

SPECIAL ISSUE

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

Kisii County Gazette Supplement No. 7 (Bills No. 7)



REPUBLIC OF KENYA

***KISII COUNTY GAZETTE
SUPPLEMENT***

BILLS, 2015

NAIROBI, 12th March, 2015

CONTENT

Bill for Introduction into the County Assembly of Kisii—

PAGE

The Kisii County Co-operative Societies Bill, 2015 1

NATIONAL COUNCIL FOR
LAW REPORTING
LIBRARY

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

KISII COUNTY CO-OPERATIVE SOCIETIES BILL, 2015

ARRANGEMENT OF CLAUSES

Clauses

PART I—PRELIMINARY

- 1—Short title.
- 2—Interpretation.
- 3—Objectives of the Act.
- 4—Guiding co-operative principles.

PART II—ADMINISTRATION OF THE CO-OPERATIVE SECTOR

- 5— Directorate of Co-operatives.
- 6—County Director of Co-operatives.
- 7—Duties of the Director.
- 8— Other officers and staff.

PART III—REGULATION, ESTABLISHMENT AND DEVELOPMENT OF THE CO-OPERATIVE SECTOR

- 9—Types of societies to be registered.
- 10—Procedure for establishment of a society.
- 11—Basic requirements to form a primary society.
- 12—Qualification for membership.
- 13—Minimum contents of by-laws.
- 14—Registration requirements.
- 15—Conditions of registration.
- 16—Rights and Obligations of Membership.
- 17—Cessation of members.
- 18—General Meetings.
- 19— Co-operative society Board.
- 20—Responsibilities of the Board.
- 21—Special General Meetings.
- 22—Duties of Registered Societies.
- 23— Records and books accounts.

PART III—CO-OPERATIVE SECTOR FUNDING

- 24—Establishment of the Fund.
- 25—Objectives of the Fund.
- 26— Operating guiding Principles of the Fund.
- 27—Revenue and expenditure of the Fund.
- 28—Establishment of the Development Fund Committee.
- 29—Terms and conditions of service.
- 30—Vacation of office of member.
- 31—Functions of the Committee.
- 32—Delegation by the Committee.
- 33—Conduct of the business of the Committee.
- 34—Co-operative Fund Unit.
- 35—Staff of the unit.
- 36—Vacation of office of Director.
- 37—Functions of the Unit.
- 38—Administration of the Fund.
- 39— Conditions for grant of loan.
- 40—Annual returns.
- 41—Loan Repayments.

PART IV—MESCELLANEOUS PROVISIONS

- 42—General provisions
- 43—Salaries of staff.
- 44—Financial reporting and audit.
- 45—General penalty.
- 46—Measures to ensure smooth transition.
- 47—Power to make regulations.

**THE KISII COUNTY CO-OPERATIVE SOCIETIES BILL,
2015**

A Bill for

**AN ACT of the County Assembly of Kisii to
develop co-operatives sector in the County by
providing direction relating to the constitution,
registration and regulation of societies and for
connected purposes**

ENACTED by the County Assembly of Kisii as follows—

PART I—PRELIMINARY

1. This Act may be cited as Kisii County Co-operative Societies Act, 2015 and shall come into operation on a date that the Member of the Executive Committee may appoint.

Short title.

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

Interpretation.

‘applicant’ means a co-operative sector institution operating within Kisii County.

“Board” means the governing body of a registered co-operative society to whom the management of its affairs is entrusted;

‘Committee’ means the Co-operative Enterprise Development Fund Committee established under section 28 of this Act;

“Director” means the County Director of Co-operative Societies appointed under section 3 and includes any person when exercising such powers of the County Director of Co-operative Societies as may have been conferred upon him under that section;

“Executive Committee Member” means the Member of the County Executive Committee responsible for the Co-operative Sector;

“Governor” means the Governor of Kisii County Government;

“member” includes a person or registered society joining in the application for the registration of a society and a person or registered society admitted to membership in accordance with the rules;

“officer” includes the chairman, vice-chairman, secretary, treasurer, member of committee, or other person empowered under the regulations or rules to give directions in regard to the business of a registered society;

‘Prescribed’ means prescribed by the Executive Committee Member;

“registered society” means a co-operative society registered under this Act;

“Regulations” means regulations made under this Act;

“rules” means the registered rules made by a society under this Act.

‘Unit’ means the Co-operative Development Fund Unit established under section 34.

3. (1) The overriding objectives of this Act is to provide a comprehensive, harmonized, efficient and effective legal and regulatory framework for the development and regulation of the co-operative sector in the County by—

Objectives of the Act.

- (a) enabling the formation, registration and operation of co-operatives;
- (b) promoting co-operative philosophy, principles, practices and objectives;
- (c) protecting the interests of co-operatives, their members and the public in the operations and activities of co-operatives;
- (d) ensuring directors and officials of co-operatives are accountable for their actions and decisions to the members of co-operatives;
- (e) encouraging and facilitating self management by co-operatives at all levels; and
- (f) encouraging the development, integration and strengthening of co-operatives at the village, ward, sub-county, and county levels by supporting and fostering peak organizations and co-operative instrumentalities.

(2) All County Government agencies, public servants and bodies charged with development and regulation of the co-operative sector shall at all times have due regard to,

and observe, the overriding objective of this Act as set out in subsection (1).

(3) Whenever there is a conflict between this Act and any other written law, having a bearing on achievement of the overriding objective of this Act, the provisions of this Act shall prevail.

4. In the fulfillment of the objectives and the interpretation of any provision of this Act, the guiding co-operative principles set out in the First Schedule shall be promoted and adhered to.

Guiding co-operative principles.

PART II—ADMINISTRATION OF THE CO-OPERATIVE SECTOR

5. (1) There shall be an office of the County Director of Co-operatives which shall be an office in the County public service.

Director of Co-operatives.

The office of the Director shall be responsible for—

- (a) the promotion, protection and development of co-operative societies in the County;
- (b) the protection of the interests of co-operative societies, their members and the public in the operations and activities of co-operatives;
- (c) overseeing the activities of co-operative societies' officers to ensure accountability for their actions and decisions;
- (d) encouraging the development, integration and strengthening of co-operative societies at all levels of the County and ensure the effective and efficient operation of the societies.

6. The Director shall be competitively recruited by the County Public Service Board on terms and conditions determined by the Board in consultation with the Salaries and Remuneration Commission.

Recruitment of County Director of Co-operatives.

7. (1) The Director shall, be responsible for the regulation and development of the co-operative sector in the county in accordance with the provisions of this Act.

Duties of the Director.

(2) Without prejudice to the generality of subsection (1) the Director shall—

- (a) Register co-operative societies in the County;

- (b) inspect and advise co-operative societies on the effective and efficient operation of the societies;
- (c) advise the Member of the Executive Committee on matters of co-operative societies in general and identify when co-operative societies need help;
- (d) ensure the establishment of co-operative societies at all levels of the economy in the County.

8. (1) The Director shall be assisted by other county public officers and staff as are necessary for the proper operation of this Act.

Other officers and staff.

(2) The officers and staff under the director shall be paid such salaries and benefits as may be determined by the Board in consultation with the Salaries and Remuneration Commission.

PART III—REGULATION, ESTABLISHMENT AND DEVELOPMENT OF THE CO-OPERATIVE SECTOR

9. The Director may register co-operative societies operating in areas including but not limited to—

Types of societies to be registered.

- (a) agriculture, livestock, fishing, bee keeping and all other farming activities;
- (b) mining and other natural resources;
- (c) savings and credit societies operating in the county;
- (d) consumer goods wholesale or retail businesses;
- (e) industry;
- (f) building planning, building construction and other housing programmes for members;
- (g) specialized skills; and
- (h) any other area of operation of its members.

10. (1) A group of people wishing to establish and register a co-operative society shall have at least five people to form the pre-co-operative society board.

Procedure for establishment of a society.

(2) The pre-co-operative society board shall communicate in writing to the Director indicating their intention to establish and register a society.

(3) The members of the pre-co-operative board shall after communication to the Director organize a meeting under the Chairmanship of the Director or a representative of the Director in which meeting the founder members shall elect a Formation Board with a chairperson and a secretary.

(4) the Formation Board shall, after its constitution, undertake the following tasks—

- (a) decide what type of society is to be formed;
- (b) prepare by-laws for the society in a prescribed form in accordance with section 13;
- (c) assess founder members' level of business;
- (d) forecast the membership of the society at the beginning and in the future, and the levels of business that the society will have;
- (e) produce a feasibility study of the intended society;
- (f) make a list of founder members and record their share capital and contributions;
- (g) make a list of prospective members and record their probable share capital and contributions;
- (h) start collecting the share capital and contributions keeping of accounts to allow periodic assessment of the group's activities; and
- (i) appoint a delegate in charge of representing the group in all civil matters.

11. A primary co-operative society may be formed, in the case of—

Basic requirements to form a primary society.

- (a) an agricultural society, by at least fifty members;
- (b) a savings and credit co-operative society, by at least twenty members;
- (c) a society involving people with specialized skills, by at least ten members; and
- (d) any other types of co-operative society, by at least ten members.

12. A person qualifies to be a member of a co-operative society, if that person—

Qualification for membership.

- (a) is in an occupation relevant to the primary society;
- (b) has a common need with other members of the society;
- (c) is capable of paying fees and buying shares of the society; and
- (d) is at least fifteen years of age.

13. (1) The by-laws of co-operative society registered under this Act shall contain the following requirements—

Minimum
contents of by-
laws.

- (a) the proposed name of the society and in what area the society will operate;
- (b) the objective of the society; the purposes to which funds of the society may be applied and how the funds may be held, disposed of or invested;
- (c) membership rules including terms of admission, shares and entrance fees; rules regarding dues payable, if at all, if a member is expelled or resigns;
- (d) to whom shares are transferred if a member dies; the extent of a member's liabilities within the group and how they will be decided; how general meetings will be run and what will decisions can be made at these meetings;
- (e) rules on the duties of Board members, their election and duration in office and their removal if need be; and
- (f) authorizing an officer to sign documents on behalf of the society.

(2) Changes or amendments in the by-laws approved by a general meeting shall be sent to the Director for approval.

14. (1) The Formation Board shall submit the following documents to the Director for registration of a co-operative society—

Registration
requirements.

- (a) a certified copy of a resolution passed at the first meeting of the group with the representative of the Director ;

- (b) four copies of the proposed by-laws of the society;
- (c) four copies of the feasibility statement; and
- (d) any other documents asked for by the Director

(2) If the application is satisfactory the Director will issue a letter of recognition to allow the group to operate for six months as a pre-co-operative society until it can fulfill the conditions required to become a full co-operative society.

(3) If the group does not fulfill the conditions after six months, the Director shall cancel the letter of recognition.

(4) If the Director refuses to register a society, the members are entitled to appeal the decision to the Executive Committee Member within sixty days of notification of the refusal.

(5) The decision of the Executive Committee Member on the matter shall be final.

15. (1) The word "Co-operative" shall form part of the name of a society registered under this Act.

Conditions of
registration.

(2) The liability of a society registered under this Act, which includes one or more registered societies among its members, shall be limited.

(3) No society shall be registered under this Act under a name identical to or which so nearly resembles any other existing registered society.

16. (1) All members of co-operative societies are entitled to the following rights once they have paid for their shares, entry fees and other dues -

Rights and
Obligations of
Membership.

- (a) to have their name and signature entered in the Register of Members;
- (b) to vote and be voted in any leadership positions or office of the society
- (c) be entitled to one vote regardless of the number of shares owned by the member;
- (d) to be issued with a share certificate once the shares are fully paid for;
- (e) to attend meetings of the society in accordance with the by-laws;

- (f) to nominate any qualifying person in any office of the society;
- (g) to be informed on all affairs of the society and be able to inspect society documents;
- (h) to gain income from the society's business operations;
- (i) to participate in making society by-laws;
- (j) to withdraw their membership; and
- (k) to institute an inquiry into the affairs of the society in accordance with the bye laws.

(2) No member shall own more than one-fifth of the shares of the society.

(3) A registered company shall not be a member of a society unless the Director gives his or her permission in writing stating how the company will be of benefit to the society.

(4) A person shall not be a member of two societies involved in the same type of business in the same area.

(5) Members of the society have the following duties -

- (a) to abide by the by-laws and procedures of the society;
- (b) to pay for their shares, dues and any debts owed to the society;
- (c) to participate in any economic activity of the society;
- (d) to attend meetings of the society and abide by the decisions taken;
- (e) to protect and defend the society's property; and
- (f) to reserve and protect the society's image and reputation.

17. A person ceases to be a member of a society if that person—

- (a) stops holding shares or making contributions provided for in the by-laws;
- (b) moves away from the area of the society;
- (c) is expelled after committing a crime, bribing

Cessation of
members.

anyone employed by the society or breaking society rules; or

- (d) has, without reasonable excuse, not participated in the activities of the society for two years.

18. (1) The overall control of a co-operative society is exercised by the members at the society's general meetings.

Annual General Meetings.

(2) A co-operative society shall hold an Annual General Meeting in each year to discharge the society's affairs.

(3) All affairs of the society may be discussed in an annual general meeting, including—

- (a) the election, suspension or removal of the Board;
- (b) appointment of an auditor;
- (c) consideration and adoption of audited accounts;
- (d) making decision on the distribution of available funds;
- (e) deciding the amount of meeting expenses to be paid to Board members and unsalaried officers;
- (f) consideration of budgets and business plans;
- (g) consideration of amendments to the by-laws; or
- (h) making decision on the purchase or sale of society property.

(4) In order to make decisions at a meeting of a society at least half of the members of the society or one hundred members, whichever is the fewer, must be present at the meeting.

(5) All members of the society shall receive at least twenty one days notice of the date, place and time of the general meeting.

19. (1) Every co-operative society shall elect a Board of not less than five and not more than nine members.

Co-operative society Board.

(2) In order to ensure that no member or group of members holds too much power in the running of the society, no Board member may serve for more than six consecutive years at a time.

(3) In the early years of a society, one third of the Board should be replaced every three years.

(4) No member can be elected to the Board if he or she —

- (a) is below eighteen years of age;
- (b) owns, controls or influences businesses like that of the society.

(5) Every year, each Board member shall fill in a form declaring the properties and businesses they own and control and must submit this form to the Director.

20. (1) The Board is responsible for the proper administration of the society in accordance with its by-laws.

Responsibilities of
the Board.

(2) The Board may hire suitable and qualified persons to take care of the day to day running of the society.

(3) The Board shall not hire any person on the basis of his or her relationship with a Board member, tribe or position in society.

(4) A person who makes a payment in order to influence a hiring decision commits an offence.

(5) A staff member of a primary society shall be guaranteed by a third party and the guarantor shall be liable to pay or compensate the society if the member of staff is responsible for any loss or default in the society's property.

21. (1) If one-third or more of the members of a society want to discuss a particular issue, the Chairperson shall convene a special general meeting of the society.

Special General
Meetings.

(2). The members seeking to have a special general meeting shall do so in writing addressed to the Chairperson with a copy to the Director.

(3) The Director or his or her representative has the power to convene a special general meeting of the society if he or she, following an inspection of the affairs of the society, finds it necessary to do so.

(4) The Director or his or her representative may recommend the removal and replacement of the existing Board to the special general meeting or may order the society to be dissolved giving reasons for so doing.

(5) The Director may, if the society is in receipt of

financial assistance from the county government or the Director considers it in the public interest, appoint special members to the Board of a society and the special members shall have the right to participate in decision-making on all matters of the society and may make such decisions as may be necessary until new elections are held by the general meeting.

22. A co-operative society shall keep the following records that can be inspected by members of the society and the Director or his or her representative

Duties
Registered
Societies. of

- (a) a register of members and their shares;
- (b) a publicly displayed balance sheet;
- (c) accounts approved by an auditor appointed by a general meeting and approved by the Director ; and
- (d) a copy of this Act and the by-laws of the society.

23. (1) A co-operative society shall keep proper records and books of accounts in such manner as may be prescribed.

Records and
books accounts

(2) A registered auditor shall audit the accounts of the co-operative society at least once a year.

(3) The accounts shall be approved by the members of the society in a general meeting and sent to the Director for scrutiny.

(4) If a society fails to prepare accounts within three months of the end of its financial year, the Board members of the society may be removed by the Director and special members to the Board appointed until a new Board is elected.

(5) Board members removed in this way cannot be elected to the Board again for at least ten years.

(6) Any society officers who commit any offence in the discharge of duties are liable to fines for their part in the offence as may be prescribed.

(7) The Director may inspect the bank accounts of a society and make any order, as may be necessary, directing the society to take actions to remedy any defects in the financial affairs of the society.

PART III -CO-OPERATIVE SECTOR DEVELOPMENT FUND

24. (1) There is established a Fund to be known as the Co-operative Development Fund.

Establishment of
the Fund.

(2) The Fund shall be a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract, and sue and be sued in its own name.

25. The object and purpose of the Fund shall be to -

Objectives of the
Fund.

- (a) provide funds for granting low-interest loans to co-operative institutions with a view to scaling up their lending activities, value addition amongst other activities as may be prescribed;
- (b) provide funds to support, revive and initiate co-operative sector institutions in areas without co-operative and make impact to household economy;
- (c) attract and facilitate investment in co-operative sector institutions that have linkages to micro, small and medium enterprises that benefit the youth ;
- (d) provide financial support to co-operative sector institutions that support strategic and high-return interventions which directly and indirectly have the potential to trigger growth and sector-wide impact;
- (e) attract and facilitate investment in co-operative sector institution that have linkages to low-income persons, community-based organizations, and women groups; and
- (f) provide funds to co-operative sector institutions to facilitate marketing of products and services both in the domestic and the international markets.

26. In the performance of any functions relating to or operation of the Fund under this Act, the Executive Committee Member, the Committee and the Unit shall be guided by the following principles—

Operating guiding
Principles of the
Fund.

- (a) public participation and financial inclusiveness;
- (b) development partner linkages and participation;
- (c) protection of the interests of the marginalized communities, persons with disability, women and youth; and
- (d) emphasis on local ownership and sustainability.

27. (1) The Fund shall consist of—

Revenue and
expenditure of the
Fund.

- (a) sums of money which may, from time to time, be appropriated by the County Assembly for that purpose;
- (b) sums of money paid to the Fund in repayment of the capital and interest of any loan granted from the Fund;
- (c) income from any investment made by the Fund;
- (d) any sums of money borrowed by the Fund with the approval of the County Assembly; and
- (e) any gifts, donations, grants and endowments made to the Fund by development partners or any other body.

(2) There shall be paid out of the Fund any payment or expenditure approved by the County Executive Committee Member in relation with the operations or administration of the Fund.

28. (1) There is established a Committee to be known as the Co-operative Development Fund Committee consisting of—

Establishment of
the Development
Fund Committee.

- (a) a Chairperson appointed by the County Executive Committee Member through a

- (d) the Head of legal services in the county or a representative appointed in writing;
- (e) the Director of Co-operatives;
- (f) three persons, not being public officers, appointed by the Executive Committee Member through a competitive and transparent recruitment process; and
- (g) the Director of the unit appointed under section 35, who shall be the secretary to the Committee.

(2) The Chairperson and persons under subsection (1) (d) shall hold office for a term of three years renewable for one further term.

(3) A person shall be qualified for appointment Chairperson or member of the Committee if that person-

- (a) holds a degree from a recognized university recognized in Kenya;
- (b) has at least five years professional experience in the relevant field; and
- (c) meets the requirements of leadership and integrity provided for in Chapter Six of the Constitution or any relevant national legislation.

29. The members of the Committee shall be paid such allowances as the Executive Committee Member shall determine in consultation with the County Public Service Board.

Terms conditions and of service.

30. The office of the Chairperson or member of the Committee appointed under section 28 (1) (d) shall become vacant if the member—

Vacation of office of member.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) is convicted of an offence involving fraud or dishonesty;
- (d) is absent, without reasonable cause, from three consecutive meetings of the Committee;
- (e) resigns in writing addressed to the Executive Committee Member;

- (f) dies; or
- (g) is removed from office by the Executive Committee Member for -
 - (i) being unable to perform the functions of the office by reason of mental or physical infirmity;
 - (ii) failing to declare his or her interest in any matter being considered or to be considered by the Committee; or
 - (iii) any other sufficient reason as may be prescribed.

31. The functions of the Committee are to—

Functions of the Committee.

- (a) formulate policy guidelines on co-operative sector funding;
- (b) ensure that all projects funded under this Act are consistent with the county government priorities specified in the relevant policy documents;
- (c) approve proposals submitted to it by the Unit under this Act;
- (d) authorize allocations from the Fund;
- (e) formulate or approve standards, guidelines and procedures for funding proposals under this Act;
- (f) approve the organizational structure of the Unit;
- (g) provide oversight in the utilization of the Fund; and
- (h) perform any other function as may be conferred on it by this Act or any other written law.

32. (1) The Committee may establish such sub-committees as it may consider necessary for the better performance of its functions and the exercise of its powers under this Act.

Delegation by the Committee.

(2) The Committee may co-opt into the membership of a sub-committee established under subsection (1), such persons whose knowledge and skills are found necessary for the performance of the functions of the sub-committee.

(3) The Committee may, by resolution either generally or in any particular case, delegate to any sub-

committee or to any member, officer, employee or agent of the Committee, the exercise of any of the powers or the performance of any of the functions of the Committee under this Act or under any other written law.

33. (1) Subject to subsection (2), the business and affairs of the Committee shall be conducted in accordance with the Second Schedule.

Conduct of business of the Committee.

(2) Except as provided in the Second Schedule, the Committee may regulate its own procedure.

34. There shall be within the County department responsible for the Co-operative sector, a unit to be known as the Co-operative Development Fund Unit.

Co-operative Fund Unit.

35. (1) The unit shall consist of a Director and staff as the Committee may consider necessary for the performance of the functions of the unit under this Act.

Staff of the unit.

(2) The Director and staff of the unit shall be county government public employees appointed by the County Public Service Board.

(3) A person shall be qualified for appointment as the Director of the unit if such person—

- (a) holds a degree from a university recognized in Kenya; and
- (b) has at least seven years professional experience in the relevant field.

(4) The appointment of the Director under subsection (3) shall be by notice in the County Gazette for a term of five years and shall be eligible for re-appointment for one further term.

36. The office of the Director shall become vacant if the office holder—

Vacation of office of Director.

- (a) is adjudged bankrupt;
- (b) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (c) resigns in writing addressed to the Committee;
- (d) dies; or
- (e) is removed from office by the County Public Service Board Committee for—

- (f) being unable to perform the functions of the office by reason of mental or physical infirmity;
- (g) failing to declare his or her interest in any matter being considered or to be considered by the unit or the Committee; or
- (h) fails to perform his or her duties in accordance with the terms and conditions of appointment.

37. (1) The functions of the unit are to—

Functions of the Unit.

- (a) administer the Fund;
 - (b) provide technical, financial and legal expertise to the beneficiaries of the Fund.
- (2) In the performance of its functions under subsection (1), the unit shall—
- (a) conduct civic education to promote the awareness and understanding of the operations of the Fund amongst stakeholders;
 - (b) provide capacity building to, and advise co-operative sector institutions to ensure the effective use of the funds borrowed under this Act;
 - (c) develop framework that will ensure an open, transparent and efficient use of the funds borrowed under this Act ;
 - (d) conduct research and gap analysis to ensure continuous performance improvement of the Fund;
 - (e) assist co-operative sector institutions, where the unit considers it necessary, to design, identify, select, prioritize, appraise, evaluate and negotiate investment opportunities that will result in maximum benefits;
 - (f) maintain a record of all Fund documentation;
 - (g) assist the Executive Committee Member in formulating guidelines and standard documentation required under this Act;
 - (h) carry out such other functions as may be conferred on it by the Executive Committee Member and this Act.

(3) The unit shall prepare financial accounts and an inventory of any monies allocated to it, any financial support received by it and any success fees received by it from a private party or project company as the case may be, under this Act.

38. (1) A Co-operative institution wishing to be considered for the grant of a loan shall make an application to the Unit in the prescribed form.

Administration of
the Fund.

(2) A Co-operative institution that has been awarded a loan shall be issued with a Loan Identification Account Number by the Unit.

(3) An officer of a Co-operative institution who—

- (a) in filling a loan application form, knowingly makes any false statement, whether orally or in writing relating to any matter affecting the application for a loan;
- (b) being required to answer any questions, furnish any information or particular which is false or produce any document or paper,
- (c) neglects to produce any information, particulars, document or paper without reasonable cause; or
- (d) is granted a loan based on false information;

commits an offence and in the case of paragraphs (a), (b) and (c) be liable to a fine of not more than one million shillings or to imprisonment for a term of not more than six months and in the case of paragraph (d) to a fine of not more than one million shillings or to imprisonment for a term of not less than eight months.

39. (1) The Committee may—

Conditions for
grant of loan.

- (a) accept or reject any application for a loan;
- (b) grant a loan to a Co-operative institution and in so granting impose conditions, demand security and require repayment in instalments at such times and within such periods as the Committee deems fit.

(2) Notwithstanding subsection (1) and subject to the other provisions of this section the Committee may on the

advice of the Unit, upon the request by an applicant to whom a loan has been granted, at any time vary—

- (i) the condition subject to which the loan was made;
- (ii) any security given in relation to the loan; or
- (iii) any of the terms of repayment of the loan.

(3) Where the Committee has resolved to make a loan to any eligible co-operative institution, the Unit shall notify the applicant in writing, and require the applicant to comply with the conditions and provide the security imposed or demanded within a specified period not exceeding six months.

(4) Where a co-operative institution fails to comply with the requirement of the Unit notified under subsection (3) within the prescribed period, the application shall be deemed to have lapsed.

(5) Where in granting a loan to a co-operative institution the Committee considers it prudent to request for a guarantor to guarantee any loan granted in case of any default by a co-operative institution in the repayment of the loan, person or body who guaranteed the loan, shall automatically and fully be liable to pay to the Unit all or any part of the loan together with interest accrued and outstanding, to the Unit, as shall be notified to the guarantor by the Unit.

(6) Where a guarantor notified by the Unit under subsection (5) fails or refuses to repay the loan together with any interest accrued thereon, the guarantor will have committed an offence and liable to criminal prosecution or civil proceedings or both in accordance with the provisions of the relevant laws and this Act.

40. On the last day of each financial year the Unit shall send to all co-operative institution having loans an annual return form to be filled by the co-operative institution and submitted to the Unit before the end of the month of August of the succeeding year.

Annual returns.

41. A co-operative institution having a loan shall repay the borrowed sums and interest on such terms and conditions as may be prescribed.

Loan Repayments.

PART IV—MISCELLANEOUS PROVISIONS

42. (1) If in the opinion of the Unit there has been or is likely to be any breach of, or failure to comply with any condition or term of repayment respecting a loan, the Unit may forthwith—

General provisions.

Cap. 42

(a) recover the loan from the co-operative institution as a civil debt under the Debts (Summary Recovery) Act, the amount of the loan or the amount thereof then remaining unpaid together with interest thereon;

(b) enforce or realize any security relating thereto.

(2) The Unit may, in exercise of the powers conferred by subsection (1), engage the services of private legal practitioners.

43. The salary and allowances of the Director and staff of the Unit shall be paid out the Fund.

Salaries of the staff.

44. (1) A co-operative institution that has benefited from a loan grant under this Act shall keep proper books of accounts and records in relation to the funds and shall be open for scrutiny by the Unit.

Financial reporting audit and of institutions.

(2) The beneficiary co-operative institution shall submit the duly audited financial accounts and any other information as may reasonably be required by the Unit within six months after the end of each financial year

(3) The submitted accounts and any other information shall be verified and reported upon by the Auditor-General.

45. Where a person is convicted of an offence under this Act for which no penalty is expressly provided, that person shall be liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

General penalty.

46. The Executive Committee Member shall, in consultation with the Commissioner of Co-operatives of the national government, formulate and implement immediate, medium-term and long-term administrative or policy measures to ensure the smooth implementation of this Act.

Measures to ensure smooth transition.

47. (1) The Executive Committee Member may make regulations generally for the better carrying out the provisions of this Act and without prejudice to the

Power to make Regulations.

generality of the foregoing, may make regulations in respect of the following—

- (a) the receipt, processing and approval of applications for loans and the granting of loans to applicants;
- (b) the preparation and maintenance of records of co-operative institution granted loans;
- (c) the withdrawal, recovery and cancellation of loans;
- (d) the waiver or exemption from repayment of loans; and
- (e) the setting-up of procedures for dealing with loan defaulters.

(2) Regulations made under this section shall be approved by the County Assembly before they take effect.

FIRST SCHEDULE (S. 4)

GUIDING CO-OPERATIVE PRINCIPLES

The co-operative principles are the following principles:

1. Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (1 member, 1 vote) and co-operatives at other levels are organised in a democratic way.

3. Members economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of the capital is usually the common property of the co-operative. They usually receive limited compensation (if any) on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes:

- (a) developing the co-operative, possibly by setting up reserves, part of which at least would be indivisible;
- (b) benefiting members in proportion to their transactions with the co-operative;
- (c) supporting other activities approved by the membership.

4. Autonomy and independence

Co-operatives are autonomous, self help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers and employees so that they can contribute effectively to the development of their co-operatives. They inform the general public, particularly young people and opinion leaders, about the nature and benefits of co-operation.

6. Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for the community

While focusing on member needs, Co-operatives work for the sustainable development of their communities through policies accepted by their members.

SECOND SCHEDULE (S. 33)

Conduct of Business and Affairs of the Committee

1. Meetings

(1) The Committee shall meet at such place in Kenya as the chairperson may determine and the meetings shall be convened by the chairperson.

(2) The Committee shall have at least four meetings in every financial year and not more than three months shall elapse between one meeting and the next meeting.

(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member by the Director of the unit.

(4) The chairperson may, at his or her discretion or at the written request made by at least half of the members of the Committee and within seven days of the request, convene an extraordinary meeting at such time and place as he or she may appoint.

(5) Meetings shall be presided over by the chairperson or in his or her absence by the vice- chairperson.

(6) The members of a Committee shall elect a vice- chairperson from among themselves-

- (a) at the first sitting of the Committee; and
- (b) whenever it is necessary to fill the vacancy in the office of the vice-chairperson.

(7) Where the chairperson or vice-chairperson is absent, the members shall appoint from among themselves, a person to chair the meeting of the Committee.

(8) The Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Committee.

2. Conflict of interest

(1) If any member has a personal or fiduciary interest in a project, proposed contract or any matter before the Committee, and is present at a meeting of the Committee at which any matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare the interest and shall not take part in any consideration or discussion of, or vote on any question touching that matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

3. Quorum

(1) Subject to subparagraph (2), the quorum of the meeting shall be four members including half of the appointed members of the Committee.

(2) Where the persons present at a meeting of the Committee do not constitute the quorum necessary to hold a meeting under this Act or where by reason of exclusion of a member from a meeting, the number of members present falls below the quorum necessary to hold a meeting, the Committee shall postpone the consideration of the matter in question until there is a quorum.

4. Voting

A question before the Committee shall be decided by simple majority of the members present and voting and the chairperson shall, in the case of an equality of votes, have a casting vote.

5. Rules of Procedure and minutes

(1) Except as is provided above, the Committee may regulate the procedure and conduct of its business.

(2) The secretary to the Committee shall keep minutes of the proceedings and decisions of the Committee.

MEMORANDUM OF OBJECTS AND REASONS

The principal objective of this bill is to develop co-operatives sector in the County by providing direction relating to the constitution, registration and regulation of co-operative societies and for connected purposes.

Part I of the Bill provides for preliminary matters including the short title to the Bill the interpretation of words and expressions used in the Bill, the objectives and guiding principles of the Bill.

Part II of the Bill contains administrative provisions of the Act, Directorate of Co-operatives, of the Director and other staff of the Directorate.

Part III of the Bill provides regulation, establishment and development of the Co-operative sector. The part sets out the types of societies, procedure for establishment and registration of Co-operative societies, rights and obligations of membership, books of accounts, Co-operative Board, functions and powers of Board and responsibilities of the Board.

Part IV of the Bill provides for the establishment of Co-operative Societies Fund, objectives of the Fund, revenue and expenditure of the Fund.

Part V of the Bill contains general provisions such as personal liability of employees, salaries, general penalty and power to make Regulations.

STATEMENT THAT THE BILL IS NOT A MONEY BILL WITHIN THE MEANING OF ARTICLE 114 OF THE CONSTITUTION

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 28th November, 2014

CHARLES OCHONG'A MAINA,
Chairperson, Agriculture Committee.

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA

COUNTY ASSEMBLIES FORUM (CAF)
P. O. Box 73552 - 00200,
NAIROBI, KENYA