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THE MERU COUNTY CO-OPERATIVE SOCIETIES ACT, 2014

No. 7 of 2014

Date of Assent: 17th November, 2014

Date of Commencement: 21st November, 2014

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THE MERU COUNTY CO-OPERATIVE SOCIETIES ACT, 2014

AN ACT of County Assembly of Meru to provide for the promotion of establishment and development and regulation of co-operative societies and for connected purposes

ENACTED by the County Assembly of Meru, as follows—

PART I—PRELIMINARY

Short title and Commencement.

1. This Act may be cited as the Meru County Co-operative Societies Act, 2014 and shall come into operation upon publication in the *Gazette*.

Interpretation.

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

"agricultural produce" includes any agricultural product, horticultural, viticultural, dairy products, livestock and livestock products, products of poultry and bees, edible products of forestry and any farm produce;

"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 it 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 to whom the management of its affairs is entrusted, and includes a board of directors;

"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;

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"co-operative society" means a society registered under section 19;

"co-operatives societies forum" means the County Co-operative Societies Forum established under section 11;

"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;

"Executive Member" means the County Executive Committee Member for the time bing responsible for co-operative societies;

"Gazette" means, the *Kenya Gazette* and / or the *County Gazette*;

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

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

"officer" includes a 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;

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"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;

"Tribunal" means the Co-operative Tribunal established under section 103.

Purpose of the Act.

3. The purpose of this Act is to facilitate the implementation of section 7 (e) of Part II of the Fourth Schedule to the Constitution and to provide for the establishment of legal and institutional framework for establishment and regulation of co-operative societies in order to—

(a) promote growth and development of cooperative societies;

(b) enhance good corporate governance in co-operative societies;

(c) promote local economic growth and development; and

(d) promote the realization of Article 36 of the Constitution on freedom of association.

Application.

4. This Act shall apply to any co-operative society registered under this Act or registered under any written law but operating within the county.

PART II—ADMINISTRATION

Directorate of Co-operative Development.

5. There is established the Directorate of Co-operative Development, which shall be an office in the county public service.

Functions of the Directorate.

6. (1) The directorate shall be responsible for –

(a) promoting and facilitating the establishment, growth and development of co-operative societies;

(b) supervising co-operative societies and ensuring compliance with the Act and any other written law;

(c) providing liaison with National Government on any matter related to this Act;

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(d) advise the Executive Member generally on any policy to be adopted or matter necessary to effective achievement of the objectives;

(e) carry out any other function for effective realization of objectives under this Act or any other function assigned by the Executive Member.

(2) The directorate shall prepare an annual report on the development and status of co-operative societies which shall provide among others for-

(a) the status of promotion of formation of co-operative societies;

(b) the level of growth and development of co-operative societies;

(c) the challenges faced in implementing the Act and proposed mitigation measures;

(d) the status of promotion of good corporate governance among co-operative societies;

(e) the challenges faced by co-operative societies and proposed mitigation measures;

(f) any other matter as may be prescribed.

(3) The directorate shall submit the report to the Executive Member not later than two months after the end of each financial year.

(4) The Executive Member shall, within fourteen days of receiving the annual report submit it to the County Executive Committee and thereafter within twenty one days transmit it to the Clerk of the County Assembly for tabling before the County Assembly for consideration.

Director of Co-operative Development.

7. (1) There shall be a Director of Co-operative Development who shall head the directorate.

(2) The director shall be appointed by the County Public Service Board through a competitive process.

(3) A person shall not be appointed as the director unless he or she –

(a) holds a masters degree in business administration, management or co-operatives development;

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(b) has at least ten years experience in management;

(c) meets the requirements of Chapter Six of the Constitution; and

(d) meets any other qualification as the County Public Service Board may stipulate.

Powers of the Director.

8. (1) The director shall have powers to perform the functions assigned to the directorate in furtherance of the purpose of this Act.

(2) The director may delegate in writing any of his powers under this Act generally of specially to officers appointed under section 7 or to any person.

Officers.

9. The County Public Service Board shall appoint such number officers to serve in the directorate for effective carrying out of its functions under this Act.

PART III – PROMOTION AND DEVELOPMENT

Promotion and development.

10. The directorate shall—

(a) mobilize county residents, farmers, traders, business community and any person involved in any enterprise to form co-operative societies;

(b) facilitate the formation and establishment of co-operative societies;

(c) supervise co-operative societies registered under this Act;

(d) promote growth and development of co-operative societies;

(e) promote and facilitate advancement and integration of good corporate governance in co-operative societies; and

(f) carry out any other function as may be assigned by the Executive Member for the purposes of implementing this Act.

County Co-operative Societies Forum.

11. (1) There is established the County Co-operative Societies Forum.

(2) The co-operative societies forum shall consist of two representatives of each co-operative society in the county.

(3) The co-operative societies forum shall be

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responsible for—

(a) providing a platform for consultations and dialogue among co-operative societies;

(b) reviewing and monitoring the growth and development of co-operative societies;

(c) identifying and proposing policies, programs and plans to be adopted for promoting and supporting growth and development of co-operative societies;

(d) facilitating co-ordination of the implementation of this Act; and

(e) carrying out any other function assigned by the Executive Member.

(4) The director shall be the secretary of the co-operative societies forum.

(5) The Executive Member shall prescribe the procedures for conduct of business of the co-operative societies forum.

PART IV—REGISTRATION OF CO-OPERATIVE SOCIETIES

Register of co-operative societies.

12. (1) The directorate 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 director and shall be signed by him and every alteration, interlineation or erasure shall be initiated by the director.

Co-operative societies principles.

13. (1) A co-operative society registered under this Act shall promote the following principles—

(a) voluntary and open membership;

(b) democratic governance;

(c) good corporate governance;

(d) pursuit and common interest;

(e) existence primarily for members benefit as core purpose;

(f) promotion of improvement of members economic

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and social welfare;

(g) co-operation; and

(h) free participation in society's activities by members.

(2) A co-operative society shall incorporate the principles provided under this section in its by-laws, rules, and policies.

Compliance with the Act.

14. (1) A co-operative society shall not operate within the county, unless in accordance with the provisions of this Act and any other written law.

(2) A co-operative society that contravenes this section commits an offence and shall be liable to a fine of fifty thousand only.

Formation of co-operative society.

15. (1) Any ten or more persons associated for any lawful purpose may, by subscribing their names to the by-laws and having complied with the requirements of this Act, form a co-operative society with limited liability upon registration under this Act.

(2) Notwithstanding subsection (1), any two or more co-operative societies may form a co-operative society and be registered as a co-operative society.

(3) A co-operative society that is formed under subsection (2) may use the name "Co-operative Union."

Liability of members.

16. (1) 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.

(2) Notwithstanding subsection (1), the liability of members may be unlimited.

Corporate status.

17. A co-operative society registered under this Act shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

(a) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(b) borrowing money or making investments;

(c) entering into contracts; and

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(d) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Application for registration.

18. (1) Subject to section 15 any persons intending to form a co-operative society shall apply for registration to the directorate in accordance with the procedure provided under this Act and in the prescribed form.

(2) An application under this section shall—

(a) contain the names and addresses of the proposed members;

(b) state the registered office of the society;

(c) be accompanied by the by-laws of the society;

(d) any other information as the executive member may prescribe.

(3) The directorate shall review the application within thirty days.

Grant of registration.

19. (1) Where the directorate is satisfied that the applicant meets the conditions of this Act, it shall register the co-operative society upon payment of the prescribed fee and issue the prescribed registration certificate to the applicant.

(2) Where the directorate is not satisfied with the application, it may—

(a) reject the application giving reasons and notify the applicant accordingly within fourteen days of the decision to reject the application;

(b) make comments and recommendations thereon and return it to the applicant within fourteen days.

(3) The applicant to whom the application is returned under subsection (2) (b) may re-submit a revised application within thirty days of the date of notification.

(4) On receipt of any revised application under subsection (3), the directorate shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, register the society.

Deregistration.

20. (1) Subject to subsection (2) and (3), where a co-

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operative society fails to comply with the requirements of this Act or any other relevant written law, the directorate may deregister the society.

(2) The directorate shall, before deregistering the co-operative society give it–

(a) a notice of intention to deregister, which shall not be less than sixty days before such withdrawal;

(b) an opportunity for hearing on the matters leading to non compliance.

(3) A co-operative society may within the sixty days stipulated under subsection (2) comply with the requirements of this Act as directed by the directorate.

(4) Where the co-operative society fails within the sixty days to comply with this Act, the directorate shall deregister it until such a time when the co-operative society complies with the requirements of this Act.

Appeals.

21. (1) An applicant whose application has been rejected or deregistered, it may appeal against the decision to the executive member within fourteen days.

(2) The Executive Member may within thirty days—

(a) uphold the decision of the directorate; or

(b) reverse the decision of the directorate subject to such conditions as the executive member may stipulate.

(3) Where an applicant is aggrieved by the decision of the executive member, the applicant may within fourteen days after such decision appeal to the Tribunal.

(4) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court.

Provisions Related to Names of Co-operative Societies

Reservation of name.

22. (1) The directorate 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 subsection (1) shall remain

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in force for a period of thirty days or such longer period, not exceeding sixty days, as the directorate may, for special reasons, allow, and during such period no other co-operative society shall be entitled to be registered with that name.

(3) The directorate shall ensure that any name reserved under subsection (1) above is not similar to any other reserved or registered name under any other register of co-operative societies.

Undesirable name.

23. No name shall be reserved, and no co-operative society shall be registered by a name which consists of abbreviations, initials or by a name, which, in the opinion of the directorate, is undesirable.

Protection of the name "Co-operative."

24. (1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the directorate, 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.

25. (1) A co-operative society may, by special resolution and with the approval of the directorate signified in writing, change its name.

(2) Where a co-operative society changes its name under this section, it shall within fourteen days give to the directorate notice thereof and the directorate shall enter the new name on the register in place of the former name, and shall issue to the company a certificate of change of name, and shall notify such change of name in the *Gazette*.

(3) A change of name by a co-operative society under this section—

(a) shall not affect any rights or obligations of the cooperative society; or

(b) render defective any legal proceedings by or against the co-operative society.

(4) Any legal proceedings that might have been continued or commenced against the co-operative society by its former name may be continued or commenced

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against it by its new name.

26. (1) A co-operative society shall make by-laws in respect of the following matters— By-laws.

(a) its name;

(b) its registered office and postal address;

(c) its area of operation and membership common bond;

(d) the objects of the society;

(e) the purposes to which its funds may be applied;

(f) the disposal of its accumulated funds;

(g) the qualification for membership, the terms of admission of members and the mode of their admission;

(h) the withdrawal and expulsion of members and the payment, if any, to be made to such members and the time within which such payment shall be made;

(i) the rights, liabilities and obligations of members, including the minimum share-holding and produce delivery;

(j) the transfer of the shares or interests of the members;

(k) the manner of raising funds, including the maximum rate of interest on deposits;

(l) its general meetings, the procedure and quorum of such meetings, power of such meetings and representation and voting at such meetings;

(m) the appointment, suspension and removal of members of the committee and officers and the powers and duties of the committee and officers;

(n) the period of its financial year;

(o) the authorization of officers to sign documents on its behalf;

(p) the settlement of disputes; and

(q) such other matters as may be expedient for the better carrying out of its objects.

(2) If the objects of the society include the creation of

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funds to be lent to its members, by-laws shall also be made in respect of the conditions and other requirements on which loans and advances may be made to members including—

(a) the rate of interest;

(b) the maximum amount which may be lent to a member;

(c) the extension, renewal and recovery of loans;

(d) the period and purpose of loans;

(e) the security for loans; and

(f) the consequences of default in the repayment of any sum due.

Amendment of by-laws.

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

(2) No amendment of the by-laws of a co-operative society shall be valid until the amendment has been registered and approved under this Act.

(3) If the directorate is satisfied that any amendment of the by-laws of the co-operative society is not contrary to this Act, it may register the amendment.

(4) The directorate may reject registration of the amendment if it is satisfied that—

(a) an amendment under this section was effected pursuant to a misrepresentation; or

(b) concealment of a material fact by the person applying for registration.

(5) 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.

By-laws to bind members of co-operative societies.

28. (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-

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operative society under the by-laws shall be a debt due from him to the co-operative society.

Fines for violation of by-laws.

29. (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) No fine shall 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.

(5) A member shall not be taken to have infringed the by-laws of a co-operative society by reason of his having failed to deliver produce to such society, if the failure was due to the fact that, before becoming a member of the society, he had contracted to deliver such produce to some other person, and the contract had been disclosed in accordance with subsection (6).

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

Keeping of copy of the Act and by-laws.

30. (1) Every co-operative society shall keep at its registered office—

(a) a copy of this Act and of the rules made thereunder;

(b) its own by-laws; and

(c) a list of its members excluding details of nominees and shareholdings.

(2) The co-operative society shall keep documents referred under subsection (1) open for inspection by any person at all reasonable times during business hours.

(3) The co-operative society shall not charge any fee

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for inspections of the documents referred under this section unless in circumstances where a person requests to be given a copy of any of the documents to carry away from the office.

PART V—MEMBERSHIP OF CO-OPERATIVE SOCIETY

Prohibition of limitation of number of members.

31. (1) No co-operative society shall fix any limit to the number of its members.

(2) Any member of a co-operative society who ceases to qualify for membership of the society under section 32 shall forthwith cease to be a member of the society and the committee shall direct the secretary or manager to strike his name off the register of members.

Qualification for membership.

32. (1) A person other than a co-operative society shall not be qualified for membership of a co-operative society unless—

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

(b) his employment, occupation or profession falls within the category or description of those for which the co-operative society is formed; and

(c) he is resident within, or occupies land within, the society's area of operation as described in the relevant by-law.

(2) Notwithstanding subsection (1) (c), a person may qualify to be a member of a co-operative society where he resides in the society's area or not if residence in a specific location is not a core criteria for one joining membership of such society.

(3) Notwithstanding subsection (1) (b), a person may qualify to be a member of a co-operative society where his occupation or profession does not fall within the category or description of those for which the co-operative society is formed if the co-operative society in its bylaws approves such membership.

Membership subject to authorisation by annual general meeting.

Cap. 486.

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

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Limitation of holding share capital.

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

Limitation of membership to one society.

35. (1) No person shall be a member of more than one co-operative society with unlimited liability or having the same or similar object.

(2) Notwithstanding subsection (1), a person who—

(a) is a member of a co-operative society; and

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

Transfer of shares.

36. (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 prescribed in section 34.

(2) 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.

(3) 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.

(4) No transfer of a share in a co-operative society shall be valid and effective until such transfer has been recorded in the register of the society.

(5) No transfer of a share or shares in a co-operative society shall be valid and effective if made by a member indebted to a society whether such debt is due for payment or not.

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Rights of Members

Rights of members.

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

(a) attend and participate at all general meetings of the society;

(b) to vote on any matter;

(c) be elected to organs of the society, subject to it's by-laws;

(d) enjoy the use of all the facilities and services of the society subject to the society's by-laws; and

(e) all legitimate information relating to the society, including: internal regulations, registers, minutes of general meetings, supervisory committees, reports, annual accounts and inventories, investigation reports, at the society's head office.

Voting rights of members.

38. (1) Each member of a co-operative society shall have one vote irrespective of the number of shares the member holds.

(2) Notwithstanding subsection (1), members of a co-operative society whose membership consists of co-operative societies only, may have as many votes as may be prescribed under the by-laws of such co-operative society.

Member's obligations.

39. 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 established by-laws; and

(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.

Conditions for exercising rights.

40. No member of a co-operative society shall exercise any of the rights of a member unless he has—

(a) made such payment to the society in respect of membership; or

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(b) has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society.

Records to be kept.

41. A co-operative society shall keep—

(a) a register of members showing in respect of each member—

(i) the name, age, date of application for membership, postal address and occupation;

(ii) the date he was admitted to membership;

(iii) the date on which he ceased to be a member;

(iv) the appointment, if any, of his nominees in accordance with section 59;

(b) a minute book giving details of the proceedings at general meetings;

(c) a minute book giving details of the proceedings at committee meetings;

(d) a cash book showing details of all moneys received and expended or paid out in any way by the society;

(e) a ledger containing such accounts as are necessary to properly record the transactions of the business;

(f) a personal ledger showing transactions of each member with the society including details of produce delivered to the society by each member and the payment made therefor;

(g) an assets register;

(h) a stock control ledger;

(i) a register of charges showing in respect of every charge created by the society the amount of the charge and the person entitled thereto;

(j) a register of loans to members showing in respect of each loan the name of the borrower, the amount borrowed, the purpose of the loan, the due date of repayment, and the date the

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repayment is made;

(k) a ledger showing deposits and withdrawals by members; and

(l) such other books as the committee may decide or the Executive Member may prescribe.

PART VI—FINANCES OF CO-OPERATIVE SOCIETIES

Estimates of income and expenditure.

42. 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.

Account and audit.

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

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

(b) reflect the true and fair state of the co-operative society's affairs; and

(c) explain the co-operative society's transactions including—

(i) all sums of money received and paid by the co-operative society and the reasons thereto;

(ii) all sales and purchases of goods and services by the co-operative society; and

(iii) all assets and liabilities of the co-operative society.

(2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by 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 an auditor appointed under subsection (4).

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

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(5) Where at an annual general meeting no auditor is appointed, the directorate 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) The accounts referred to in subsection (3) shall—

(a) conform with International Financial Reporting Standards;

(b) include the following records—

(i) a balance sheet;

(ii) an income and expenditure account; and

(iii) a cash flow statement;

(c) be approved by the committee; and

(d) be authenticated by at least three committee members including the Chairman of the co-operative society.

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

(8) The 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.

(9) The auditor shall have the right to—

(a) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor;

(b) receive all notices and other communications

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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 securities;

(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

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

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

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

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(13) A co-operative society shall, in each year, publish in at least two local daily newspapers, the statement of accounts prepared under this section.

Approval of auditors.

Cap. 531.

44. (1) A person qualified under the Accountants Act, wishing to be considered to audit co-operative societies shall make an application in writing to the directorate and shall pay the prescribed fee, a fee of three thousand Kenya shillings and such application may be made annually.

(2) The directorate may cause the list of auditors approved to audit co-operative societies to be published in the *County Gazette*.

Production of books and other documents.

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

Audit by directorate.

46. (1) The directorate shall conduct annual audit of a co-operative society's governance, financial and management systems.

(2) A co-operative society shall provide any information as the directorate may require in order to enable it carry out its audit.

(3) The directorate shall prepare the audit report and shall submit copies of the report to the Executive Member and to the management committee of the respective co-operative society.

(4) The directorate may, in the audit report prepared under subsection (3) recommend measures to be adopted by the co-operative society.

(5) The co-operative society shall adopt and with the measures recommended under subsection (4).

(6) A co-operative society that fails to comply commits an offence.

(7) Notwithstanding subsection (1), the directorate may require a co-operative society to make reports as may

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be prescribed in order to ensure that a co-operative society is in compliance with this Act.

PART VII—GOVERNANCE OF CO-OPERATIVE SOCIETIES

General meetings.

47. (1) The supreme Authority of a co-operative society shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters.

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

(3) In the first year after registration of a co-operative society, the 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 members of the committee including the office bearers for the following 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 directorate;

(c) consider and adopt audited accounts;

(d) determine the manner in which any available

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surplus is to be distributed or invested;

(e) elect the members of the committee and office bearers for the following year;

(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 rules and stating the objects and reasons for calling the meeting.

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

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

(9) The 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 director may preside at any meeting convened under subsection (8).

(11) The by-laws shall provide for other matters related to the general meetings such as—

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(a) quorum;

(b) voting;

(c) resolutions.

Management Committee.

48. (1) The management of the co-operative society shall vest in a committee consisting of not less than five and not more than nine members.

(2) 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.

(3) 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) has not attained a Kenya Certificate of Secondary Education or its equivalent;

(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 directorate in the

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prescribed manner;

(i) is an undischarged bankrupt;

(j) is of unsound mind;

(k) has been adversely named by the directorate 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 thereunder;

(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) A Member of the Management Committee shall hold office for a period of three years, and shall be eligible for re-election for a further and final term of three years, after which the person shall not be eligible for election to the Committee before the expiration of three years.

(5) The committee may delegate any of its duties under this Act to an officer or officers of the co-operative society:

Provided that the committee shall not be absolved from its responsibility to run the affairs of the co-operative society in a proper and businesslike manner.

(6) 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.

(7) The committee may suspend from duty any

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committee member charged in a court of law with an offence involving fraud or dishonesty pending the determination of the matter.

(8) The general meeting of a society shall prescribe by-laws governing affairs and meetings of Committee.

PART VIII—AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

Amalgamation of co-operative societies.

49. (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.

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

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

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

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

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

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

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

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

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

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

(9) If, within such time as the directorate considers reasonable, the directorate is satisfied that the secondary resolutions of each of the societies amalgamating comply with the provision of this section, it may register the amalgamated society and its by-laws.

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

(d) any 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

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with the secondary resolution, may pursue such claims against the amalgamated society.

(11) Where the directorate rejects an application for amalgamation under subsection (10) such societies may appeal against such rejection to the executive member.

Division of co-operative societies.

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

(2) The preliminary resolution shall contain proposals for the division of assets and liabilities of the existing society among the new societies in which it is proposed to be divided and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.

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

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

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

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

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

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section.

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

(a) the repayment of the share capital of any member who has given notice under subsection (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 Directorate may determine, or direct;

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (7).

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

(10) If, the directorate 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

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(d) any share holders 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 directorate refuses to approve the division of an existing society under subsection (9), the society may appeal to the executive member within thirty days of the communication to it of the refusal.

PART IX—RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

Society to have charge over member's produce.

51. (1) A co-operative society which has as one of its objects the processing, marketing or selling 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 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

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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.

52. (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 therefrom or with the aid of such money.

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

Society to have first charge over members' share.

53. 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.

54. (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

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seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at a rate of not less than five per cent per month.

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

(3) The director may, by written notice, appoint any person, bank or institution to be an agent of the society for the purposes of collection and recovery of a debt owed to the society.

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

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

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

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

(6) Where an agent fails to notify the directorate 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

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defence for the agent to claim lack of the moneys.

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

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

Member's share not subject to attachment.

55. Subject to section 51, the share 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.

56. 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.

57. 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

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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.

58. (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

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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.

Appointment of nominees.

59. (1) Every member of a society may appoint his nominee or nominees for the purposes of section 58.

(2) No member of a co-operative society shall be entitled to appoint more than one nominee unless that member holds more than one share.

(3) Where more than one nominee is appointed by any member, the number of shares to be transferred to each of these nominees shall be specified at the time of the appointment.

(4) Every appointment of a nominee by any member of a co-operative society shall be made in writing and signed by the member in the presence of two witnesses and shall be in the prescribed form.

(5) Every appointment of nominee shall be acknowledged by the society.

(6) For the purpose of transfer to a nominee, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the society otherwise provide.

(7) Where the deceased member is in credit with the society, any nominee under this section may be paid all dues on evidence of death being produced without awaiting lawful administration of the estate.

(8) Where any money is paid to a nominee who is a minor, a receipt given either by the minor or by his

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guardian shall be sufficient discharge to the society.

(9) If for any reason on the death of a member a nominee does not exist, the society may pay any money due to the deceased member to the personal representative or recognized heirs of that deceased member.

(10) In the event of any person so nominated dying or of the member desiring to cancel any such nomination, the member may from time to time nominate in writing another person in the same manner, and the necessary alteration shall be made in the register of members.

Evidence of member's interest in society.

60. (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.

Restriction on production of society's books.

61. No officer of a co-operative society shall in any legal proceedings to the society or liquidator is not a party may be compelled to produce any of the society's books where the contents can be proved under section 57 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court, for special cause, otherwise orders.

PART X—PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

Application of society's property and funds.

62. 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.

Procurement and disposal of assets rules.

63. (1) A co-operative society shall establish procurement and disposal of asset rules as may be

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prescribed.

(2) A co-operative society shall not procure or dispose any asset unless in accordance with the rules established under subsection (1).

Loans to members.

64. No loan shall be made to a member of a co-operative society save in accordance with the conditions laid down for the making of such loans in the society's by-laws.

Restriction on giving loans.

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

Restriction on borrowing.

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

(2) A co-operative society other than a society with authorization to operate front office services, may receive deposits and loans from persons who are not members under sub section (1) if—

(a) the general meeting is satisfied that the society needs the deposit or loan;

(b) the general meeting is satisfied that the terms of the deposit or loan and the rate of interest are reasonable;

(c) repayment of the deposit or loan is secured to the satisfaction of the general meeting;

(d) the maximum liability fixed under section 67 is not exceeded; and

(e) the general meeting has given specific approval for the deposit or loan.

Limitation of borrowing powers.

67. (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.

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(2) Notification of the maximum liabilities fixed shall be sent to the directorate in the prescribed form.

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

(4) Any member of the society may appeal against the decision of the directorate made under subsection (3) to the High Court within thirty days of such decision.

Investment of society's funds.

68. (1) A co-operative society may invest or deposit its funds only—

(a) in the Post Office Savings Bank;

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

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(c) in the shares of any other co-operative society;

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

(e) 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.

(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 and dividend.

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

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

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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.

(4) Notwithstanding subsection (1), (2) and (3), the rate of dividends on share capital paid by a co-operative society shall not exceed the prescribed rate.

Maintenance of Reserve Fund.

70. (1) A co-operative society which derives surplus from its transactions shall maintain a Reserve Fund.

(2) A co-operative society shall pay into the Reserve Fund one-fifth of any net surplus in each financial year.

(3) The Reserve Fund shall be invested in the manner provided for under section 68 of this Act.

(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) No withdrawals shall be made from the Reserve Fund of a co-operative society without the consent in writing of the directorate and any such withdrawals shall be made good from the net available funds accruing to the society if the directorate so directs.

(6) The Reserve Fund shall be kept in separate account to be known as the Reserve Fund Account.

(7) The society shall cause an annual audit of the Reserve Fund Account.

(8) Upon the dissolution of a co-operative society, the assets under the Reserve Fund shall be applied in the discharge of the liabilities of the society.

Distribution of net balance.

71. Subject to sections 69 and 70, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the prescribed manner or by the by-laws of the society.

Front office services.

72. (1) A co-operative society operating or intending to operate front office services, shall after a resolution of the general meetings apply in writing to the directorate for authorisation.

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(2) In considering an application for authorization made subsection (1), the directorate shall take into account the—

(a) location of the front office;

(b) minimum capital (capital base) of the society;

(c) risk management systems;

(d) size of membership;

(e) human resources;

(f) security;

(g) liability; and

(h) such other factors as may be necessary.

(3) A co-operative society operating front office services shall—

(a) maintain a minimum liquidity at ten per cent of the deposits;

(b) maintain a minimum capital adequacy and reserves at ten *per centum* of its total liabilities;

(c) maintain such other prudential standards as may be directed by the directorate in writing from time to time;

(d) make provision for bad and doubtful debts before any surplus is declared;

(e) ensure that the provision for bad and doubtful debts made under paragraph (a) of this sub-rule complies with such guidelines as may be prescribed.

(4) The directorate may—

(a) require a co-operative society to submit statistics regularly; and

(b) collect such data and other information as may be necessary for the protection of members funds.

Inspection of front office.

73. (1) The directorate may of his own accord, and, shall on the so directing of the Executive Member, cause a front office operation to be inspected by any person authorized by him in writing, on any co-operative society

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and of its books, accounts and records.

(2) When an inspection is made under subsection (1) the co-operative society and every officer and employee thereof shall produce all the books, accounts, records and other documents of the co-operative society and such correspondence, statements and information relating to the society, its business and the conduct thereof as the person making the inspection may in writing require.

(3) All information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes this Act.

(4) The person carrying out an inspection shall submit his report to the directorate; and the report shall draw attention to any breach or non-observance of the requirements of this Act, made thereunder any irregularity in the manner of conduct of the business of the co-operative society inspected any apparent mismanagement of the business or lack of management skills in that society and any matter revealed or discovered in the course of the inspection warranting, in the opinion of the person making the inspection, remedial action or further investigation.

PART XI—CHARGES BY CO-OPERATIVE SOCIETIES

Creating charge over society's property.

74. 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.

75. A charge created by a co-operative society in accordance with section 74 of this Act shall comply with the provisions of the law applicable to the particular type of charge.

Charges to be registered with the Directorate.

76. (1) It shall be the duty of every co-operative society to register with the directorate, 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

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Directorate for such registration.

(4) Where a co-operative society fails to register a charge with the directorate 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.

77. (1) The directorate 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) 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 directorate 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 directorate 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.

78. The directorate may, on evidence being given to its satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum certificate of satisfaction be entered on the register, and shall if required, furnish the co-operative society concerned with a copy thereof.

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Receiver to give notice of his appointment.

79. (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 directorate 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 directorate and the Directorate 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 directorate and the directorate 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.

80. A 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.

81. (1) A 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 ten thousand shillings.

Inspection of register of charges.

82. (1) The copies of the instruments creating charges which are required by this Act to be registered and the register of charges kept by the co-operative society under section 77 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.

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(2) The register of charges shall be open for inspection by any other person on payment of the prescribed fee.

(3) An inspection under this section shall not be allowed for more than two hours in each day.

(4) 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,

commits of an offence and shall be liable to a fine not exceeding two thousand shillings for each day during which the refusal of permission continues.

(5) The court may order an immediate inspection of such register or copies under subsection (4).

PART XII – INQUIRY AND INSPECTION

Inquiry by directorate.

83. (1) The directorate 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 directorate 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) Where the directorate is satisfied, after due inquiry, that the committee of a co-operative society is not performing its duties properly, it may—

(a) dissolve the Committee; and

(b) cause to be appointed an interim committee consisting of not more than five members from

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among the members of the society for a period not exceeding ninety days.

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

Inspection of books of indebted society.

84. (1) The directorate 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 directorate 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 directorate such sum as security for the expenses of the inspection as the directorate may require.

(2) The directorate shall inform the creditor of the results of the inspection.

Expenses of inquiry.

85. (1) Where an inquiry is held under section 79, or an inspection is made under section 80 of this Act, the directorate may, by a certificate under his hand, make an order apportioning the expenses, or such part of the expenses as he considers proper, between the society, the members or creditor demanding the inquiry or inspection, and the officers or former officers of the society; and the decision of the directorate thereon shall be final.

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

Routine inspection.

86. Notwithstanding the provisions of sections 79 and 80, the directorate may from time to time carry out impromptu inspection into the affairs of a co-operative society.

PART XIII – DISSOLUTION

Procedure for dissolution.

87. (1) If the directorate, after holding an inquiry under section 83 or making an inspection under section 84 of this Act, or receiving an application made by at least three quarters of the members of a co-operative society, is

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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 Member with a final appeal to the High Court.

(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 Member or by the High Court, as the case may be.

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

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

Cancellation of registration.

88. (1) Where a co-operative society has—

(a) less than the prescribed number of members; or

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

(c) failed to achieve its objects,

the directorate 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 directorate under subsection (1) may appeal against such order to the Executive Member within thirty days of the order.

Effects of cancellation.

89. 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.

Winding up.

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90. (1) The sections of the Companies Act specified in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule, shall apply *mutatis mutandis* in relation to the winding-up of a co-operative society as they apply to that of a company registered under that Act.

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(2) The Executive Member may, by order, amend the Schedule to this Act.

Appointment of liquidator.

91. Where the registration of a co-operative society is cancelled under section 87 or 88, the directorate 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.

92. (1) The liquidator shall, subject to this Act, have the following powers—

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

(b) to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society;

(c) to appoint an advocate to assist him in the performance of his duties;

(d) to refer disputes to the Tribunal in the prescribed manner;

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

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

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

(h) to sell the movable and immovable property and rights of action of the society, by public auction or private contract with power to transfer the

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whole thereof to any person or company or to transfer the same in parcels;

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

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

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

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

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

(n) to compromise, with the approval of the directorate, any claim by, or against, the society;

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

(2) The liquidator shall cause to be undertaken a valuation of all movable and immovable property before exercising the right of sale and shall ensure that the price does not fall below twenty five percent of the market value.

Liquidation account of societies.

93. The directorate shall keep an account, to be called the Co-operative Societies Liquidation Account, with such bank as may be prescribed and shall be administered in the prescribed manner.

Powers of Directorate during liquidation.

94. (1) The liquidator shall exercise his powers subject to the guidance and control of the directorate and to any limitations imposed by the directorate, and the directorate may—

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

(b) remove the liquidator from office and appoint a

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new liquidator in his place;

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

(d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 92;

(e) at its discretion, require accounts to be rendered to the directorate by the liquidator;

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

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

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

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

(j) appoint a special manager for the management of the business of the society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties;

(k) refer any dispute between a liquidator and any third party to the Tribunal if that party consents in writing to be bound by the decision of the Tribunal;

(l) require the indemnification of the liquidator.

(2) The decision of the Tribunal on any matter referred to it under subsection (1) (k) shall be binding upon the parties and shall be exercisable in the like manner as an order made by the directorate under subsection (1) (a).

(3) Where any matter is referred to the Tribunal under

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

Appeal against order of liquidator or directorate.

95. (1) A person aggrieved by any order or decision of the directorate or the liquidator under section 92 or section 94, as the case may be, may appeal against the order or decision to the Tribunal within thirty days of the order or decision.

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

Enforcement of orders.

96. Subject to sections 94 and 95, any order or decision made under section 92 or section 94 on being filed in the court, may be enforced in a court in the same manner as if the order or decision were an order or decision of the court.

Institution of winding up proceedings.

Cap. 486.

97. If the liquidator of a society whose registration has been cancelled alleges that any of the offences mentioned in sections 318, 319, 320, 321, 322 or 323 of the Companies Act have been committed, he shall report the facts to the directorate, who shall, if he thinks fit, institute such proceedings as may be necessary.

Restraint to convicted persons from being officers of society.

Cap. 486.

98. Any person who is convicted of an offence under sections of the Companies Act specified in section 97 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 XIV – SURCHARGE

Power to surcharge officers of co-operative society.

99. (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—

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(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 directorate 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 directorate 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 directorate thinks just or to contribute such sum to the assets of the society by way of compensation as the directorate 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.

Appeal against order.

100. (1) Any person aggrieved by an order of the Directorate under section 99 (1) may, within thirty days, appeal to the Tribunal.

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

Recovery of surcharge.

101. (1) Subject to section 100, an order made pursuant to section 99 for any moneys to be repaid or contributed to a co-operative society shall be filed with the Tribunal and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

(2) Without prejudice to the powers by the committee of a society to take action for recovery of the sum surcharged under section 95, the Directorate may, on behalf of the society, institute such action.

PART XV – SETTLEMENT OF DISPUTES

Disputes.

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

(a) among members, past members and persons claiming through members, past members and

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deceased members; or

(b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or

(c) between the society and any other co-operative society, it shall be referred to the Tribunal.

(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.

Establishment of the Tribunal.

103. (1) There is hereby established a tribunal to be known as the Meru County Co-operative Tribunal which shall consist of the following members—

(a) a chairperson and deputy chairperson appointed by the Executive Member on nomination by the Judicial Service Commission;

(b) a lawyer with experience in co-operative law appointed by the Executive Member; and

(c) two persons with at least ten years experience in the field of cooperative management and practice appointed by the Executive Member in consultation with the county co-operative societies forum.

Cap. 16.

(2) No person shall be qualified for appointment as Chairman or Deputy Chairman of the Tribunal unless he holds, and has held for a total period of not less than five years, the qualifications specified in sections 12 and 13 of the Advocates Act.

(3) All appointments to the Tribunal shall be by notice in the *Gazette* issued by the Executive Member and shall be for a period of three years, provided that no one shall serve

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for more than two consecutive terms.

(4) The office of a member of the Tribunal shall become vacant—

(a) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for the appointment to office of a member of the Tribunal;

(b) if he is removed from membership of the Tribunal by the Executive Member after due inquiry for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misconduct; or if he fails to attend three consecutive sittings of the Tribunal without reasonable cause.

Proceedings of Tribunal.

104. (1) The Tribunal shall not be bound by the rules of evidence.

(2) The Tribunal shall, upon an application made to it in writing by any party or a reference made to it by the directorate or any committee or officer of a co-operative society on any matter relating to this Act, the rules made thereunder or the by-laws of the society, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned.

(3) The Tribunal shall sit at such times and in such places as it may decide.

(4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(5) Except as expressly provided in this Act or any rules made thereunder, the Tribunal shall regulate its own procedure.

Award of Tribunal.

105. (1) The Tribunal may—

(a) make such orders for the purposes of securing the attendance of any person at any place, the discovery or production of any document or the investigation of contravention of this Act as it deems necessary or expedient;

(b) take evidence on oath and may for that purpose administer oaths; or

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(c) on its own motion summon and hear any person as a witness.

(2) Any person who—

(a) fails to attend to the Tribunal after having been required to do so under subsection (1) (a);

(b) refuses to take oath before the Tribunal or to answer satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal or to produce any article or document when required to do so by the Tribunal;

(c) knowingly gives false evidence or information which he knows to be misleading;

(d) at any sitting of the Tribunal;

(e) wilfully insults any member or officer of the Tribunal; or

(f) wilfully interrupts the proceedings or commits any contempt of the Tribunal, shall be guilty of an offence under this Act.

(3) Where the Tribunal enters judgment in terms of the award together with costs, it shall issue a decree which shall be enforceable as a decree of a court.

(4) If, after making an order, the Tribunal discovers that the order was based on a misrepresentation or a concealment of a material fact by either party to the dispute, the Tribunal may order the party guilty of the misrepresentation or concealment to pay the other party such sum as is, in the opinion of the Tribunal, sufficient compensation for any damage or loss suffered by the party as a result of the misrepresentation or concealment.

(5) The Tribunal shall have unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes.

Quorum for Tribunal.

106. (1) For the purposes of hearing and determining any cause or matter under this Act, the Chairman and two members of the Tribunal shall form a quorum:

Provided that where for any reason either or both of

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the members is or are not present for any part of the hearing, the jurisdiction of the Tribunal may be exercised by the Chairman, sitting either with one such member or alone as the case may be.

(2) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(3) Any matter considered by the Tribunal shall be decided by the votes of the majority of the members constituting the Tribunal and voting, and the person presiding shall have a casting as well as a deliberative vote:

Provided that any point of law arising in any proceedings before the Tribunal shall be reserved to, and pronounced upon, by the person presiding exclusively.

(4) Notwithstanding any other provision of this Act, the Chairman of the Tribunal acting alone shall have jurisdiction to deal with temporary injunctions.

(5) Any power conferred or duty imposed by or under this Act on the Chairman may, unless a contrary intention appears, be exercised or performed by the Deputy Chairman of the Tribunal if—

(a) the Chairman is unable to exercise or perform that power or duty owing to illness or absence;

(b) the Chairman authorises the Deputy Chairman to exercise or perform that power or duty

Appeal to High Court.

107. (1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

(2) Upon the hearing of an appeal under this section, the High Court may—

(a) confirm, set aside or vary the order in question;

(b) remit the proceedings to the Tribunal with such instructions for further consideration, report,

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proceedings or evidence as the court may deem fit to give;

(c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or

(d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

(3) The decision of the High Court on any appeal shall be final.

Power to appoint co-operative assessors.

108. The Chairman of the Tribunal may appoint any person with special skills or knowledge on co-operative issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as an assessor in an advisory capacity, in any case where it appears to the Chairman that such special skills or knowledge are required for proper determination of the matter.

Contempt of Tribunal.

109. It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish any such person for contempt in accordance with the provisions of this Act.

Remuneration of members of Tribunal.

110. There shall be paid to the Chairman and members of the Tribunal such remuneration and allowances as the Executive Member in consultation with the county treasury shall from time to time determine.

Appointment of secretary to Tribunal.

111. (1) The Executive Member shall appoint a public officer to be the secretary to the Tribunal who shall be paid such allowances as the Executive Member in consultation with the county treasury shall, from time to time determine.

Cap. 16.

(2) No person shall be appointed under subsection (1) unless he holds the qualification specified under sections 12 and 13 of the Advocates Act.

Powers to establish benches of Tribunal.

112. The Executive may establish one or more benches of the Tribunal in any part of county as he deems appropriate and shall for that purpose provide for the constitution and jurisdiction of such benches, in consultation with the Chairman of the Tribunal.

Right of parties

113. Any person who is a party to the proceeding

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before the Tribunal may appear in person or be represented by an Advocate.

before Tribunal.

Immunity.

114. (1) The Chairman or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction:

Provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of.

(2) No officer of the Tribunal or other person bound to execute the lawful warrants, orders or other processes of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal issuing it.

PART XVI—GENERAL PROVISIONS

Remuneration of officers and members of the society.

115. (1) No officer or member of a co-operative society shall receive any remuneration, salary, commission or any other payment from the society for services rendered to the society unless the society has, by a resolution passed at a general meeting, approved the payment of such remuneration, salary, commission or other payment.

(2) No officer or member of a co-operative society shall receive any remuneration, salary, commission or other payment from any person or body or association other than the society in respect of any business or transaction entered into by the society:

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

(3) Any officer or member of a co-operative society who receives any remuneration, salary, commission or other payment in contravention of this section 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.

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(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."

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

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

Co-operative Development Fund.

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

(2) The Fund shall consist of—

(a) contributions by co-operative societies as may be prescribed;

(b) such monies as may be appropriated by the county assembly;

(c) such grants or donations from and any lawful source.

(3) The Fund shall be used for—

(a) promotion of education, training and research in co-operative development;

(b) promotion of growth and development of co-operatives in the county.

(4) The Fund shall be administered by the directorate with the approval of the Executive Member;

(5) The Fund shall only be administered under appropriations approved by the Executive Member or the County Assembly as the case may be;

(6) The Executive Member shall appoint five persons

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to the Board of Trustees, two of whom shall be elected by the co-operative societies in the county and three appointed by the Executive Member in consultation with the Governor from among professionals qualified and experienced in co-operatives development and business management or any related field.

(7) The Executive Member shall prescribe the manner of administering the Fund.

Rules.

118. (1) The Executive Member may in consultation make rules for the better carrying out of the provisions and purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a society and the procedure to be followed;

(b) procedures for conduct of business for county co-operative societies forum;

(c) 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;

(d) 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;

(e) regulate the manner in which funds may be raised whether by means of shares or debentures or otherwise;

(f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(g) provide for the appointment, suspension and removal of the members of the committee and other officers, and for the procedure at meetings

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of the committee, and for the powers to be exercised and the duties to be performed by the committee and other officers;

(h) prescribe the accounts and books to be kept by a co-operative society;

(i) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;

(j) prescribe the rate of dividend on share capital;

(k) prescribe the procurement and disposal of assets rules;

(l) prescribe the reports to the prepared by a co-operative society;

(m) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and for the liabilities of past members;

(n) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified;

(o) provide for the inspection of documents and registers at the directorate's office and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;

(p) 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;

(q) 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;

(r) 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;

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(s) 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;

(t) prescribe the procedure to be followed in appeals made to the Executive Member under this Act;

(u) prescribe the returns to be submitted by a co-operative society to the Executive Member and the person by whom and the form in which such returns shall be submitted;

(v) prescribe the fees to be paid on applications, registrations and other acts done by the Executive Member under this Act;

(w) prescribe the procedures to be followed in the liquidation of societies; and

(x) prescribe anything which under this Act may be prescribed.

(3) In any case where the directorate is satisfied that a substantial number of members of any co-operative society are unacquainted with the English language, it may cause any rules made under this section to be translated into a language with which such members are acquainted, and to be made known in a manner customary for the community to which such members belong, provided that on any matter of interpretation the English version of the rules shall prevail.

Exemption.

119. (1) Notwithstanding anything contained in this Act, the Executive Member may, by notice in the *Gazette*—

(a) exempt any co-operative society from any of the provisions of this Act, subject to such conditions, exceptions or qualifications as he may think fit to impose;

(b) apply to any co-operative society any of the provisions of this Act subject to such modifications as he may think fit.

(2) The Executive Member shall cause to be published in the *Gazette* thirty days' notice of the intention to grant an exemption under subsection (1).

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(3) Any person with an objection regarding an intended exemption under this section may make representations to the Executive Member within the period of the notice.

(4) The Executive Member may upon considering representations and objections made under this section, either—

(a) abstain from granting the intended exemption; or

(b) grant such exemption subject to such terms and conditions as he may deem fit.

(5) The Executive Member may at any time and on any matter direct the directorate as to the exercise of his powers and duties under this Act.

Other powers of the directorate.

120. Without prejudice to any other powers under this Act the Directorate may—

(a) call for elections in any co-operative society;

(b) attend meetings of a co-operative society and require every society to send to him at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;

(c) require that societies update their by-laws; and

(d) exercise such other powers consistent with this Act as may be prescribed.

Offences.

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

(a) a co-operative society, or an officer or a member thereof, fails to do or to cause to be done any act or thing which is required by or under this Act or any rules made thereunder to be done; or

(b) a co-operative society, or an officer or a member thereof, does anything which is prohibited by or under this Act or any rules made thereunder; or

(c) a co-operative society, or an officer or a member thereof, willfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the directorate, or any person duly authorized in that behalf, by the directorate; or

(d) a co-operative society or an officer or member

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thereof willfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any rules made thereunder; or

(e) any person wilfully and without reasonable excuse disobeys any summons, requirement or lawful order issued under this Act, or fails to furnish any return or information lawfully required from him by a person authorized to do so, or which he is required to furnish, by or under this Act or any rules made thereunder; or

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

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

(3) The Executive Member in consultation with Director of Public Prosecutions appoint public prosecutors for cases arising under the provisions of this Act.

Certain laws not to apply. Cap. 486. Cap. 499.

122. (1) The provisions of the Companies Act, other than those referred to in sections 86 and 93 of this Act, and the Registration of Business Names Act, shall not apply to a co-operative society.

(2) Notwithstanding the Labour Relations Act, 2007 no co-operative society shall be taken to be a trade union.

Savings.

123. (1) A co-operative society which was registered under the Co-operative Societies Act, prior to the commencement of this Act shall be deemed to be registered under this Act.

(2) Notwithstanding subsection (1), a co-operative society operating in the county shall comply with this Act within six months.

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SCHEDULE (s. 90)

PART I – THE COMPANIES ACT (CAP. 486)

No. of Section	*Description of Section*
220	Definition of inability to pay debts.
223	Power to stay or restrain proceedings against company.
224	Avoidance of dispositions of property, etc., after commencement of winding-up.
225	Avoidance of attachments, etc.
228	Actions stayed on winding-up order.
229	Effect of winding-up order.
251	Power to stay winding-up.
263	Power to summon persons suspected of having property of company, etc.
266	Power to arrest absconding promoters, officers and contributors.
309	Debts of all descriptions may be proved.
310	Application of bankruptcy rules in winding-up of insolvent companies.
311	Preferential payments (except subsection (6) thereof).
312	Fraudulent preference.
313	Liabilities and rights of certain fraudulently preferred persons.
314	Effects of floating charge.
315	Disclaimer of onerous property in case of company wound-up.
316	Restriction of rights of creditor as to execution or attachment in case of company being wound up. (Except proviso (i) to subsection (1) thereof).
317	Duties of court as to goods taken in execution.
318	Offences by officers of companies in liquidation.
319	Penalty for falsification of books.
320	Fraud by officers of companies which have gone into liquidation.

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321 Officers of company failing to account for loss of part of company's property.

322 Liability where proper accounts not kept.

323 Responsibility for fraudulent trading of persons concerned.

PART II

For the purpose of this Act, the provisions of the Companies Act mentioned in Part I of this Schedule shall have effect as if for reference to "company", "court", "commencement of the winding up", "winding-up order", "contributory" and "director, manager or other officer" there were substituted references to "society;"

"Registrar", "the date of dissolution", "order for the cancellation of the registration of a society", "member of a society" and "officer or manager of a society" respectively.

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