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EMBU COUNTY BILLS, 2019

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THE EMBU COUNTY CO-OPERATIVE SOCIETIES BILL, 2019

A Bill for

AN ACT of the County Assembly of Embu to give effect to section 7 (e) of Part II of the Fourth Schedule of the Constitution, to establish a framework relating to the formation, registration, promotion, development and regulation of co-operative societies and for connected purposes

ENACTED by County Assembly of Embu as follows—

PART I—PRELIMINARY

Short title and commencement

1 This Act may be cited as the Embu County Co-operative Societies Act, 2019 and shall come into operation upon publication in the *Gazette*

Interpretation

2 In this Act, except where the context otherwise requires—

“agricultural produce” means any produce or article produced or obtained by the work or industry of members of a co-operative society or marketed by a co-operative society, whether the produce be of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise,

“apex society” means a national umbrella co-operative society whose membership is open to all co-operative societies and entire co-operative movement, to promote co-operative development and represent the interests of co-operative societies locally and internationally,

“Committee” means the governing body of a co-operative society to whom the management of its affairs is entrusted, and includes a Board of Directors

‘bonus’, in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s volume of business with the society bears to the total volume of business done by the society,

“by-laws” means the by-laws made by a society and registered under this Act and includes any registered amendment of such by-laws,

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

“contributor” means a person liable to contribute to the assets of a co-operative society in the event of its being wound up and for the purposes of any proceedings for determining and before the final determination of the persons who are to be deemed contributors, includes any person alleged to be a contributor,

“co-operative society” means a society registered under section 7 and includes a co-operative society registered in another county and licensed to operate within the county,

“co-operative union” means a co-operative society whose membership is restricted to primary societies,

County” means the County Government of Embu,

“date of dissolution” means the date on which the Director’s order canceling the registration of a co-operative society takes effect,

“deposit” means a sum of money received by a society from a member 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 between the society and the member,

“Director” means the Director for Co-operative Development appointed under section 6 and includes any person on whom any of the powers of the Director have been conferred in accordance with this Act,

“dividend” in relation to a member of a co-operative society, means that member’s share of the surplus of the society 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 society,

“Executive Committee Member” means the County Executive Committee Member for the time being responsible for co-operative societies

“Investment co-operative society” means a co-operative society whose core activity is to raise money for investment in any sector not prohibited by law

“limited liability” means limited by shares or limited by guarantee, according to the nature of the liability prescribed by the by-laws of the co-operative society,

member” includes a person or a co-operative society joining in the application for the registration of a society, and a person or co-operative society admitted to membership after registration in accordance with the by-laws,

“officer” includes a chairperson, vice-chairperson, secretary, treasurer, committee member, employee or any other person empowered under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society,

“personal representative” means any person who, under law or custom, is responsible for the administration of the estate of a deceased person,

“primary society” means a co-operative society whose membership is restricted to individual persons,

“share” means the amount represented by a member’s portion in the equity of a society as a co-owner,

“special general meeting” means a general meeting, other than an ordinary general meeting, of which at least fifteen clear days written notice of the resolution and of 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 society,

“supervisory committee” means an oversight committee elected at a general meeting, and

“winding up” means all proceedings subsequent to the dissolution of a co-operative society

Object and purpose

3 The object and purpose of this Act is to establish a legal framework for registration and regulation of co-operative societies within the County in order to—

- (a) promote growth and development of co-operative societies,
- (b) promotion of cooperation between the national and county governments in matters relating to co-operative societies,
- (c) enhance good governance in the co-operative societies,
- (d) manage conflicts and disputes,
- (e) promote corporate governance of co-operative societies, and
- (f) promote local economic growth and development

Application

4 (1) This Act shall regulate the operations of a co-operative society or a branch of a co-operative society within the County

(2) A person who operates or intends to operate a co-operative society or a branch of a co-operative society within the County shall comply with the provisions of this Act

PART II—ADMINISTRATION AND OFFICERS

Role of the County Executive Committee Member

5 The Executive Committee Member shall be responsible for the growth and development of co-operative societies in the County, and shall in particular—

- (a) Develop and oversee the implementation of county co-operative societies policies and strategies,
- (b) promote good governance in co-operative societies,
- (c) liaise and collaborate with the national government and other county governments on matters relating to co-operative societies,
- (d) advise the County Government on matters relating to the co-operatives,
- (e) submit to the County Assembly an annual status of co-operative societies,
- (f) authorize the cancellation of licenses or de-registration of co-operative societies, subject to the provisions of this Act,
- (g) publish Regulations and guidelines for better operationalisation of this Act,
- (h) Establish and put in place an office specially tasked to promote good ethics and high integrity in management of Co-operatives and devise mechanisms of enforcing the same
- (i) take affirmative action in promotion, development and registration of youth women, persons living with disability co-operative societies, and
- (j) perform such other functions as may be assigned under this Act

Director and other officers

6 (1) There shall be a Director for Co-operative Development whose office shall be an office in the public service

(2) The Director shall be responsible for —

- (a) registration of co-operative societies,
- (b) supervising and inspecting co-operative societies to ensure compliance with the law,

- (c) maintaining the register of co-operative societies within the county,
- (d) supervising dissolution, division or amalgamation of a co-operative societies,
- (e) overseeing the implementation of this Act,
- (f) educating and training of members, shareholders and office holders on operating and managing co-operative societies,
- (g) conducting programmes to promote and sensitize the public on co-operative societies,
- (h) collecting and maintaining data and registers of co-operative societies,
- (i) conducting audits of co-operative societies in special circumstances,
- (j) conducting research and disseminating findings on co-operative societies to the Executive Committee Member,
- (k) advising the Executive Committee Member on any matter relating to co-operative societies, and
- (l) undertaking any other function assigned under this Act or by Executive Committee Member for better realization of the objects of this Act

(3) A person shall qualify for appointment as a Director under this Act if that person—

- (a) a Kenya Citizen,
- (b) holds an academic degree from a university recognized in Kenya
- (c) possess at least five years post-graduate experience in co-operative societies affairs and
- (d) has met the Constitutional requirements

(4) The Director appointed under this Act may at any time resign from office by notice in writing to the Executive Committee Member or may be removed from office if the Director—

- (a) is adjudged bankrupt,
- (b) is convicted of an offence involving dishonesty or fraud,
- (c) otherwise fails to comply with the requirements of Chapter Six of the Constitution,
- (d) is convicted of a criminal offence and sentenced to

imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings,

- (e) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a Director

(5) There shall be such number of officers, including Sub-County Co-operative officers, as may be necessary to assist the Director in the administration of the provisions of this Act

(6) The Director may, with the approval of the Executive Committee Member, delegate any of his or her function to an officer of the County Government appointed in accordance with this section

PART III—REGISTRATION AND STRUCTURE OF CO-OPERATIVE SOCIETIES

Registration of co-operative societies

7 Subject to the provisions of this Act, a society 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 following co-operative principles—
 - (i) voluntary and open membership,
 - (ii) democratic member control,
 - (iii) economic participation by members
 - (iv) autonomy and independence,
 - (v) education training and information,
 - (vi) co-operation among co-operatives, and
 - (vii) concern for community in general,

may be registered by the Director as a co-operative society under this Act with limited liability

Qualification for membership

8 A person shall not be qualified for membership of a co-operative society unless—

- (a) the person has attained the age of eighteen years provided that a minor may join a cooperative society through a guardian,
- (b) person's employment, occupation or profession falls within the category or description of those for which the co-operative society is formed, and
- (c) The person is resident within, or occupies land within, the society's area of operation as described in the relevant by-law

Affiliation

9 Co-operative societies may affiliate to the relevant national bodies constituted in accordance with the cooperative principles

Types of co-operative societies

10 The Director may register the following types of co-operative societies—

- (a) marketing co-operative societies to deal with the processing packaging and marketing of members agricultural produce,
- (b) consumer co-operative societies to deal with wholesale and retail business to be patronized by members and other members of the public,
- (c) industrial co-operative societies for production, manufacturing and sale of goods,
- (d) housing co-operative societies to deal with purchase of land, building and construction of houses at affordable rates to members,
- (e) livestock co-operative societies to deal with the needs of members in animal husbandry, livestock keeping and dairy farming
- (f) fisheries co-operatives to deal with fishing, processing, packaging and marketing of fish and sea products,
- (g) investment co-operative societies to deal with investment in specific sectors,
- (h) such other co-operative societies as may be established from time to time

Structure of Co-operatives

11 The Co-operative society shall comprise of Primary co-operatives and co-operative unions

Eligibility for registration of a co-operative society

12 For a society to be registered under this Act, it shall—

- (a) in the case of a primary society, consist of at least ten persons all of whom shall be qualified for membership of the co-operative society under section 8, or
- (b) in the case of a co-operative union has at least two registered societies as its members

Procedure for registration

13 (1) The Director shall, within thirty days from the date of receipt of an application—

- (a) register the co-operative society, or
- (b) reject the application with a written explanation pointing out the provisions of the Act not complied with and in the case where in the opinion of the Director he thinks corrections can be made, require a duly corrected application for registration to be re-submitted within 15 days from the date such rejection is communicated

(2) An application made under subsection (1) (b) shall be processed within 15 days from the date application is made

Provisional registration

14 (1) If the Director is not satisfied that a society has complied with this Act, or is of the opinion that further steps need to be taken by the persons on whose behalf the application for registration is made in order to comply with this Act, the Director may in his discretion provisionally register the society for such period, not exceeding one year, and subject to its compliance with such terms and conditions and provisions, as the Director may specify in writing

(2) A provisional registration shall entitle the society to operate as a co-operative society and to operate as a body corporate

(3) A society which is provisionally registered shall cause the fact that it is provisionally registered to be stated in legible Roman letters in all billheads, letters, papers, notices, advertisements and other official publications of the society, and on a sign board in a conspicuous position outside any premises in which it operates

Appeal against refusal to register

15 (1) A co-operative society may appeal to the Executive Committee Member against the decision of the Director refusing to register the society

(2) Any party aggrieved by the decision of the Executive Committee Member under subsection (1) may seek Court redress within thirty days from the date the Executive Committee Member makes a decision under sub-section (1)

Protection of the name “co-operative”

16 (1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the Director, to mislead the members of the public as to its identity

(2) The word “co-operative” shall form part of the name of every co-operative society, and the word “limited” shall be the last word in the name of every co-operative society having limited liability

Evidence of registration

17 (1) A certificate of registration or of a provisional registration signed by the Director shall be conclusive evidence that the society therein mentioned is duly registered or provisionally registered, unless it is proved that such registration of the society has been canceled or has been terminated

(2) The certificate of registration bearing the number and date of registration shall be displayed at the head office of every co-operative society

(3) A copy of the by-laws of a co-operative society or of an amendment of such by-laws certified by the Director shall be *prima facie* evidence for all purposes of the registration of such by-laws or such amendment

(4) A document purporting to be signed by the Director shall be presumed to have been signed by him until the contrary is proved

Co-operative society to be body corporate

18 (1) Upon registration, every society shall be a body corporate and shall be capable in its corporate name of—

(a) suing and being sued,

(b) purchasing acquiring, or otherwise holding and or disposing of movable and immovable property,

(c) entering into contract, and,

(d) borrowing money

(2) There shall be a county register of Co-operative Societies into which shall be entered particulars of all registered co-operative societies including—

(a) the name of co-operative society,

(b) physical address of its offices,

(c) nature of business,

(d) number of members, and

(e) such other particulars as the director may determine

(3) A co-operative society registered under this Act may establish a branch or other offices other than its registered headquarters and file a notification of such establishment with the Director subject to payment of requisite fees

PART IV—CO-OPERATIVE SOCIETY'S BY- LAWS

Development and content of the By- laws

19 Every co-operative society shall develop its by- laws and submit them to the Director

(2) The by-laws shall, subject to the provisions of this Act, guide all the operations of a co-operative society

(3) A co-operative society may, by resolution of members in a general meeting, develop regulations, rules or guidelines for better implementation of the by-laws

(4) In addition to any other requirements, the by- laws of a co-operative society shall provide for—

(a) the name of the co-operative society,

(b) the registered office and address of the co-operative society including the Land Reference Number of the proposed physical address,

(c) the nature of business of the co-operative society,

(d) criteria for admission to membership,

(e) procedure for review of the by-laws,

(f) the common seal,

(g) the rights and obligation of a member,

(h) transfer of membership,

- (i) nomination of nominees,
- (j) cessation of membership,
- (k) the co-operative society s fund including subscription and members' contribution,
- (l) investments and trade, including trading with non—members where applicable,
- (m) procedure for acquisition and maintenance of movable and immovable assets,
- (n) procedure for disposal of movable or immovable assets and management of proceeds of sale of such assets,
- (o) the co-operative society s borrowing powers,
- (p) management of meetings of the co-operative,
- (q) co-operative committees and their functions,
- (r) procedure for transfer and registration of shares,
- (s) mode of appointment and functions of committee members,
- (t) quorum for meetings,

Custody of a copy of the By-laws, rules or guidelines

20 A copy of the co-operatives by-laws or an amendment to the by-laws or any rules, or guidelines made by a co-operative society shall be deposited and maintained by the Director

Amendment of by-laws

21 (1) A co-operative society may, subject to this Act, amend its by-laws

(2) No amendment of the by-laws of a co-operative society shall be valid until the amendment has been registered under this Act by forwarding to the Director a copy thereof in the prescribed manner

(3) The Director may cancel the amendment if he discovers that an amendment was effected and registered through misrepresentation or concealment of a material fact

(4) An amendment which changes the name of a co-operative society shall not affect any right or obligation of that society or its members

(5) When the Director registers an amendment of the by-laws of a co-operative society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered

(6) 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 co-operative society where this forms a part of the by-laws of such a society

PART V—RIGHTS AND LIABILITIES OF MEMBERS

Limitation of holding share capital

22 No member, other than a co-operative society, shall hold more than one-fourth of the issued and paid-up share capital of any co-operative society

Membership subject to authorization by annual general meeting

23 No company incorporated or registered under the Companies Act (Cap 486), and no unincorporated body of persons shall be entitled to become member of a co-operative society, except with a written authorization through a resolution by a general meeting of that co-operative society

Membership of co-operative society

24 No member of a co-operative society shall exercise any of the rights of a member unless he has made such payment to the society in respect of membership, or has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society

Limitation of membership to one society

25 No person shall be a member of more than one co-operative society having the same or similar object

Provided that a person who—

- (a) is a member of a co-operative society, and
- (b) carries on business on land or at premises outside the area of operation of that co-operative society, may be a member of a co-operative society in whose area of operation that land or those premises are situate notwithstanding that its objects are the same as or similar to those of the first-mentioned society

Voting rights of members

26 Each member of a co-operative society shall have one vote only in the affairs of the society, irrespective of the number of shares the member holds

Provided that a co-operative society which is a member of a co-operative union or an apex society shall have as many votes as may be prescribed by the by-laws of the co-operative union or apex society of which it is a member, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power

Transfer of shares

27 The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding as are laid down in section 23

Rights of members

28 A member of a co-operative society shall have the right to—

- (a) attend and participate in decisions taken at all general meetings of the society and vote,
- (b) be elected to organs of the society, subject to its by-laws,
- (c) enjoy the use of all the facilities and services of the society subject to the society's by-laws,
- (d) all legitimate information relating to the society, including internal regulations, registers, Minutes of general meetings, supervisory committees, reports, annual accounts and inventories, investigation reports, at the society's head office

Member's obligations

29 A member of a co-operative society shall have the obligation to—

- (a) observe and comply with all the society by-laws and decisions taken by the relevant organs of the co-operative society in accordance with the by-laws of that society,
- (b) buy and pay up for shares or make any other payments provided for in the by-laws of the society, and
- (c) meet the debts of the society in case of bankruptcy in accordance with this Act and the by-laws of the society

Member's share not subject to attachment

30 Subject to section 31, the share, saving deposits or interest of a member in the capital of a co-operative society shall not be liable to attachment or sale under any decree or order of a court 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, saving deposits or interest

Provided that, where a co-operative society 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

Liability of past members

31 The liability of a past member of a co-operative society shall be in respect of the debts of the society as they existed at the date when he

ceased to be a member and proceedings in respect thereof may be commenced within a period of two years from such date

Provided that, in the case of a co-operative society with limited liability, if the first audit of the accounts of such society after his ceasing to be a member discloses that the society is solvent the financial liability of such past member shall cease forthwith

Liability of deceased members

32 The estate of a deceased member shall be liable for the debts of the co-operative society as they existed at the time of his death, and proceedings in respect thereof may be commenced within one year of the death

Provided that—

- (a) in the case of a co-operative society with limited liability, if the first audit of the accounts of the society after the death discloses a credit balance in favour of the society, the financial liability of the estate shall cease forthwith, and
- (b) a personal representative shall not be liable except in respect of assets in his possession or under his control

Transfer of share or interest of deceased members

33 (1) On the death of a member, a co-operative society may transfer the share or interest of the deceased member to—

- (a) the person nominated in accordance with this Act and any rules made thereunder, or
- (b) if there is no person so nominated, such person as may appear to the Committee of the society to be the personal representative of the deceased member or
- (c) if either of such persons is not qualified under this Act and any rules made thereunder or the by-laws of such society for membership, such person, specified by the nominee or personal representative, as the case may be, who is so qualified, or may pay to such nominee or personal representative, as the case may be a sum representing the value of such member's share or interest ascertained in accordance with any rules made under this Act or by-laws of the society

Provided that—

- (i) in the case of a co-operative society with unlimited liability, such nominee or personal representative, as the case may be, may require the society to pay him the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection, or

(11) in the case of a co-operative society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or personal representative, as the case may be, being qualified in accordance with this Act or any rules made thereunder or the by-laws of such society for membership of the society, or on his application within one month of the death, to any person specified in the application, who is so qualified

(2) A co-operative society shall pay all other moneys due to the deceased member from the society to such nominee or personal representative, as the case may be

(3) All transfers and payments made by a co-operative society in accordance with this section shall be valid and effectual against any demand made upon the society by any other person

Evidence of member's interest in society

34 (1) Any register or list of members or of shares which is kept by a co-operative society 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 co-operative society regularly kept in the course of its business, shall, if certified in accordance with the rules made under this Act, be *prima facie* evidence in any proceedings of the existence of such entry, and of the matters, transactions, and accounts, therein recorded

PART VI—RIGHTS AND DUTIES OF CO-OPERATIVE SOCIETIES

Registered office and address of co-operative society

35 Every co-operative society shall have a registered office and address to which notices and communications may be sent and shall send to the Director notice of every change of address and office within one month of the change

Society to keep certain documents at registered office

36 Every co-operative society shall keep a copy of this Act and of the Regulations made hereunder including 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 person, free of charge, at all reasonable times during business hours

Estimates of income and expenditure

37 For each financial year, the Committee of a co-operative society shall cause to be prepared estimates of the society's income and expenditure including recurrent and capital estimates for approval by the general meeting at least three months before the end of the preceding financial year

Account and audit

38 (1) Every co-operative society shall keep proper accounts which shall—

- (a) be prepared in accordance with International Accounting Standards,
- (b) reflect the true and fair state of the co-operative society's affairs, and
- (c) explain the co-operative society's transactions including—
 - (i) all sums of money received and paid by the co-operative society and the reasons thereto,
 - (ii) all sales and purchases of goods and services by the co-operative society, and
 - (iii) all assets and liabilities of the co-operative society

(2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor

(3) It shall be the duty of every co-operative society to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4)

(4) The auditor shall be appointed at the annual general meeting from a list of auditors approved by the Director, in consultation with the Institute of Certified Public Accountants of Kenya

(5) Where at an annual general meeting no auditor is appointed, the Director may competitively appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society

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

- (a) conform with International Financial Reporting Standards,
- (b) be approved by the Committee, and
- (c) be authenticated by at least three Committee members including the chairperson of the co-operative society

(7) No auditor shall present the audited accounts of a co-operative society to the members at a general meeting unless the accounts have previously been submitted to the Director in such form as may be prescribed

(8) The auditor shall present the audited accounts to a general meeting within four months after the end of the accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted—

- (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society, and
- (b) in accordance with the co-operative society's objectives by-laws and any other resolutions made by the society at a general meeting

(9) The auditor shall have the right to—

- (a) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor,
- (b) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive,
- (c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit—
 - (1) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs,
 - (11) require the production of any book document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities,

- (11) demand such other information or explanation from any officer of the co-operative society as may be necessary for the performance of his duties as an auditor

(10) Every co-operative society shall, at such time and in such form as may be prescribed, file with the Director an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months

(11) Where a co-operative society fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, members of the Committee shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Director is satisfied that the failure was due to circumstances beyond their control

(12) For the purposes of this section, “International Accounting Standards” and “International Financial Reporting Standards” means the standards established by the Institute of Certified Public Accountants of Kenya

Production of books and other documents

39 Any officer, agent, servant or member of a co-operative society who is required by the Director, or by a person authorized in writing by him to do so shall, at such place and time as the Director may direct, produce all moneys securities, books, accounts and documents belonging to or relating to the affairs of such society which are in the custody of such officer, agent, servant or member

Society to have charge over member’s produce and service

40 (1) A co-operative society which has as one of its objects the disposal of any agricultural produce or service provision, may enter into a contract with its members, either in its by-laws or by a separate document binding the members to dispose of all their agricultural produce or service, or such amounts or descriptions of the same as may be stated therein, to or through the society, and the contract may bind the members to produce the quantities of agricultural produce or provide service therein specified, and the contract may also provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract, and any such sum on becoming payable shall be a debt due to the society and shall be a charge upon the immovable property of the member (subject to registration of the charge under the law under which the property is registered) and all stock then being thereon

(2) Any such contract as is mentioned in subsection (1) shall have the effect of creating in favour of the co-operative society a charge upon the proceeds of sale of all produce or service mentioned therein, whether existing or future

(3) A co-operative society 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 society, in all respects as if it were the owner of the produce, or service provider responsible

Fines for violation of by-laws

41 (1) The by-laws of a co-operative society may subject to this Act, provide for the imposition of fines, not exceeding twenty thousand shillings, on its members for any infringement of its by-laws, but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefore has been served on him and he has had an opportunity of showing cause why the fine should not be imposed and, if he so desires, of being heard with or without witnesses

(2) Any such fine shall be a civil debt due to the co-operative society, and shall, without prejudice to any other means of recovery, be recoverable summarily

(3) The whole or any part of such fine may be set off against any moneys due to such member in respect of produce delivered by him to the co-operative society

(4) A member shall not be taken to have infringed the by-laws of a co-operative society by reason of his having failed to deliver produce to such society and the contract had been disclosed in accordance with this Act

(5) It shall be the duty of every person applying for membership of a registered society to disclose to the society particulars of all such contracts as are mentioned in subsection (4)

Society to have first charge over debts, assets, etc in certain cases

42 (1) Subject to any other written law as to priority of debts where a co-operative society 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, or
- (b) rendered any services to any member or past member or

- (c) lend money to any member or past member to enable him to buy any such things as aforesaid or to obtain any such services the society 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 co-operative society to a member shall remain unpaid

Society to have first charge over members' share

43 A co-operative society 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 society, 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

44 (1) Where an employer of a person who is a member of a co-operative society has, under the instructions of the employee, made a deduction from the employee's emoluments for remittance to the co-operative society 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 Director may, on behalf of the society, institute legal proceedings in court 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) The Director may, by written notice, appoint any person bank or institution to be an agent of the society for the purposes of collection and recovery of a debt owed to the society

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

(5) Where an agent claims to be or to have become unable to comply with subsection (3) by reason of lack of moneys held by or due from him, he shall give a written notification to the Director stating the reasons for his inability and the Director may—

- (a) accept the notification and cancel or amend the notice accordingly, or
- (b) if he is not satisfied with the reasons, reject the notification in writing

(6) Where an agent fails to notify the Director or the notification is rejected, it shall be presumed that the agent has sufficient moneys for the payment of the amount specified in the notice

(7) 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 moneys come into his hands for or become due to him from the employer, the agent shall be liable for the amount specified in the notification as if he were the employer

(8) 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 moneys

(9) This section shall apply notwithstanding that the failure under subsection (1), to remit the sum deducted may constitute an offence under some other law for which the employer has been prosecuted, or is being, or is likely to be prosecuted

(10) In this section 'employer' includes any person, firm or organization holding remuneration or payment for produce of a member of a co-operative society and the term 'employee' includes any person who receives remuneration or payment for produce from such persons or firm or organization

Restriction on production of society's books

45 No officer of a co-operative society shall in any legal proceedings to the society or liquidator is not a party may be compelled to produce any of the society's books where the contents can be proved under section 42 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court, for special cause, otherwise orders

PART VII—MANAGEMENT OF CO-OPERATIVE SOCIETIES

General meetings

46 (1) The supreme authority of a co-operative society shall vest in the general meeting in which members shall have the right to attend and vote on all matters

(2) Subject to subsection (3) a co-operative society shall hold an annual general meeting within four months after the end of each financial year

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

- (a) elect the co-operative society's office bearers for the ensuing year,
- (b) determine the maximum borrowing powers of the co-operative society,
- (c) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof,
- (d) appoint the co-operative society's bankers and auditors, and
- (e) receive reports and decide upon such other matters as may be necessary for the conduct of the co-operative society's business

(4) A general meeting of a co-operative society shall be convened by giving at least fifteen days written notice to the members

(5) At the annual general meeting of a co-operative society, the members shall —

- (a) consider and confirm the minutes of the last general meeting,
- (b) consider any reports of the Committee or the Director,
- (c) consider and adopt audited accounts
- (d) determine the manner in which any available surplus is to be distributed or invested,
- (e) elect the co-operative society's office bearers for the ensuing year,
- (f) determine, where necessary, the maximum borrowing power of the society,
- (g) appoint an auditor for the ensuing year, and
- (h) transact any other general business of the co-operative society of which notice has been given to members in the manner prescribed in the by-laws of the co-operative society

(6) A special general meeting of a co-operative society may be convened—

- (a) by the Committee for the purpose of approving annual estimates or discussing any urgent matter which in the Committee's opinion is in the interest of the co-operative society, or

- (b) on receipt of a written notice for such meeting signed by such number of the members of the co-operative society as may be prescribed in the rules and stating the objects and reasons for calling the meeting

(7) If the Committee fails to convene a meeting within fifteen days of receiving the notice under subsection (6)(b), the members demanding the meeting may themselves convene the meeting by giving notice to the other members of the co-operative society, stating the objects and reasons for the meeting and the fact that the Committee has failed to convene the meeting

(8) The Director may convene a special general meeting of a society at which he may direct the matters to be discussed at the meeting

(9) The meeting convened by the Director under subsection (8) shall on be limited to deliberations on—

- (a) government policies,
- (b) critical financial crisis,
- (c) leadership acrimony or disagreements,
- (d) such other circumstances as may be provided for in this Act or in the Regulations or Co-operative Society by-laws

(10) The chairperson or in his absence the vice-chairperson or such other person as may be prescribed in the by-laws of the co-operative society shall preside at a general meeting of a co-operative society

(11) The Director may preside at any meeting convened under subsections (7) and (8)

Committees of a co-operative society

47 (1) A co-operative society shall establish—

- (a) a management committee responsible for giving directions in regard to the business of the co-operative society, and
- (b) a supervisory committee responsible for verifying all the transactions of the co-operative society and reporting to the general meeting and to the Director

(2) A co-operative society may by resolution in a general meeting establish an *adhoc* committee to deal with any matters specified in the resolution

(3) A resolution made in accordance with subsection (2) shall outline the committee's terms of reference, including the committee's tenure

(4) The general meeting shall elect not less than three and not more than nine persons from amongst its members to be members of each committee. The gender rule parity of 30% shall apply in all cases.

(5) A co-operative society existing prior to enactment of this Act shall during the annual general meeting or within a period of nine months from the date of commencement of this Act hold a special general meeting for purposes of compliance with this section.

Membership of the Committee

48 (1) The general meeting shall elect not less than three and not more than nine persons from amongst its members to be members of each committee.

(2) The members of the Committee shall elect a chairperson, vice-chairperson, secretary and the treasurer from among their number.

(3) No person shall be a member of a Committee if the person—

- (a) is not a member of the co-operative society,
- (b) is under eighteen years of age
- (c) is unable to read and write in Kiswahili or English
- (d) receives any remuneration, salary or other payment from the co-operative society save in accordance with this Act,
- (e) is a committee member in two other co-operative societies,
- (f) has been adversely named by the Director in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the Committee,
- (g) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding six months,
- (h) has been unable to pay a debt owing to a co-operative society as required other than in respect of a loan under the provision of any rules made under this Act, and
- (i) is a person against whom any amount of money is due under a decree, decision or order or is pending recovery under this Act.

(4) The Committee may delegate any of its duties under this Act to an officer or officers of the co-operative society but, nothing in this subsection shall absolve the Committee from its responsibility to run the affairs of the co-operative society in a proper and business like manner.

(5) Any Committee member charged in a court of law with an offence involving fraud or dishonesty in respect to the co-operative society the committee member is serving shall stand suspended pending the determination of the matter

Term of the Committee

49 (1) The term of a committee of a co-operative society of fifty or more than fifty members shall be three years with an option of renewal for another final three years' term

(2) The term of a committee of a co-operative society of less than fifty members shall be three years with one third of the members of the board retiring at the end of each year on a rotational basis. The regulation will provide the basis of retirement on rotation basis

(3) A serving member of the committee wishing to compete in any elective office either at the County or National level during the general elections shall resign within the time limit provided in the election law

Vacancy of a position of a committee member and requirements to step down

50 (1) The position of a member of the committee shall become vacant at the expiry of the term or at any other time if a member —

- (a) is convicted of a criminal offence excluding traffic offence,
- (b) is adjudged bankrupt,
- (c) is convicted of an offence under this Act,
- (d) is unable to conduct business due to ill health, or
- (e) dies

(2) A member of a committee shall be suspended from office for the period expedient to allow for conclusion of investigations if—

- (a) following an audit, there are allegations that the member has mismanaged the affairs of the co-operative society, committed a fraudulent transaction or has been negligent in the conduct of business to the financial detriment of the co-operative society,
- (b) the member is under investigation for a criminal offence not related to the co-operative society's operations, or
- (c) The member is under bankruptcy proceedings

(3) The Executive Committee Member may by regulations prescribe the procedure for conduct of investigations under this section

(4) Where a vacancy occurs, including upon suspension of a member, the committee members shall nominate a member of the co-operative society who qualifies to be elected under this Act as an interim member to transact business until the vacancy is filled by election in accordance with this Act

(5) The period of interim membership under subsection (3) shall not be taken into account for purposes of calculating the tenure of a person intending to become a member of a committee

(6) The Director shall have powers to declare a vacancy and to surcharge a sum not exceeding one hundred thousand shillings to a committee member who upon being required to vacate office under this section fails to voluntarily vacate office, which sum shall be payable to the Fund

(7) Where following investigations the office bearer is found innocent of the allegation, the member may be reinstated to their position in the committee on confirming their interest to be reinstated in writing addressed to the Director and copied to the respective committee

Functions of the committees

51 (1) The committees of a co-operative society shall conduct business as set out in their by-laws

(2) Notwithstanding subsection (1), the management committee shall, in addition to any other functions assigned under this Act or by the resolutions of a general meeting or the provisions of the by-laws—

- (a) oversee the general operations of the co-operative society,
- (b) execute contracts,
- (c) authorize the use of the co-operative society common seal,
- (d) institute and defend suits and other legal proceedings brought in the name of or against the co-operative society,
- (e) implement the annual procurement plan and the budget,
- (f) manage the funds, assets and resources of the co-operative society,
- (g) manage the co-operatives records including the by-laws, rules, books of accounts, member's register and minutes of meetings
- (h) ensure that the accounts of the co-operative society are audited in accordance with this Act, and
- (i) do all other things necessary to achieve the objects of the co-operative society in accordance with the by-laws

(3) Notwithstanding subsection (1), the supervisory committee shall be the oversight authority of the co-operative with powers to—

- (a) audit all the management functions and all operations of the co-operative society,
- (b) to inspect all books of accounts,
- (c) prepare supervisory reports and recommendations for consideration by the management committee, and
- (d) submit its report to a general meeting for consideration

(4) The committees shall prepare and submit reports of their activities to the general meeting and copies deposited with the Director

Fiduciary duty

52 (1) The members of a committee shall exercise prudence and diligence of ordinary businessmen in the conduct of the affairs of a co-operative society and shall jointly and severally be held liable for any losses sustained through any of their acts or omissions which are contrary to the Act, Regulations made under the Act, and the by-laws or rules of the co-operative society or the resolutions of a general meeting of the co-operative society

(2) Members of committees shall within thirty days from the date of appointment execute an indemnity in the prescribed form and in the event of default of a member's obligation, the member shall indemnify the co-operative society to the extent of the default

Declaration of wealth by member of a committee

53 A person appointed as a member of a committee shall within thirty days of such appointment and not later than thirty days after ceasing to be a member submit to the Director a declaration of his or her wealth

PART VIII—AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

Amalgamation of co-operative societies

54 (1) Any two or more co-operative societies may, by special resolution (in this section referred to as the preliminary resolution) resolve to amalgamate as a single society (hereinafter referred to as the amalgamated society)

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

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

(4) Any creditor of any of the amalgamating societies may, notwithstanding any agreement to the contrary, by notice in writing given to such society at least one month before the date specified as the date of amalgamation, intimate his intention to demand the payment of any money due to him

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the concerned amalgamating society, not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his 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 societies 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 society (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 Director

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8)

(8) Each amalgamating society 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 Director considers reasonable the Director is satisfied that the secondary resolutions of each of the societies amalgamating comply with the provision of this section, he may register the amalgamated society and its by-laws and thereupon—

- (a) each of the amalgamating societies shall stand dissolved and its registration cancelled,
- (b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society,
- (c) the remaining members of the amalgamating societies shall become members of the amalgamated society and will be subjected to its bylaws,
- (d) Any shareholder of the amalgamating societies or any other persons who have claims against the amalgamating societies and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against the amalgamated society

(10) Where the Director refuses the amalgamation of the amalgamating societies under subsection (9) such societies may appeal against such refusal to the Executive Committee Member

Division of co-operative societies

55 (1) A co-operative society (hereinafter referred to as the existing society) may, by special resolution (in this section referred to as the preliminary resolution), resolve to divide itself into two or more co-operative societies (hereinafter referred to as the new societies)

(2) The preliminary resolution shall contain proposals for the division of assets and liabilities of the existing society among the new societies 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 societies

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

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

(5) Any creditor of the existing society may, notwithstanding any agreement to the contrary, by notice in writing given to the existing society within two months after his receipt of the copy of the preliminary resolution, intimate his intention to demand the payment of any money due to him

(6) Any other person whose interest will be affected by the division may, by notice in writing given to the existing society 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 society shall be held to consider the preliminary resolution and any notices received under this section

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

- (a) the repayment of the share capital of any member who has given notice under subsection (2),
- (b) the satisfaction of any claims by creditors who have given notice under subsection (5),
- (c) the satisfaction of the claims of such other persons who have given notice under subsection (6) or the securing of their claims as the Director may determine, or direct

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (9)

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

(10) If, the Director 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 societies into which the existing society has been divided and the by-laws of such societies and thereupon —

- (a) the registration of the existing society shall stand dissolved,
- (b) the registration of the new societies shall be sufficient to vest the assets and liabilities of the existing society in the new societies in the manner specified in the preliminary resolution, as confirmed,
- (c) the remaining members of the existing society shall become members of one or other of the new societies, as is provided by the preliminary resolution, as confirmed, and

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

(11) Where the Director refuses to approve the division of an existing society under subsection (10), the society may appeal to the Executive Committee Member within thirty days of the communication to it of the refusal

PART IX—PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

Application of society's property and funds

56 The property and funds of a co-operative society shall only be applied for the benefit of the society and, its members, in accordance with the provisions of this Act, the rules made hereunder and the by-laws of the society

Restriction on giving loans

57 A co-operative society shall not give a loan nor allow any credit, to person other than a member, unless the by-laws of the society provide for giving a loan subject to a resolution passed at the general meeting of the society to that effect

Restriction on borrowing

58 A co-operative society may receive loans from persons who are not members only to such extent and under such conditions as may be prescribed by its by-laws or by rules under this Act and for the purposes of this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan

Investment of society's funds

59 A co-operative society may invest or deposit its funds only—

- (a) in and upon such investments and securities as are for the time being authorized for the investment of trust funds,
- (b) in the shares of any other co-operative society,
- (c) with any bank licensed under the Banking Act (Cap 488),
- (d) in the stock of any statutory body established in Kenya or in any limited liability company incorporated in Kenya or in any other

manner approved by a resolution at a general meeting of the said society

Declaration and payment of bonus

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

(2) No co-operative society shall pay a dividend, bonus, or distribute any part of its accumulated funds without a balance sheet and audited account and report disclosing the surplus funds out of which the dividend, bonus or distribution is to be made

(3) A co-operative society shall pay a dividend at such rate as may be recommended by the management committee and approved by the annual general meeting of the society

Maintenance of reserve fund

61 (1) Every co-operative society which does or can derive surplus from its transactions shall maintain a reserve fund

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

(3) The reserve fund shall be invested in the manner provided for under this section

(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 co-operative society, the assets under the reserve fund shall be applied in the discharge of the liabilities of the society

Distribution of net balance

62 Subject to sections 60 and 61, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the manner prescribed by rules made under this Act or by the by-laws of the society

PART X—CHARGES BY CO-OPERATIVE SOCIETIES

Creating charge over society's property

63 A co-operative society 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

Charge to comply with applicable law

64 A charge created by a co-operative society in accordance with section 63 of this Act shall comply with the provisions of the law applicable to the particular type of charge

Charges to be registered with the Director

65 (1) It shall be the duty of every co-operative society to register with the Director, every charge created by it and the particulars thereof Provided that registration of a charge may be effected on the application of any person interested therein

Provided further that where registration is effected on the application of a person other than the co-operative society, such person shall be entitled to recover from the co-operative society the amount of any fees properly paid by him to the Director for such registration

(2) If any co-operative society fails to send to the Director 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, every officer of the society shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues

Register of charges

66 (1) The Director shall, with respect to each co-operative society, 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 society, the date of its creation, and if the charge was a charge existing on property acquired by the society, the date of the acquisition of the property,
- (b) the amount secured by the charge,
- (c) short particulars of the property charged, and
- (d) the persons entitled to the charge

(2) The Director shall issue a certificate under his hand of the registration of any charge registered under this Act stating the amount secured and the certificates 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 by any interested person on payment of the prescribed fee

(4) The Director 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

67 The Director 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 co-operative society concerned with a copy thereof

Receiver to give notice of his appointment

68 (1) If any person obtains an order for the appointment of receiver or manager of the property of a co-operative society, or if the Director 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 Director and the Director shall enter the notice in the register of charges

(2) Where any person appointed receiver or manager of the property of a co-operative society 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 Director and the Director shall enter the notice in the register of charges

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues

Society to keep copy of instruments of charge at registered office

69 Every co-operative society 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 society

Society to keep register of particulars of charges

70 (1) Every co-operative society shall keep, at the registered address of the society, a register of charges in which shall be entered all charges specifically affecting the property of the society and all floating charges on the property or assets of the society, 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 co-operative society knowingly omits, or permits the omission of, any entry required to be made in any register in pursuance of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings

Right of members and creditors to inspect register of charges

71 (1) The copies of the instruments creating charges which are required by this Act to be registered and the register of charges kept by the co-operative society under section 54 shall be open, during business hours, to inspection by any creditor or member of the society, without fee, subject to such reasonable restrictions as the society, in general meeting, may impose. Provided however, that not more than two hours in each day shall be allowed for inspection, and the register of charges shall also be open to inspection by any other person on payment of the prescribed fee

(2) Any officer of a co-operative society who refuses to allow inspection of the register of charges or copies of the instruments creating charges in accordance with subsection (1) of this section, or who permits such refusal, shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the refusal of permission continues, and the court may order an immediate inspection of such register or copies

PART XI—INQUIRY AND INSPECTION**Inquiry by Director**

72 (1) The Director may hold an inquiry or, in writing, direct any person to hold an inquiry —

- (a) on the direction of the executive Committee Member, or
 - (b) on the application of not less than one-third of the members present and voting at a properly convened General meeting of the society, or
 - (c) on the application of the liquidator or of any creditor
- (2) The inquiry under subsection (1) may inquire into—

- (a) the by-laws, working and financial conditions of any co-operative society, or
- (b) the conduct of any person who has taken part in the organization or management of a co operative society, or any past or present officer or member of the society

(2) All officers and members of the co-operative society shall produce such cash, accounts, books, documents and securities of the society, and furnish such information in regard to the affairs of the society, as the person holding the inquiry may require

(3) The Director shall report the findings of the inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report

(4) Where the Director is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, he may dissolve and cause to be appointed an interim Committee consisting of not more than five members from among the members of the society for a period not exceeding ninety days

(5) Any person found to have misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, he may, if the Director so directs, be required to repay or restore the money or property or any part thereof to the co operative society together with interest at such rate as the Director thinks fit

(6) This section shall apply notwithstanding 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

(7) Any person aggrieved by an order of the Director under sub-section (6) may, within thirty days appeal to the Appeals Committee

(8) Any party aggrieved by the decision of the Appeals Committee may within thirty days appeal to the High court on matters of law

(9) Subject to sub-section (8) an order made pursuant to Sub-section (6) for any monies to be repaid or contributed to a co-operative society shall be filed with the Appeals committee and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily

Inspection of books of indebted society

73 (1) The Director may, if he thinks fit, on the application of a creditor of a co-operative society inspect, or direct some persons authorized by him in writing to inspect, the books of the society, if—

- (a) the creditor satisfies the Director that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time, and
- (b) the applicant deposits with the Director such sum as security for the expenses of the inspection as the Director may require

(2) The Director shall inform the creditor of the results of the inspection

Expenses of inquiry

74 (1) Where an inquiry is held under section 72, or an inspection is made under section 73 of this Act, the Director may, by a certificate under his hand, make an order apportioning the expenses, or such part of the expenses as he considers proper, between the society, the members or creditor demanding the inquiry or inspection, and the officers or former officers of the society, and the decision of the Director 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

75 Notwithstanding the provisions of sections 72 and 73, the Director may from time to time carry out routine inquiry or inspection into the affairs of a co-operative society

PART XII—DISSOLUTION**Procedure for dissolution**

76 (1) If the Director, after holding an inquiry under section 72 or making an inspection under section 73 of this Act, or receiving an application made by at least three fourths of the members of a co-operative society, is of the opinion that the society ought to be dissolved, he may in consultation with the County Executive Committee Member order the dissolution of the society and subsequent cancellation of registration

(2) Any member of a co-operative society 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 County Executive Committee Member with a recourse to the Appeals Committee

(3) 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 order shall not take effect unless it is confirmed by the Executive Committee Member or by the High Court, as the case may be

(4) Where the Director 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 society

(5) No co-operative society shall be dissolved or wound up save by an order of the Director

Cancellation of registration

77 (1) Where a co-operative society has—

- (a) less than the prescribed number of members, or
- (b) failed to file returns with the Director for a period of three years, or
- (c) failed to achieve its objects, the Director may, in writing, order the cancellation of its registration and dissolution of the society and the order shall take effect immediately

(2) A person aggrieved by an order of the Director under subsection (1) may appeal against such order to the Executive Committee Member within thirty days of the order

Effects of cancellation

78 Where the registration of a co-operative society is cancelled, the society shall cease to exist as a corporate body from the date the order takes effect

Application of the Insolvency Act, 2015

79 Sections 381-511 part VI of the Insolvency Act shall apply *mutatis mutandis* in relation to the winding up of a co-operative society as they apply to that of a company registered under the companies Act, 2015

Appointment of liquidator

80 Where the registration of a co-operative society is cancelled under section 77, the Director may appoint one or more persons to be liquidator or liquidators of that society (hereinafter referred to as the

liquidator) and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect

Powers of a liquidator

81 (1) 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 co-operative society 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 society in his own name or office, and to appear before the Appeals Committee as litigant in person on behalf of the society,
- (c) to appoint an advocate to assist him in the performance of his duties,
- (d) to refer disputes to the Appeals Committee 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 society, to the funds of the society,
- (f) to investigate all claims against the society, 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 society, by public auction or private contract with power to transfer the whole thereof to any person or company or to transfer the same in parcels,
- (i) to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society,
- (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 society,

- (l) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Director,
- (m) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding up the affairs of the society,
- (n) to compromise, with the approval of the Director, any claim by, or against, the society,
- (o) to apply to the Director for his 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 court under the Civil Procedure Act (Cap 21), in so far as such powers are necessary for carrying out the purposes of this section

Liquidation account of societies

82 The Director shall open and maintain a co-operative societies liquidation account, which shall be administered in the prescribed manner

Powers of the Director during liquidation

83 The liquidator shall exercise his powers subject to the guidance and control of the Director and to any limitations imposed by the Director, and the Director 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 his place,
- (c) call for all books, documents and assets of the society,
- (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 81,
- (e) at his discretion, require accounts to be rendered to the Director by the liquidator,
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society,
- (g) make an order for the remuneration of the liquidator,

- (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings,
- (i) require any member or past member of the society and any trustee, banker, receiver, agent or officer of the society to pay, deliver convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or papers in his hands to which the society appears to be entitled,
- (j) appoint a special manager for the management of the business of the society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties,
- (k) refer any dispute between a liquidator and any third party to the Appeals Committee if that party consents in writing to be bound by the decision of the Appeals Committee, or
- (l) require the indemnification of the liquidator

Appeal against order of liquidator or Director

84 (1) A person aggrieved by any order or decision of the Director or the liquidator under section 69 or section 71, as the case may be, may appeal against the order or decision to the Appeals Committee within thirty days of the order or decision

(2) A person aggrieved by a decision of the Appeals Committee under subsection (1) may appeal to the High Court within thirty days of the decision

Institution of winding up proceedings

85 If the liquidator of a society whose registration has been cancelled alleges that any of the offences relating to liquidation of a company have been mentioned in the Insolvency Act, 2015 have been committed, he shall report the facts to the Director, who shall, if he thinks fit, institute such proceedings as may be necessary

Power to restrain convicted persons from being officers of society

86 Any person who is convicted of an offence under sections of the Companies Act, 2015 specified in section 77 shall cease to be, or remain, an officer of a co-operative society, and shall cease to be concerned in or take part in, whether directly or indirectly, the management of a co-operative society, for a period of five years from the date of his conviction, and any person acting as, or purporting to be acting as such an officer, or being so concerned in, or taking part in the management of a

co-operative society during that period, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years

PART XIII—SETTLEMENT OF DISPUTES

Disputes

87 (1) If any dispute concerning the business of a co-operative society arises—

- (a) among members, past members and persons claiming through members, past members and deceased members, or
- (b) between members, past members or deceased members, and the society, its Committee or any officer of the society, or
- (c) between the society and any other co-operative society, it shall be referred to the Appeals Committee

(2) A dispute for the purpose of this section shall include—

- (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member whether such debt or demand is admitted or not, or
- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society whether such debt or demand is admitted or not

Settlement of disputes

88 (1) The management committee shall be responsible for internal dispute resolution in the co-operative society and may—

- (a) consider and adjudicate on any claims and disputes submitted before it, or
- (b) on determination of any dispute, surcharge an offending member a sum not exceeding fifty thousand shillings and such sum shall be payable to the Fund

(2) In the event that the management committee is unable to resolve an internal dispute or where a dispute involves the members of the management committee, the matter may be referred to the Co-operatives Appeals Committee for determination

Co-operative Appeals committee

89 (1) There is established a Co-operative Appeals Committee comprising of—

- (a) Chief Officer who shall be the Chairperson,
- (b) The County Attorney,
- (c) a member of staff of the County Government appointed to the Committee by the Executive Committee Member,
- (d) one person each representing the youth, women and persons with disability appointed by the Governor,
- (e) an expert in Co-operatives matters who is not a staff of the County Government, and
- (f) a representative of the Governor

(2) A person aggrieved by any decision made under this Act may within sixty days from the date of that decision appeal in writing the Co-operatives Appeals Committee through the office of the Executive Committee Member

(3) The Co-operative Appeals Committee may, in making its determination, summon any person to appear before it to provide evidence or clarify on any matter or in any other way provide any information relevant to the appeal

(4) The Executive Committee Member shall by regulations, determine the procedure of the Co-operatives Appeals Committee

PART IV—GENERAL PROVISIONS

Remuneration of officers and members of society

90 (1) No officer or member of a co-operative society shall receive any remuneration, salary, commission or any other payment from the society for services rendered to the society unless the society 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 co-operative society shall receive any remuneration, salary, commission or other payment from any person or body or association other than the society in respect of any business or transaction entered into by the society

Provided that in special circumstances the society may, by resolution passed at a general meeting, authorize such remuneration, salary, commission or other payment to be made

(3) Any officer or member of a co-operative society who receives any remuneration, salary, commission or other payment in contravention of this section shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term

not exceeding two years, or to both such fine and such imprisonment, and shall, if the offence is the contravention of subsection (1) of this section, be ordered to repay the amount of the remuneration, salary, commission or other payment received from the society 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 court

Restriction on use of word “Co-operative”

91 (1) No person, other than a co-operative society, shall trade or carry on business under any name or title of which the word “Co-operative’ or its equivalent in any other language is part, without the written approval of the Director

(2) Any person who contravenes subsection (1) of this section shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings and in the case of a continuing offence, to a further fine not exceeding two thousand shillings for each day on which the offence is continued after conviction therefor

Regulations

92 (1) The Executive Committee Member may in consultation with the co operative societies 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 the foregoing such regulations may—

- (a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a society and the procedure to be followed,
- (b) prescribe the matter in respect of which a co-operative society 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,
- (c) 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,
- (d) regulate the manner in which funds may be raised whether by means of shares or debentures or otherwise,
- (e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings,

- (f) provide for the appointment, suspension and removal of the members of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers,
- (g) prescribe the accounts and books to be kept by a co-operative society,
- (h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto,
- (i) 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,
- (j) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified,
- (k) provide for the inspection of documents and registers at the Director's office and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers,
- (l) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares or limited by guarantee, of the register of shares,
- (m) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to section 39 for the nomination of a person to whom such interest may be paid or transferred,
- (n) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred,
- (o) 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 co-operative society,
- (p) prescribe the procedure to be followed in appeals made to the Executive Committee Member under this Act,
- (q) prescribe the returns to be submitted by a co-operative society to the Director and the person by whom and the form in which such returns shall be submitted,

- (r) prescribe the fees to be paid on applications, registrations and other acts done by the Director under this Act,
- (s) prescribe the procedures to be followed in the liquidation of societies, and
- (t) prescribe the manner of establishment and maintenance of the Fund
- (u) prescribe anything which under this Act may promote and develop the cooperative societies in the county

(3) In any case where the Director is satisfied that a substantial number of members of any co-operative society are unacquainted with the English language he may cause any rules 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 provided that on any matter of interpretation the English version of the rules shall prevail

Offences

93 (1) It shall be an offence under this Act if—

- (a) a co-operative society, 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 rules made thereunder to be done, or
- (b) a co-operative society, or an officer or a member thereof does anything which is prohibited by or under this Act or any rules made thereunder, or
- (c) a co-operative society, or an officer or a member thereof, willfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Director or the Registrar, or any person duly authorized in that behalf, by the Director or the Registrar, or
- (d) a co-operative society or an officer or member thereof willfully 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 rules made thereunder, or
- (e) any person willfully 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 him by a person authorized to do so, or which he is required to furnish, by or under this Act or any rules made thereunder, or

(f) any person acts or purports to act as an officer of a co-operative society when not entitled to do so

(2) Every co-operative society, officer or member of a co-operative society or other person who commits an offence under this section shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both

(3) The Director of Public Prosecution may appoint public prosecutors for cases arising under of this Act

Transition provisions

94 (1) Every society, and all by-laws of a society, registered under the Co-operative Societies Act (Cap 490) shall be deemed to have been registered under this Act,

(2) Any register kept in pursuance of the Co-operative Societies Act (Cap 490) shall be deemed to be part of the register to be kept in pursuance of this Act,

(3) Any document referring to a provision of the Co-operative Societies Act (Cap 490) shall be construed as referring to the corresponding provision of this Act, and

(4) Any orders, directions, appointments and other acts lawfully made or done under any of the provisions of the Co-operative Societies Act (Cap 490) 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

(5) Save as provided under this Act, the Co-operative Societies Act (Cap 490) shall cease to apply to co-operative societies to which this Act applies

MEMORANDUM OF OBJECTS AND REASONS

The principle object of this Bill is to give effect to section 7 (e) of part two of the fourth schedule of the Kenya Constitution and to make provisions relating to the formation registration and regulation of co-operative societies. It also seeks to embrace the global standards and norms set as cooperative principles in order to promote, develop and regulate co-operative societies in Embu County.

PART I of the Bill provides for preliminary matters. It contains the short title and interpretation of terms used in the Bill.

PART II of the Bill provides for Administration and officers, the director and other officers who will be instrumental in the administration of the Act.

PART III of the Bill provides for registration of co-operative societies.

It contains provision on essentials for registration of a co-operative society, procedure for registration and provisional registration. It also provides for amendments of by-laws by co-operative societies and appeal against refusal to register. This part also provides for protection of the name “co-operative” and what constitutes evidence of registration. This part also provides for membership of a minor to a cooperative society under a guardian. This is to lay a foundation for enticing the youth to join cooperatives. Currently, cooperatives have an ageing membership which the minor membership is intended to address.

PART IV of the Bill provides co-operative society’s by-laws. It provides for mechanisms of development, content and development of co-operative society by-laws that will bind members of a co-operative society.

PART V of the Bill provides for rights and liabilities of members of a co-operative society. It provides for qualification for membership, limitation of holding share capital, voting rights of members and transfer of shares. This part also provides for rights of members and member’s rights vis-a-vis the rights of the co-operative society.

PART VI of the Bill deals with rights and duties of a co-operative society. It requires a co-operative society to have a registered address, to keep a copy of the Act and by-laws in the registered office and to produce certain books and documents if needed. This part also limits term of office for chairs of cooperatives to ensure good governance and give room for succession planning.

PART VII of the Bill provides for management of co-operative societies specifically the conduct of general meetings and Committees of Co-operative Society

PART VIII of the Bill provides for Amalgamation and division of co-operative societies

PART IX of the Bill provides for property and funds of co-operative societies It provides for restrictions and limitation on borrowing, investment of funds and declaration of bonus and dividend

PART X of the Bill provides for charging of property by co-operative societies

PART XI of the Bill provides for inquiry and inspection of co-operative societies by the Director It provides for the expense of inquiry and the routine of inspection This part also provides for surcharge of officers of co-operative societies appeal against the order of surcharge and recovery of surcharge

PART XII of the Bill provides for dissolution of a co-operative society and consequential matters It contains provisions on the procedure for dissolution, cancellation of registration and effects of cancellation This part provides the extent of application of the Companies Act Cap 486 and appointment and powers of liquidators It goes further to spell out powers of the Directors during liquidation and enforcement of orders It also provides for the institution of winding up proceedings and power to restrain convicted persons from being officers of co-operative societies

PART XIII of the Bill provide for settlement of disputes It provides that the establishment, and operation of Appeals Committees

PART XIV provides for general provisions It contains provisions on remuneration of officers and members of the society and restriction on the use of the word “co-operative” It empowers the Executive Member to make Rules for the better carrying into effect of this Act This part also makes provision on exemptions on the provisions of this Act and also additional powers of the executive committee member and the director

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided through the annual budgetary estimates

Dated the 17th September, 2019

ELIZABETH NDELEVE KIBAI,

*Chairperson, Committee on Agriculture
Livestock, Fisheries and Cooperatives*