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**KISUMU COUNTY GAZETTE
SUPPLEMENT**

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NAIROBI, 12th June, 2015

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

THE KISUMU COUNTY CO-OPERATIVE SOCIETIES BILL, 2015

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THE KISUMU COUNTY CO-OPERATIVE SOCIETIES BILL, 2015

A Bill for

AN ACT of the County Assembly of Kisumu to implement section 7 (e) of part 2 of the Fourth Schedule to the Constitution by providing the Legal and Institutional framework for the constitution, registration and regulation of Co-operative Societies and for purposes incidental thereto

ENACTED by the County Assembly of Kisumu as follows—

Short title and Commencement

1. This Act may be cited as the Kisumu County Co-operative Societies Act, 2015 and shall come into force on such date as the County Executive Committee Member shall by Notice in the *Gazette* appoint

“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 society formed at the national level by the Co-operative movement in Kenya and registered under this Act to promote Co-operative development and represent the interests of Co-operative societies locally and internationally.

“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;

“Committee” means the governing body of a Co-operative Society that is established under Section 33 of this Act;

“Commissioner” means the County Commissioner of Co-operatives appointed under section 4 of this Act and includes any person on whom any of the powers of the Commissioner have been conferred in accordance with this Act.

“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 5 of this Act;

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

“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;

“Co-operative union means” means a Co-operative Society whose membership is restricted to primary societies;

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

“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;

“officials” includes a chairman, vice-chairman, 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 administering the estate of a deceased person;

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

“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;

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

the resolution and of the date, time and place of the meeting has been given to each member;

“prescribed” means prescribed by the Member of the Executive Committee;

“primary society” means a Co-operative Society whose membership is restricted to individual persons;

“regulations” means regulations made under this Act;

“tribunal” means committee or board appointed to adjudicate on matters related to Co-operative societies development under this Act and regulation made thereunder

Objectives and purpose of Act

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

- (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 Commissioners 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.

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 sub-section (1).

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 save for the National Laws.

This Act applies to a Co-operative Society operating within the County

County Commissioner of Co-operatives and other Officers

4. (1) There shall be an office of the County Commissioner of Co-operatives which shall be an office in the County Public Service

(2) The Commissioner shall be responsible for the regulation and development of the Co-operative sector in the County in accordance with the provisions of this Act.

(3) The County Public Service Board shall recruit such other officers who in the opinion of the Chief Officer are required to assist the Commissioner in the performance of functions under this Act.

Registration of Co-operative Societies

5. (1) Subject to the provisions of this Act, a society which has for its objects the promotion of the welfare and economic interest of its members, and has incorporated the Co-operative principles in its by-laws may be registered under this Act with or without limited liability.

(2) A society shall not be registered under this Act unless—

(a) in the case of a primary society, consists of at least ten persons all of whom shall be qualified for membership of the Co-operative Society or

(b) in the case of a Co-operative union has at least two registered societies as its members

(3) An application to register a society shall be made to the Commissioner in the prescribed form.

Procedure for Registration

6. (1) The application shall be accompanied by four copies of the proposed by-laws of the society in English, the prescribed registration fee, and the person or persons by whom or on whose behalf such application is made shall furnish such information with regard to the society as the Commissioner may require.

(2) The Commissioner shall within 30 days review the application and issue the Certificate of Registration to the applicant who meets the registration requirements.

(3) If an application for registration does not meet the requirements under this Act, the Commissioner shall reject the application and notify

the applicant accordingly within fourteen day of the decision to reject the application.

(4) A person who is aggrieved with the decision of the Commissioner under this section may appeal to the Member of the Executive Committee within 14 days in the manner prescribed.

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

(6) The Member of the Executive Committee shall make rules and regulations providing the powers of the Commissioner to issue provisional registration for a period not exceeding one year to applicants who don't meet the requirements under this Act.

Register of Co-operative Societies

7. (1) The Commissioner shall keep or cause to be kept at its office a record called the register of Co-operative societies wherein shall be entered particulars relating to the registration of societies and their by-laws and any amendments thereto.

(2) Every entry in the register shall be made by, or under the direction of, the Commissioner and shall be signed by him and every alteration, interlineations or erasure shall be initialed by the Commissioner.

Limitation of liability

8. The liability of members in a Co-operative Society shall be limited to the amount of shares held or to the contribution made to such society.

Co-operative to be Body Corporate

9. A Co-operative Society registered under this Act shall be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of whatever kind, to enter into contracts, to sue and be sued and to do all things necessary for the purpose of, or in accordance with, its by-laws

Evidence of Registration

10. A certificate of registration or of provisional registration signed by the Commissioner shall be conclusive evidence that the society therein mentioned is duly registered or provisionally registered unless it is proved that such of the society has been cancelled or has been terminated.

Display of the Certificate of Registration

11. The certificate of registration bearing the number and date of registration Shall be displayed at the head office of every Co-operative Society

Reservation of Name

12. (1) The Commissioner may, on written application, reserve a name pending registration of a Co-operative Society or a change of name by a Co-operative Society.

(2) Any reservation under sub-section (1) shall remain in force for a period of thirty days or such longer period, not exceeding sixty days, as the Commissioner may, for special reasons, allow, and during such period no other Co-operative Society shall be entitled to be registered with that name

Protection of the name "Co-operative"

13. (1). A Society shall not be registered under a name identical to an existing society, or under any name likely, in the opinion of the Commissioner, 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

Change of Name

14. (1) A Co-operative Society may, by special resolution and with the approval of the Commissioner signified in writing, change its name.

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

(3) An amendment of the by-laws of a Co-operative Society shall not be valid until the amendment has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the Commissioner in the prescribed manner

(4) If the Commissioner is satisfied that any amendment of the by-laws of the Co-operative Society is not contrary to this Act and any rules made there under, he may register the amendment

(5) When the Commissioner registers an amendment of the by-laws of a Co-operative Society, he shall issue a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

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

Appeal against refusal to Register

15. (1) A Co-operative Society may appeal to the Executive Committee Member against the Commissioner of Co-operative's refusal to register the society and its by-laws or any amendments of its by-laws within thirty days of being notified of the refusal.

(2) The Executive Committee Member may within thirty days after considering reasons given in writing by both the aggrieved and the Commissioner, uphold the decision of the Commissioner or reverse the decision of the Commissioner subject to such conditions as the Executive Committee Member may stipulate.

(3) An applicant aggrieved by the decision of the executive member may appeal to the Co-operatives Tribunal within fourteen days of delivery of the decisions of the executive member.

(4) An applicant aggrieved by the decision of the Tribunal may appeal to the High Court within fourteen days of delivery of the decisions of Tribunal.

By laws to bind Members of Co-operatives Societies

16. (1) The By-Laws of a Co-operative Society, shall, when registered, bind the Co-operative Society and the members to the same extent as if they were signed by each member and contained covenants on the part of each member for himself and his personal representatives to observe all the provisions of the by-laws.

(2) All money payable by any member to the Co-operative Society under the by-laws shall be a debt due from him to the Co-operative Society.

Fines for violation of By-Laws

17. (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.

(2) A fine shall not be imposed under this section 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

(3) 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.

(4) 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

PART III—RIGHTS AND LIABILITIES OF MEMBERS

Qualification for Membership

18. A person shall not be qualified for membership of a Co-operative Society unless that person—

- (a) has attained the age of Eighteen years;
- (b) is in employment, occupation or profession falls within the category or description of those for which the Co-operative Society is formed; and
- (c) is a resident within, or occupies land within, the society's area of operation as described in the relevant by-law.

Membership subject to authorization by Annual General Meeting

19. A company and unincorporated body of persons shall not become member of a Co-operative Society, except with a written authorization through a resolution by a general meeting of that Co-operative Society.

Limitation of holding share capital

20. A member, other than a Co-operative Society, shall not hold more than one-fifth of the issued and paid-up share capital of any Co-operative Society

Limitation of membership to one Society

21. (1) A person shall not be a member of more than one Co-operative Society having the same or similar objectives;

(2) 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,

Notwithstanding the foregoing a person may be a member of a Co-operative Society outside his area of operation or residence if residency or location is not a core requirement for joining the Co-operative Society; or if the Co-operative Society approves such membership in its by-laws.

Transfer of Shares

22. (1) 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.

The Kisumu County Co-operative Societies Bill, 2015

(2) In the case of a Co-operative Society registered with unlimited liability, a member shall not transfer or charge any share held by him or his interest in the capital of the society or any part thereof, unless—

- (a) he has held such share or interest for at least one year; and
- (b) the transfer or charge is in favour of the society or a member of the society.

(3) Subject to the approval of the Committee, a member may transfer his share or her shares in a Co-operative Society to any other member of the society or to any person whose membership of the society has been approved by the Committee.

(4) A transfer of a share in a Co-operative Society shall not be valid and effective until such transfer has been recorded in the register of the society

(5) A transfer of a share or shares in a Co-operative Society shall not be valid and effective if made by a member indebted to a society whether such debt is due for payment or not

Rights of Members

23. A member of a Co-operative Society is entitled to the following rights—

- (a) to have their name and signature entered in the Register of Members;
- (b) to vote and be voted for at meetings – every member has one vote regardless of the number of shares they own;
- (c) to be issued share certificates once they have paid for their shares;
- (d) to be considered for leadership positions;
- (e) to call meetings in accordance with by-laws;
- (f) to nominate a successor;
- (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.

(2) Notwithstanding subsection (1), members of a Co-operative Society whose membership consists of Co-operative Societies only, may have as many votes (2) Notwithstanding subsection (1), members of a Co-operative Society whose membership consists of Co-operative Societies only, may have as many votes

Member's Obligations

24. A member of a Co-operative Society shall have the obligation to—

- (a) to have their name and signature entered in the Register of Members;
- (b) to vote and be voted for at meetings – every member has one vote regardless of the number of shares they own;
- (c) to be issued share certificates once they have paid for their shares;
- (d) to be considered for leadership positions;
- (e) to call meetings in accordance with by-laws;
- (f) to nominate a successor;
- (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.

Voting Rights of Members

25. 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;
- (c) meet the debts of the society in case of bankruptcy in accordance with the provisions of this Act and the by-laws of the society.

Registered address of a Co-operative Society

26. Every Co-operative Society shall have a registered address to which notices and communications may be sent and shall send to the

Commissioner notice of every change of address within one month of change.

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

27. Every Co-operative Society shall keep at its registered office a copy of this Act and of the rules made there under and of its own by-laws and a list of its members (excluding details of nominees and shareholdings) at its registered office and shall keep them open for inspection by any person free of charge, at all reasonable time during business hours.

Committee's power to prepare estimates

28. 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

29. (1) Every Co-operative Society shall keep proper accounts which—

- (a) shall 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 any member or 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 a qualified audit firm as may be prescribed.

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

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

(6) An auditor shall not 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 Commissioner in such form as may be prescribed.

(7) An auditor shall submit the audited accounts to a general meeting within four months after the end of the financial year 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.

(8) 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—
 - (i) 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;
 - (ii) 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 Production of books and other documents.

- (iii) 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.

(9) A Co-operative Society shall, at such time and in such form as may be prescribed, file with the Commissioner an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.

(10) 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 Commissioner is satisfied that the failure was due to circumstances beyond their control.

(11) For the purposes of this section, "International Accounting Standards" and "International Financial Reporting Standards" means the standards adopted by the Institute of Certified Public Accountants of Kenya

(12) A Co-operative Society shall remit audit and supervision fees to the County Revenue Fund at the rate prescribed in the County Finance Bill.

(13) A Co-operative Society audited by a private auditor shall remit to the County Revenue Fund supervision fees at the rate prescribed vide the Commissioner of Co-operative Society's Circulars

30. (1) A person qualified under the Accountants Act Chapter 521 of the Laws of Kenya and who wishes to be considered to audit Co-operative societies shall make an application in writing to the Commissioner and shall pay the prescribed application fee and such application may be made annually.

(2) The Commissioner shall cause the list of auditors approved to audit Co-operative societies to be published in the County Gazette

Approval of Auditors

31. An officer, agent, servant or member of a Co-operative Society who is required to produce books of accounts or other documents shall so act at the direction of the Commissioner, Board or court order.

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.

PART IV—GOVERNANCE OF CO-OPERATIVE SOCIETIES

General Meetings

32. (1) Overall control of Co-operatives is exercised by the members at the Annual General meeting.

(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 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 Commissioner;
- (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; as provided in the society's by-laws.
- (f) determine, where necessary, the maximum borrowing power of the society;
- (g) appoint an auditor for the following 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.
- (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 by-laws 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 Commissioner may convene a special general meeting of a society at which he may direct the matters to be discussed at the meeting
- (9) The chairman or in his absence the vice-chairman 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.
- (10) The Commissioner may preside at any meeting convened under sub-section (8).

Membership and powers of the committee

33. (1) Every Co-operative Society shall have a Committee consisting of not less than five and not more than nine members.

(2) The members of the committee shall elect the chairman, vice chairman. Hon secretary and Treasurer from among their number.

(3) The Committee shall be the governing body of the society and shall, subject to any direction from a general meeting or the by-laws of the Co-operative Society, direct the affairs of the Co-operative Society with powers to—

- (a) enter into contracts;
- (b) institute and defend suits and other legal proceedings brought in the name of or against the Co-operative Society; and

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

(4) A person shall not be a member of a Committee if he—

(a) is not a member of the Co-operative Society;

(b) is under eighteen years of age;

(c) is unable to read and write;

(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) being a member of a Co-operative Society that lends money to its members, lends money on his own account;

(g) being a member of a Co-operative Society which trades in goods or produce, trades either on his own account or some other person's account in the same type of goods or produce;

(h) has not, within thirty days of being appointed, declared his wealth to the Commissioner in the prescribed manner;

(i) is an undischarged bankrupt;

(j) is of unsound mind;

(k) has been adversely named by the Commissioner in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the Committee;

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

(m) has been convicted of any offence under this Act or rules made there under;

(n) has any uncleared debt owing to a Co-operative Society at the end of its financial year other than in respect of a loan under the provision of any rules made under this Act;

(o) 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:

(5) In the conduct of the affairs of a Co-operative Society the Committee shall exercise the prudence and diligence of ordinary men of business and the members shall be held, jointly and severally liable for any losses sustained through any of their acts which are contrary to the

Act, rules, by-laws or the directions of any general meeting of the Co-operative Society.

(6) The Committee may suspend from duty any Committee member charged in a court of law with an offence involving fraud or dishonesty pending the determination of the matter.

PART V—AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

Amalgamation of Co-operative societies

34. (1) Any two or more Co-operative societies hereinafter referred to as amalgamating 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.

(5) A 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.

(6) A 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.

(7) A 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.

(8) 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.

(9) 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);

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

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

Provided that no member or creditor or other person shall be entitled to 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 Commissioner considers reasonable, he is satisfied that the secondary resolutions of each of the societies amalgamating complies with the provision of this section, he may register the amalgamated society and its by-laws and thereupon.

(10) Upon the registration of the amalgamated society—

(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 amalgamating members of the amalgamating societies shall become members of the amalgamated society and will be subjected to its by-laws;

(d) the share holders of the amalgamating societies or any other persons who have claims against the amalgamating societies, and

(e) whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against the amalgamated society

(11) Where the Commissioner refuses the amalgamation of the amalgamating societies under subsection (such societies may within thirty days appeal against such refusal to the Executive Committee Member.

Division of Co-operative Societies

35. (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 called to consider the preliminary resolution and any notices received under this section.

(8) At the special general meeting held under this Act 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 (4);
- (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 Commissioner may determine, or direct:

(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 Commissioner are not substantial, and the decision of the Commissioner as to whether any changes are or are not substantial shall be final.

If, the Commissioner is satisfied within such time as he considers reasonable that the provisions of the secondary resolution and the provisions of this section have been complied with, he may, register the 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

(10) 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 Commissioner refuses to approve the division of an existing society, the society may appeal to the Executive Committee Member within thirty days of the communication to it of the refusal.

(12) A party aggrieved by the decision of the Executive Committee Member may appeal to the High Court within thirty days

PART VI—RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

Society to have charge over member's produce

36. (1) A Co-operative Society which has as one of its objects the sale and marketing of any agricultural produce, may enter into a contract with its members, either in its bylaws or by a separate document binding the members to dispose process, market or sell all their agricultural produce, or such amounts or descriptions of the same as may be stated therein, to or through the society.

- (2) The contract referred to under subsection (1) may—
 - (a) bind the members to produce the quantities of agricultural produce therein specified;
 - (b) provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract.
- (3) The sum referred under subsection (2) shall on becoming payable —

(a) be a debt due to the society; and

(b) 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.

(4) 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 mentioned therein, whether existing or future.

(5) 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.

(6) No contract entered into under this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.

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

37. (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) lent 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 there from 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

38. 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

39. (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 Commissioner 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 Commissioner 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 Commissioner stating the reasons for his inability and the Commissioner 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) When an agent fails to notify the Commissioner 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 defense 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.

Member’s share not subject to attachment

40. The shares 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 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

41. 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

42. 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—

- (i) 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

- (ii) 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

43. (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; 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 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
- (ii) 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 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

44. (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 VII—PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

Application of society's property and funds

45. 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

46. 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.

47. A Co-operative Society may receive deposits and loans from persons who are not members in such manner and conditions as may be prescribed.

48. (1) A Co-operative Society which under its by-laws has power to borrow money shall from time to time at a general meeting fix the maximum liability which it may incur in loans or deposits from non-members.

(2) The maximum liabilities fixed shall be subject to the approval of the Commissioner who may at any time reduce it or impose such conditions as he may deem necessary.

(3) A member of the society may appeal against the decision of the Commissioner made under sub-rule (3) to the Executive Committee Member within thirty days of such decision

Investment of society's funds

- 49. (1)** 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;
 - (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; or
 - (e) in such other investment scheme, avenue or method as may be prescribed.

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

Declaration and payment of bonus

50. (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) A Co-operative Society shall not 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

51. (1) A 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 as may be prescribed.

(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) The reserve fund shall be kept in separate account to be known as the reserve fund account.

(6) 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.

PART VIII—CHARGES BY CO-OPERATIVE SOCIETIES

Creating charge over society's property

52. 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

53. A charge created by a Co-operative Society in accordance with section 52 of this Act shall comply with the provisions of the law applicable to the particular type of charge.

Charges to be registered with the Commissioner

54. (1) It shall be the duty of every Co-operative Society to register with the Commissioner, every charge created by it and the particulars thereof.

(2) The registration of a charge under subsection (1) may be effected on the application of any interested person.

(3) 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 Commissioner for such registration.

(4) If any Co-operative Society fails to register a charge with the Commissioner within thirty days of creation of such a charge, and the registration has been effected by some other person within that period, the members of the Committee commits 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

55. (1) The Commissioner shall, with respect to each Co-operative Society, register in such form as may be prescribed 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;
- (b) property acquired by the society, the date of the acquisition of the property;
- (c) the amount secured by the charge;
- (d) short particulars of the property charged; and
- (e) the persons entitled to the charge.

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

Certificate of satisfaction of charges

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

Receiver to give notice of his appointment

57. (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 Commissioner appoints such a receiver or manager under any powers contained in any instruments, he shall, within seven days from the date of the order of the appointment under the said powers, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.

(2) Where any person appointed 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 Commissioner and the Commissioner 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.

Keeping of instruments of charge

58. 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.

Keeping of register of particulars of charges

59. (1) Every Co-operative Society shall keep, at the registered office 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 five hundred thousand shillings.

Right of members and creditors to inspect register of charges

60. (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 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 for inspection by any other person on payment of the prescribed fee.

(2) Any officer of a Co-operative Society who—

(a) refuses to allow inspection of the register of charges or copies of the instruments creating charges in accordance with subsection (1); or

(b) permits such refusal,

is guilty of an offence and shall on conviction be liable to a fine not exceeding two million shillings.

PART IX—INQUIRY AND INSPECTION

Inquiry by the Commissioner

61. (1) The Commissioner may, of its own accord, and shall on the direction of the Executive Member, as the case may be, or on the application of not less than one-third of the members present and voting at a meeting of the society which has been duly advertised, hold an inquiry

or direct any person authorized by it in writing to hold an inquiry, into the by-laws, working and financial conditions of any Co-operative 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 Commissioner shall report the findings of its inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report

(4) A person who contravenes subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings.

Inspection of books of indebted society

62. (1) The Commissioner may, if it deems 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 Commissioner 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 Commissioner such sum as security for the expenses of the inspection as the Commissioner may require.

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

Expenses of Inquiry.

63. (1) Where an inquiry is held under section 61 or an inspection is made under section 62 of this Act, the Commissioner 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;

(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.

PART X—DISSOLUTION

Procedure for dissolution

64. (1) If the Commissioner, after holding an inquiry under section 61 or making an inspection under section 62 of this Act, or receiving an application made by at least three quarters of the members of a Co-operative Society, is of the opinion that the society ought to be dissolved, he may, in writing, 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 Executive Committee Member.

(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.

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

(5) A Co-operative Society shall not be dissolved or wound up except by an order of the Commissioner

Cancellation of Registration

65. (1) Where a Co-operative has—

- (a) less than the prescribed number of members; or
- (b) failed to file returns with the Commissioner for a period of three years; or
- (c) failed to achieve its objects

The Commissioner 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 Commissioner under subsection (1) may appeal against such order to the Executive Committee Member.

Effects of Cancellation

66. 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.

Appointment of Liquidator

67. Where the registration of a Co-operative Society is cancelled under this Act the Commissioner 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 Liquidator

68. 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 Tribunal as litigant in person on behalf of the society;
- (c) to appoint an advocate to assist in the performance of his duties;
- (d) 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;
- (e) to investigate all claims against the society, and subject to this Act, to decide questions of priority arising between claimants;
- (f) to call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;
- (g) 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;
- (h) to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society;
- (i) to determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;
- (j) to take possession of the books, documents and assets of the society;

- (k) 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 Commissioner;
- (l) 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;
- (m) to compromise, with the approval of the Commissioner, any claim by, or against, the society;
- (n) to apply to the Commissioner 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.

Liquidation account of Societies

69. The Commissioner shall open and administer an account, to be called the Co-operative Societies Liquidation Account, in such a bank as may be prescribed.

Powers of the Commissioner during liquidation

70. The liquidator shall exercise powers under this Act under the guidance and limitations imposed by the Commissioner, and the Commissioner may —

- (a) rescind or vary any order made by the liquidator and make any new order he thinks proper;
- (b) direct on timelines for and the progress reports to be submitted by the liquidator as may be prescribed.
- (c) remove the liquidator from office and appoint a new liquidator in his place;
- (d) call for all books, documents and assets of the society;
- (e) at his discretion, require accounts to be rendered to the him 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) require the indemnification of the liquidator.

Institution of winding up proceeding

71. (1) If the liquidator of a society whose registration has been cancelled alleges that any of the offences under any written law have been committed, the liquidator shall report the facts to the Commissioner.

(2) The Commissioner shall within 7 days submit the report received under subsection (1) to the Commissioner of Public Prosecutions

Powers to restrain convicted Person from being officers of Society

72. Any person who is convicted of an offence under this Act 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 XI—MISCELLANEOUS PROVISIONS

Power to surcharge officers of Co-operative Society

73. (1) Where it appears that 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—

- (a) has misapplied or retained or become liable or accountable for any money or property of the society; or
- (b) has been guilty of misfeasance or breach of trust in relation to the society, the Commissioner may, on his own accord or on the application of the liquidator or of any creditor or member, inquire into the conduct of such person.

(2) Upon inquiry under subsection (1), the Commissioner may, if it considers it appropriate, make an order requiring the person 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 Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

(3) 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.

Disputes

74. (1) If any dispute concerning the business of a Co-operative Society arises—

- (a) among members, past members and persons claiming through
- (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 Commissioner.

(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;
- (b) representative of a deceased member, whether such debt or demand is admitted or not; or
- (c) 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.

The Commissioner shall make every reasonable effort to settle disputes under this Act. If the Commissioner does not resolve a dispute under this Act the Commissioner shall within 14 days refer the dispute to an Arbitration Committee which shall be constituted in the manner prescribed by regulation

Remuneration of officers and members of society

75. (1) An officer or member of a Co-operative Society shall not 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) An officer or member of a Co-operative Society shall not 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 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 commits an offence and 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

(4) Notwithstanding subsection (3), where 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”

76. (1) A person, other than a Co-operative Society, shall not 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 Commissioner

(2) Any person who contravenes subsection (1) of this section commits an offence and shall on conviction be liable to a fine not exceeding one million thousand shillings.

Co-operative Development Fund

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

(2) The Fund shall consist of—

- (a) sums of money which may from time to time be voted by the County Assembly for that purpose;
- (b) sums which represent the 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.

(3) The Fund shall be used—

- (a) to grant 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) to provide funds to support, revive and initiate Co-operative sector institutions in areas that can have an immediate impact to household economy;
 - (c) to 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) to attract and facilitate investment in Co-operative sector institution that have linkages to low-income persons, community-based organizations, and women groups;
 - (f) provide funds to Co-operative sector institutions to facilitate marketing of products and services both in the domestic and the international market; and
 - (g) Conduct research and development, capacity building and Training the Co-operative sector.
- (4) The Fund shall be administered by a Board of Trustees in the manner prescribed in regulations.

Power to make Rules and Regulations

78. (1) The Member of the Executive Committee may make regulations generally for the better carrying out the provisions of this Act, and without prejudice to the foregoing, may make regulations in respect of the following—

- (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, members 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, suspension 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 Commissioner'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 55 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 A
 - (q) prescribe the returns to be submitted by a Co-operative Society to the Commissioner 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 Executive Committee Member under this Act;
 - (s) prescribe the procedures to be followed in the liquidation of societies; and
 - (t) prescribe anything which under this Act may be prescribed.
- (2) The regulations under this Act shall be approved by the County Executive Committee and the County Assembly before they take effect.

MEMORANDUM OF OBJECTS AND REASONS

The Principle of this Bill is to provide a Legal and Institutional framework for the Constitutional registration and Regulation of Co-operative Societies and for related purposes within Kisumu County.

Dated 8th June, 2015.

HANIF RANA,
Ag. Executive Committee Member,
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