

CLAUSE 10

THAT, Clause 10 of the Bill be amended—

(a) in subclause (1), by deleting the word "Board" appearing immediately after the words "appointed by" and substituting therefor the word "Commission"; and

(b) in subclause (4), by deleting the word "Board" appearing immediately after the words "assigned by" and substituting therefor the word "Commission".

CLAUSE 11

THAT, Clause 11 of the Bill be amended in subsection (4) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) the accounting officer and head of staff of the Academy;

CLAUSE 13

THAT Clause 13 of the Bill be amended in subclause (1) by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) monies allocated to the Commission for purposes of the Academy and approved by the National Assembly;

(b) deleting paragraph (b); and

(c) deleting paragraph (c).

III. THE BOOKS AND NEWSPAPERS (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 66 OF 2026)

Notice is given that the Chairperson of the Parliamentary Broadcasting and Library Committee intends to move the following amendments to the Books and Newspapers (Amendment) Bill, 2025 at the Committee Stage—

NEW CLAUSE 1A

THAT the Bill be amended by inserting the following new clause immediately after clause 1—

Amendment of section 2 of Cap 111.

1A. Section 2 of the principal Act is amended—

(i) in the definition of the word "book" by inserting the words "printed or digital publication" immediately after the words "includes any"; and

(ii) by inserting the following new definition in its proper alphabetical sequence —

"digital publication" means a publication in electronic form of a book or newspaper accessible online or offline;

CLAUSE 2

THAT, Clause 2 of the Bill be amended—

(a) in paragraph (c) by—

(i) deleting subparagraph (i) and substituting therefor the following new subparagraph—

"(i) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) before or within twenty-one days after publication of the book, at his or her own expense deliver to the Registrar and the Clerk of the Senate three copies of the book, together with a return in the prescribed form, containing the prescribed particulars and signed by the publisher;"

(b) by inserting the following new paragraphs immediately after paragraph (c)—

(ca) by inserting the following new subsection immediately after subsection (1)—

(1A) A publisher of a digital publication in Kenya shall, within twenty-one days of publication of the book, submit a digital copy of the book to the Registrar, the Director of the Kenya National Library Service and the Clerk of the Senate together with a return in the prescribed form, containing the prescribed particulars.

(cb) by deleting the words "the Colony" appearing in subsection (2) and substituting therefor the word "Kenya"; and

(c) in paragraph (h) by deleting the words "the Kenya National Archives" appearing in the proposed new subsection (9).

NEW CLAUSE 2A

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 2—

Amendment of section 9 of Cap 111.

2A. Section 9 of the principal Act is amended by—

(a) in subsection (1) by deleting the words "shall be guilty of an offence and be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment" appearing immediately after paragraph (c) and substituting therefor the words "shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment"; and

(b) deleting the words "guilty of an offence and liable to a fine not exceeding twenty" appearing in subsection (4) and substituting therefor the words "on conviction be liable to a fine not exceeding five hundred";

NEW CLAUSE 2B

Amendment of section 11 of Cap 111.

2B. Section 11 of the principal Act is amended by deleting the words "the Colony" appearing in subsection (1) and substituting therefor the word "Kenya".

NEW CLAUSES 5 AND 6

THAT the Bill be amended inserting the following new clauses immediately after clause 4—

Amendment of section 22 of Cap 111.

5. Section 22 of the principal Act is amended by inserting the following new paragraph immediately after paragraph (g)—

(h) prescribing the technical specifications for digital copies of books to be submitted to the Registrar, the Kenya National Library Services and the Clerk of the Senate including the file format, resolution, metadata standards and the manner of delivery.

Insertion of a new section 23 in Cap 111.

6. The principal Act is amended by inserting the following new section immediately after section 22—

Transition.

23. Section 6(9) of this Act shall not apply to publishers of books for a period of six months from the date of commencement of this Act.

LIMITATION OF DEBATE

The House resolved on Wednesday, February 11, 2026 as follows—

Limitation of Debate on Other Committee Reports

IV. **THAT**, each speech in a debate on **Other Committee Reports**, including a Report of a Joint Committee of the Houses of Parliament or any other Report submitted to the House for which limitation of time has not been specified, be limited as follows:- A maximum of two and a half hours, with not more than twenty (20) minutes for the Mover in moving and five (5) minutes for any other Member speaking, **including** the Leader of the Majority Party and the Leader of the Minority Party and the Chairperson of the relevant Committee (if the Committee Report is not moved by the Chairperson of the relevant Committee), and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and further that priority in speaking shall be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

Limitation of Debate on Bills sponsored by Parties or Committees

V. **THAT**, each speech in a debate on **Bills sponsored by a Committee, the Leader of the Majority Party or the Leader of the Minority Party** be limited as follows:- A maximum of forty five (45) minutes for the Mover, in moving and fifteen minutes (15) in replying, a maximum of thirty (30) minutes for the Chairperson of the relevant Committee (if the Bill is not sponsored by the relevant Committee), and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen minutes (15) each (if the Bill is not sponsored by either of them); and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

Limitation of Debate on Audit Committee Reports

VI. **THAT**, each speech in debate on **Reports of Audit Committees** be limited as follows:- A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each; and that priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that order.

NOTICE PAPER

Tentative business for

Tuesday, November 10, 2026

(Published pursuant to Standing Order 38(1))

It is notified that the following business is ***tentatively*** scheduled to appear in the Order Paper for Tuesday, November 10, 2026—

A. THE MICROFINANCE BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2026)
(The Chairperson, Departmental Committee on Finance & National Planning)

Second Reading

B. THE TRADE DESCRIPTION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2026)
(The Leader of the Majority Party)

Second Reading

(If not concluded on Thursday, November 05, 2026)

C. MOTION – REPORT ON INSPECTION VISITS TO CONSTITUENCY OFFICES IN NAKURU COUNTY
(The Chairperson, Committee on Members' Services and Facilities)

(If not concluded on Thursday, November 05, 2026)

D. THE KENYA INTELLECTUAL PROPERTY BILL (NATIONAL ASSEMBLY BILL NO. 40 OF 2026)
(The Leader of the Majority Party)

Second Reading

(If not concluded on Thursday, November 05, 2026)

E. MOTION – NINETEENTH REPORT ON THE AUDITED FINANCIAL STATEMENTS OF THE NG-CDF FOR CONSTITUENCIES IN NAIROBI AND KAJIADO COUNTIES FOR FYs 2013/2014 TO 2024/2025
(The Chairperson, Decentralized Funds Accounts Committee)

(If not concluded on Thursday, November 05, 2026)

F. MOTION – **THIRTEENTH REPORT ON EXAMINATION OF AUDITED FINANCIAL STATEMENTS FOR VARIOUS TECHNICAL AND VOCATIONAL COLLEGES AND TECHNICAL TRAINING INSTITUTES**

(The Chairperson, Public Investments Committee on Governance and Education)

(If not concluded on Thursday, November 05, 2026)

G. MOTION – **REPORT ON THE PEACE AND SECURITY ENGAGEMENT IN ISIOLO COUNTY**

(The Chairperson, Committee on National Cohesion and Equal Opportunity)

(If not concluded on Thursday, November 05, 2026)

H. MOTION – **REPORT ON BUDGET IMPLEMENTATION MONITORING FOR THE FINANCIAL YEAR 2025/2026**

(The Chairperson, Departmental Committee on Regional Development)

(If not concluded on Thursday, November 05, 2026)

...../Appendix*

APPENDIX

NOTICE OF PETITIONS, QUESTIONS & STATEMENTS

ORDER NO. 7 - STATEMENTS

It is **notified** that, pursuant to the provisions of Standing Order 44(2)(c), the following Statements will be **responded to –**

No.	Subject	Member	Relevant Committee
1.	Unauthorised payment by the Kenya Tea Development Agency (KTDA) to *Oriole* Homes Limited	Hon. Muchangi Karemba, MP *(Runyenjes)*	Agriculture & Livestock
2.	Reported trafficking and smuggling of Kenyan citizens through the *Kenya-Ethiopia-Sudan-Libya-Europe* corridor	Hon. Abdul Haro, MP *(Mandera South)*	Defence, Intelligence and Foreign Relations
3.	Deaths of four Kenyan migrant workers in the Middle East	Hon. Machua Waithaka, MP *(Kiambu)*	Defence, Intelligence and Foreign Relations
4.	Arbitrary disconnection of electricity in Kwale County	Hon. Fatuma Masito, MP *(Kwale County)*	Energy
5.	Operations of the QVSE online trading platform in Kenya	Hon. Stephen Mule, MP *(Matungulu)*	Finance & National Planning
6.	Governance disputes within the Football Kenya Federation and outstanding payments to Harambee Stars	Hon. Kakai Bisau, MP *(Kiminini)*	Sports & Culture
7.	Status of construction of the *Gikondi-Thaara* and *Mwireri – Mutwewathi* Roads	Hon. John Kaguchia, MP *(Mukurwe-ini)*	Transport & Infrastructure

No.	Subject	Member	Relevant Committee
8.	The status of construction of the *Mau Mau Road Lot 4* Project	Hon. Geoffrey Wandeto, MP *(Tetu)*	Transport & Infrastructure