

THE CO-OPERATIVE SOCIETIES ACT (AMENDED), 2004

No. 12 of 1997 as Amended, in 2004.

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SCHEDULE - THE COMPANIES ACT, CAP 486

THE CO-OPERATIVE SOCIETIES (AMENDED), 2004.

ENACTED by the Parliament of Kenya as follows:-

PART I - PRELIMINARY

1. This Act may be cited as the Co-operative Societies Act and shall come into operation on such date as the Minister may, by Notice in the Gazette, appoint. *Short title and commencement*

2. In this Act, except where the context otherwise requires; *Interpretation*

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

"apex society" means a society formed at the national level by the co-operative movement in Kenya and registered under this Act to promote co-operative development and represent the interests of co-operative societies locally and internationally;

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

"by-laws" means the by-laws made by a society and registered under this Act and includes any registered amendment of such by-laws;

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

"Commissioner" means the Commissioner for Co-operative Development appointed under section 3 and includes any person whom any powers of the Commissioner have been conferred in accordance with this Act;

"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;

"Co-operative society" means a society registered under section 4;

“co-operative union” means a co-operative society whose membership is

restricted to primary societies;

"date of dissolution" means the date on which the Commissioner's order cancelling the registration of a co-operative society takes effect;

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

"dividend" in relation to a member of a cooperative 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;

"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;

"Minister" means the Minister for the time being responsible for co-operative development;

"officer" includes a chairman, vice-chairman, 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;

"primary society" means a co-operative society whose membership is restricted to individual persons;

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

"special general meeting" means a general meeting, other than an annual general meeting, of which at least fifteen clear days written notice of the resolution and of the date, time and place of the meeting has been given to each member;

"special resolution" means a resolution passed by two thirds of the members present and voting at a special 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 77;

"winding up" means all proceedings subsequent to the dissolution of a co-operative society;

PART II – OFFICERS

3. (1) There shall be a Commissioner for Co-operative Development whose office shall be an office in the public service. *Commissioner, and other officers*
- (2) There shall be such number of officers, including deputy Commissioners, as may be necessary to assist the Commissioner in the administration of the provisions of this Act.
- (3) The Commissioner shall be responsible for the growth and development of co-operative societies by providing such services as may be required by co-operative societies for their organisation, registration, operation, advancement and, dissolution and for administration of the provisions of this Act.

PART III - REGISTRATION OF CO-OPERATIVE SOCIETIES

4. Subject to the provisions of this Act, a society which has as its objects;- *Registration of co-operative societies*
- (a) the promotion of the welfare and economic interests of it's members, and
- (b) has incorporated in its by-laws the following co-operative principles;
- (i) voluntary and open membership;
 - (ii) democratic member control;
 - (iii) economic participation by members;
 - (iv) autonomy and independence;
 - (v) education, training and information
 - (vi) co-operation among co-operatives, and;
 - (vii) concern for the community in general.

may be registered by the Commissioner as a co-operative society under this Act with or without limited liability

Provided that a co-operative union or apex society shall not be registered except with limited liability.

5. For a society to be registered under this Act, it must:- *Essentials for registration of co-operative society*
- (a) in the case of a primary society, consists of at least ten persons all of whom shall be qualified for membership of the co-operative society under section 14, or;

(b) in the case of a cooperative union, has at least two registered societies as its members.

6. (1) An application to register a society shall be made to the Commissioner in the prescribed form, and signed; *Procedure for registration*

(a) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14; or,

(b) in the case of a secondary or apex society, by persons duly authorized in that behalf by each co-operative society or co-operative union, as the case may be, who are members thereof.

(2) The application shall be accompanied by copies of the proposed by-laws in English and the person or persons by whom or on whose behalf such application is made shall furnish such information within regard to the society as the Commissioner may require.

(3) If the Commissioner is satisfied that a society has complied with this Act and any rules made thereunder and that its proposed by-laws are not contrary to this Act or any rules made thereunder, he may register the society and its by-laws under this Act.

7. (1) If the Commissioner is not satisfied that a society has complied with this Act and any rules made there-under, or is not satisfied that its by-laws conform with this Act and any rules made there-under, and is of the opinion that steps can be and will be taken with diligence by the persons by whom or on whose behalf the application or registration is made to comply with this Act and the rules made there-under or to make the by-laws conform as aforesaid, the Commissioner may, in his discretion provisionally register the society for such period not exceeding one year, and subject to its compliance with such terms and conditions and provisions, as the Commissioner may specify in writing to the persons by whom or on whose behalf the application for registration is made. *Provisional registration*

(2) A provisional registration shall, subject to this section, and to any terms or conditions specified by the Commissioner under subsection (1) entitle the society to operate as a co-operative society, and such society whilst so entitled to operate shall be deemed to be a body corporate with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted; and, subject to the provisions of this Act, any reference in any written law to a co-operative society shall, unless the context otherwise requires, include a reference to a society which is provisionally registered.

(3) A society which is provisionally registered shall cause the fact that it is provisionally registered to be stated in legible Roman letters in all bill heads, letter papers, notices, advertisements and other official publications of the society, and on a sign board in a conspicuous position outside any premises in which it operates. The commissioner shall publish particulars of its registration in the Kenya Gazette.

(4) (a) The Commissioner may for good cause cancel the provisional registration of a society, by a notice in writing addressed to the society, specifying the reasons thereof, and such cancellation shall operate as a refusal to register the society, and the society shall, from the date of service of the notice, cease to be a registered co-operative society.

(b) At the expiration of the period specified by the Commissioner under subsection (1), a society, if it has not been registered in the meantime, shall cease to be a registered co-operative society.

(c) Where a society ceases to be a registered co-operative society:

(i) The commissioner may appoint a competent person to be the liquidator of the society, and

(ii) The validity of any transaction entered into by that society during the period of provisional registration shall not be affected thereby.

(5) At any time during the period of provisional registration of a society, the Commissioner, if he is satisfied that the society has complied with this Act and any rules made thereunder, and that its by-laws conform with the requirements of this Act and rules made thereunder, may register the society under section 5, and thereupon such society shall be deemed to have been so registered on the date of its provisional registration, and this section shall cease to apply to such society.

(6) Where a society which has been provisionally registered under this section contravenes subsection (3), the society and every officer, or person who purports to act as an officer, of the society shall be guilty of an offence and shall be liable to a fine not exceeding **ten thousand** shillings, or in the case of a continuing offence to a fine not exceeding **one thousand** shillings for each day during which the offence continues

8. (1) A co-operative society may, subject to this Act, amend its by-laws, including *Amendments of by-laws* the by-law which declares the name of the society.

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

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

(3A) The commissioner may, if he is satisfied that an amendment under this section was effected pursuant to a misrepresentation or concealment of a material fact by the person applying for registration, cancel the amendment.

(4) 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.

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

(6) In this section, "amendment" includes the making of a new by-law and the variation or revocation of a by-law, but excludes the variation of the registered address of a co-operative society where this forms a part of the by-laws of such society.

9. (1) A co-operative society may appeal to the Minister against the commissioner's refusal to register the society and its by-laws or any amendments of its by-laws under Section 8, **within thirty days after being notified of the refusal.** *Appeal against refusal to register*

(2) Any party aggrieved by the decision of the Minister under sub-section (1) may appeal against the decision to the High Court within thirty days.

10. (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 Commissioner, to mislead the members of the public as to its identity. *Registration under identical name*

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

11. (1) A certificate of registration or of a provisional registration signed by the Commissioner shall be conclusive evidence that the society therein mentioned is duly registered or provisionally registered, unless it is proved that such registration of the society has been cancelled or has been terminated. *Evidence of registration*

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

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

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

PART IV - PRIVILEGES OF REGISTERED SOCIETIES

12. Upon registration, every society shall become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to sue and be sued and to do all things necessary for the purpose of, or in accordance with, its by-laws. *Co-operative Society to be body corporate*
13. The by-laws of a co-operative society, shall, when registered, bind the co-operative society and the members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for himself and his personal representatives to observe all the provisions of the by-laws. *By-laws to bind members of co-operative society*

PART V - RIGHTS AND LIABILITIES OF MEMBERS

14. A Person other than a co-operative society shall not be qualified for membership of a co-operative society unless:- *Qualifications for membership*
- (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.
15. 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 holding share capital*
16. No company incorporated or registered under the Companies Act, or no unincorporated body of persons shall be entitled to become a member of a co-operative society, except with a written authorization through a resolution by a general meeting of that co-operative society. *Membership subject to authorization by a general meeting*
17. No member of a co-operative society shall exercise any of the rights of a member unless he has made such payment to the society in respect of membership, or has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society. *Membership of co-operative society*

18. No person shall be a member of more than one co-operative society with unlimited liability and, no person shall be a member of more than one co-operative society having the same or similar object; Provided that a person who:-

Limitation of membership to one society

- (i) is a member of a co-operative society; and
- (ii) carries on business on land or at premises outside the area of operation of that co-operative society;

may be a member of a co-operative society in whose area of operation that land or those premises are situate, notwithstanding that its objects are the same as or similar to those of the first-mentioned society.

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

Voting rights of members

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

20. (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding as are laid down in Section 15.

Transfer of shares

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

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

21. A member of a co-operative society shall have the right to:

Rights of members

- (a) attend and participate in decisions taken at all **general** meetings of the society and vote;
- (b) be elected to organs of the society, subject to it's by-laws;
- (c) enjoy the use of all facilities and services of the society subject to the society's by- laws;

- (d) all legitimate information relating to the society, including: internal regulations, registers, Minutes of general meetings, supervisory committee reports, **annual accounts, inventories, and** investigation reports, at the society's head office.

22. A member of a co-operative society shall have the obligation to:

Member's rights vis-a vis the co-operative society.

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

PART VI - DUTIES OF CO-OPERATIVE SOCIETIES

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

Registered address of co-operative society

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

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

24A For each financial year, the committee of a co-operative society shall cause to be prepared estimates of the society's income and expenditure including recurrent and capital estimates for approval by the general meeting at least three months before the end of the preceding financial year.

Estimates of income and expenditure

25. (1) Every co-operative society shall keep proper books of accounts which shall: - *Accounts and audit*

- (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 account shall be kept at the registered office of the co-operative society and also at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.

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

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

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

(6) 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) 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 Commissioner 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 accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted –

(a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and

(b) in accordance with the Co-operative Societies' objectives, by-laws and any other resolutions made by the society in a general meeting.

(9) The auditor shall have the right to:-

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

(c) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive;

(d) 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 any member of the co-operative society for the purpose of obtaining information on the transactions of the 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) Every co-operative society shall, at such time and in such form as may be prescribed, file with the commissioner an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.

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

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

26. Any officer, agent, servant, trustee or member of a co-operative society who is required by the Commissioner, or by a person authorized in writing by him so to do shall, at such place and time as the Commissioner 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.

Production of books and other documents

27. (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.

General Meetings

(2) Subject to subsection (3) a cooperative 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 society, the general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall –

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

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

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

- (a) consider and confirm the minutes of the last general meeting;
- (b) consider any reports of the committee, or Commissioner;
- (c) consider and adopt audited accounts;
- (d) determine the manner in which any available surplus is to be distributed or invested;
- (e) elect the co-operative society's office bearers for the ensuing year;

- (f) determine, where necessary the maximum borrowing power of the society;
- (g) appoint an auditor for the ensuing year; and
- (h) transact any other general business of the society of which notice has been given to members in the manner prescribed in the by-laws of the society;

(6) A special general meeting of a co-operative society shall 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 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 notice under subsection (6) (b), the members demanding the meeting may themselves convene the meeting by notice to the other members of the society, stating the objects and reasons for the meeting and the fact that the committee has failed to convene the meeting.

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

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

(10) The Commissioner may preside at any meeting convened under subsection (8).

PART VII - MANAGEMENT OF CO-OPERATIVE SOCIETIES

28. (1) Every co-operative society shall have a committee consisting of not less than five and not more than nine members.

Membership and powers of the committee

(2) The members of the committee shall elect a chairman and a vice chairman from among their number.

(3) The committee shall be the governing body of the society and shall, subject to any direction from a general meeting or the by-laws of the co-operative society,

direct the affairs of the 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 society; and
 - (c) do all other things necessary to achieve the society's objects in accordance with its by-laws.
- (4) No person shall be a member of a committee if he -
- (a) is not a member of the co-operative society;
 - (b) is under eighteen years of age;
 - (c) is unable to read and write;
 - (d) receives any remuneration, salary or other payment from the co-operative society save in accordance with this Act;
 - (e) is a committee member in two other co-operative societies;
 - (f) being a member of a co-operative society that lends money to members, lends money on his own account;
 - (g) being a member of a co-operative society which trades in goods or produce, trades either on his own account or some other person's account in the same type of goods or produce;
 - (h) has not, within thirty days of being appointed, declared his wealth to the Commissioner in the prescribed manner;
 - (i) is un-discharged bankrupt;
 - (j) is of unsound mind;
 - (k) has been adversely named by the Commissioner in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the committee;
 - (l) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding three months;
 - (m) has been convicted of any offence under this Act or rules made thereunder;

- (n) has any un-cleared 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; and
- (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.

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

(6) In the conduct of affairs of a co-operative society the members of the Committee shall exercise the prudence and diligence of ordinary men of business and 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 Commissioner may suspend from duty any committee member charged in a court of law with an offence involving fraud or dishonesty pending the determination of the matter.

PART VIII - AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

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

Amalgamation of co-operative societies

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

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

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

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the concerned amalgamating society, not less than

one month before the date specified as the date of amalgamation, object to the amalgamation unless his claim is satisfied.

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

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

- (a) the repayment of the share capital of any member who has given notice under subsection (3).
- (b) the satisfaction of any claims by creditors who have given notice under subsection (4); and
- (c) the satisfaction of the claims of such other persons who have given notice under subsection (5) securing of their claims in such a manner as determined or directed by the Commissioner.

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 two-thirds majority of the members present and voting, confirm the preliminary resolution.

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

- (a) each of the amalgamating societies shall stand dissolved and its registration cancelled;
- (b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;
- (c) the remaining members of the amalgamating societies shall become members of the amalgamated society and will be subjected to its by-laws;
- (d) any share holders of the amalgamating societies or any other whose claims were not satisfied in accordance with the secondary resolution, may pursue

such claims against the amalgamated society.

(10) Where the Commissioner refuses to approve the amalgamation of the amalgamating societies under subsection (9) such societies may appeal against such refusal to the **Minister**.

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

Division of co-operative societies

(b) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) At the special General Meeting held under subsection (6), 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 sub-section (3);

(b) the satisfaction of any claims by creditors who have given notice under

sub-section (4);

- (c) the satisfaction of the claims of such other persons who have given notice under sub-section (5) or the securing of their claims as the Commissioner 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 (8).

(8) The society may, by further resolution passed by a three-fourths majority of the members present and voting, confirm the preliminary resolution,

(9) If, the Commissioner is satisfied within such time as he considers reasonable that the provisions of the secondary resolution and the provisions of this section have been complied with, he may, register the societies into which the existing society has been divided and the by-laws of such societies and thereupon;

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

(10) Where the Commissioner refuses to approve the division of an existing society under sub-section (9) the society may appeal to the Minister within thirty days of the communication to it of the refusal.

PART IX - RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

31. (1) A co-operative society which has as one of its objects the disposal of any produce, may enter into a contract with its members, either in its by-laws or by a separate document binding the members to dispose of all their produce, or such amounts or descriptions of the same as may be stated therein, to or through the society, and the contract may bind the members to produce the quantities of produce therein specified, and the contract may also provide for payment of a

Society to have charge over members' produce

specified sum per unit of weight or other measure as liquidated damages for any breach of the contract, and any such sum on becoming payable shall be a debt due to the society and shall be a charge upon the immovable property of the member (subject to registration of the charge under the law under which the property is registered) and all stock then being thereon.

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

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

(4) 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.

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

Fines for violation of by-laws

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

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

(4) A member shall not be taken to have infringed the by-laws of a co-operative society by reason of his having failed to deliver produce to such society, 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 sub-section (5).

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

33. (1) Subject to any other written law as to priority of debts where a co-operative society has:

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

(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 produce, 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.

34. 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.

Society to have first charge over members' share

35. (1) Where an employer of a person who is a member of a co-operative society, has under instructions of the employee, made a deduction from such employee's emoluments for remittance to the co-operative society concerned but fails to remit the deductions within seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at the rate of not less than five percent per month.

Failure to remit the sum deducted

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

(3) The Commissioner may, by a written notice, appoint any person, bank or institution to be an agent of the society for the purpose 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 for the employer or are due from him to the employer.

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

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

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

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

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

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

36. Subject to section 34, 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 bankruptcy under the law relating to bankruptcy shall not have any claim on such share or interest.

Member's share not subject to attachment

Provided that, where a co-operative society is dissolved, the share or interest of any member who is adjudged bankrupt under such law.

37. 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.

Liability of past members

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.

38. 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:

Liability of deceased members

Provided that:-

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

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

Transfer of share or interest of deceased members

(a) the person nominated in accordance with this Act and any rules made there-under; or

(b) if there is no person so nominated, such person as may appear to the Committee of the society to be the personal representative of the deceased member; or

(c) if either of such persons is not qualified under this Act and any rules there-under 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 the 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 sub-section: or

(ii) in the case of a co-operative society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or personal representative, as the case may be, being qualified in accordance with this Act or any rules made there-under 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.

40. (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. *Evidence of member's interest in society*

(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 matters, transactions, and accounts, therein recorded.

41. No officer of a co-operative society shall, in any legal proceedings to which 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 40 of this Act or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court, for special cause, otherwise orders. *Restriction on production of society's books*

PART X - PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

42. 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. *Application of society's property and funds*

43. A co-operative society shall not make a loan nor allow any credit, to any person other than a member, unless its by-laws expressly so provide subject to a resolution passed at the general meeting of the society to that effect. *Restriction on giving loans*

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

45. A co-operative society may invest or deposit its funds only:- *Investment of society's funds*

(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;

(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.

46. (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. *Declaration and payment of bonus*

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

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

47. (1) Every co-operative society which does or can derive surplus from its transactions shall maintain a reserve fund. *Maintenance of reserve fund*

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

(3) The reserve fund shall be invested in the manner provided for in section 45 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) Upon the dissolution of a co-operative society, the assets represented by the reserve fund shall be applied in the discharge of the liabilities of the society.

48. Subject to sections 46 and 47, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the manner prescribed by rules made under this Act or by the by-laws of the society. *Distribution of net balance*

PART XI - CHARGES BY CO-OPERATIVE SOCIETIES

49. 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. *Creating charge over society's property*

50. A charge created by a co-operative society in accordance with section 49 of this Act shall comply with the provisions of the law applicable to the particular type of charge. *Charge to comply with applicable law*

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

Charges to be registered with the Commissioner

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

(2) If any co-operative society fails to send to the Commissioner for registration the particulars of any charge created by it within thirty days, then unless the registration has been effected by some other person within that period, every officer of the society shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues.

52. (1) The Commissioner shall, with respect to each co-operative society, register in *Register of charges* such form as may be prescribed by or under this Act, all charges requiring registration and shall enter in the register, with respect to every charge, the following particulars:

- (a) For a charge created by the society, the date of its creation, and for a charge existing on property acquired by the society, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged; and
- (d) the persons entitled to the charge.

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

(3) The register kept in pursuance of this section shall be open for inspection by any interested person on payment of the prescribed fee.

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

53. The Commissioner may, on evidence being given to his satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required, furnish the co-operative society concerned with a copy thereof. *Certificate of satisfaction of charges*
54. (1) If any person obtains an order for the appointment of receiver or manager of the property of a co-operative society, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges. *Receiver to give notice of his appointment*
- (2) Where any person appointed receiver or manager of the property of a co-operative society under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.
- (3) If any person defaults in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding five **thousand** shillings for every day during which the default continues.
55. Every co-operative society shall cause a copy of every instrument of a charge which is required by this Act to be registered to be kept at the registered address of the society. *Society to keep register of instrument of charge at registered office*
56. (1) Every co-operative society shall keep, at the registered address of the society, a register of charges in which shall be entered all charges specifically affecting the property of the society and all floating charges on the property or assets of the society, giving in each case a short description of the property charged, the amount of the charge, and the name of the person entitled thereto. *Society to keep register of particulars of charges*
- (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.
57. (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 52 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 a general meeting, may impose. Provided however, that not more than two hours in each day shall be allowed for inspection, and the register of charges shall also be open to inspection by any other person on payment of the prescribed fee. *Right of members and creditors to inspect register of charges*
- (2) Any officer of a co-operative society who refuses to allow inspection of the

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

PART XII - INQUIRY AND INSPECTION

58. (1) The Commissioner may, of his own accord, and shall on the direction of the Minister, 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 some person authorized by him in writing to hold an inquiry, into the by-laws, working and financial conditions of any co-operative society. *Inquiry by Commissioner*

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

(3) **The commissioner shall report the findings of his 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 commissioner is satisfied, after due inquiry, that the committee of a co-operative society is not performing its duties properly, he may –**

(a) **dissolve the committee, and**

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

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

59 (1) The Commissioner may, if he thinks fit, on the application of a creditor of a co-operative society, inspect, or direct any person authorized by him in writing to inspect, the books of the society, if- *Inspection of books of indebted society*

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

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

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

60. (1) Where an inquiry is held under section 58, or an inspection is made under section 59 of this Act, the Commissioner may, by a certificate under his hand, make an order apportioning the expenses, or such part of the expenses as he considers proper, between the society, the members or creditor demanding the inquiry or inspection, and the officers or former officers of the society; and the decision of the Commissioner thereon shall be final.

Expenses of Inquiry

(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.

60A Notwithstanding the provisions of sections 58 and 59, the commissioner may from time to time carry out impromptu inspection into the affairs of a co-operative society.

Routine inspection

PART XII - DISSOLUTION

61. (1) If the Commissioner, after holding an inquiry under section 58 or making an inspection under section 59 of this Act, or receiving an application made by at least three fourths of the members of a co-operative society, is of the opinion that the society ought to be dissolved, he may, in writing, order the dissolution of the society and subsequent cancellation of registration.

Procedure for dissolution

(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 Minister 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 Minister or by the **High Court** as the case may be.

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

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

62. (1) Where a co-operative society has:-

Cancellation of registration

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

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

(c) failed to achieve its objects
the Commissioner may, in writing, order the cancellation of its registration and the dissolution of the society and the order shall take effect immediately.

(2) A person aggrieved by an order of the commissioner under subsection (1) may appeal against such order to the Minister within thirty days of the order.

63. 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. *Effects of cancellation*
64. (1) The sections of the Companies Act specified in Part (1) of the Schedule to this Act, modified in accordance with Part II of the 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. *Application of Companies Act, Cap.486*
- (2) The Minister may, by order, amend the schedule to this Act.
65. Where the registration of a co-operative society ceases under Section 7 or is cancelled under Section 61 or 62 of this Act, the Commissioner may appoint one or more persons to be liquidator or liquidators of that society (hereinafter referred to as the liquidator) and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect. *Appointment of liquidator*
66. (1) The liquidator shall, subject to this Act, have the following powers:- *Powers of liquidator*
- (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 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 Commissioner;
- (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 Commissioner, any claim by, or against, the society;
- (p) to apply to the Commissioner for his discharge from the duties of liquidator after completion of the liquidation proceedings.

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

67. An account, to be called the Co-operative societies Liquidation Account, shall be kept by the Commissioner with such bank as may be prescribed and shall be administered in the prescribed manner.

Liquidation account of societies

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

Powers of Commissioner during liquidation

- (a) rescind or vary any order made by the liquidator and make any new order he thinks proper;
- (b) remove the liquidator from office and appoint a new liquidator in his place;
- (c) call for all books, documents and assets of the society;

- (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66;
- (e) at his discretion, require accounts to be rendered to the Commissioner by the Liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the 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 Commissioner under subsection (1) (a)

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

69. (1) A person aggrieved by any order or decision of the Commissioner or the liquidator under section 66 or section 68, as the case may be, may appeal against the order or decision to the Minister within **thirty** days of the order or decision.

Appeal against order of liquidator or Commissioner.

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

70. Subject to section 68 and 69, any order or decision made under section 66 or section 68 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. *Enforcement of orders*

71. 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 fact to the Commissioner, who shall, if he thinks fit, institute such proceedings as may be necessary. *Institution of winding up Proceedings*

72. Any person who is convicted of an offence under sections of the Companies Act specified in section 71 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. *Powers to restrain convicted person from being officers of society*

PART XIII - SURCHARGE

73. (1) Where it appears that any person who has taken part in the organization or management of a co-operative society, or any past or present officer or member of the society – *Power to surcharge officers of a co-operative society*

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

(b) has been guilty of misfeasance or breach of trust in relation to the society,

the Commissioner may, on his own accord, or on the application of the liquidator or of any creditor or member, inquire into the conduct of such person.

(2) Upon inquiry under subsection (1), the commissioner may, if he considers it appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the co-operative society together with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

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

74. (1) Any person aggrieved by the decision (1) taken by any order of the Commissioner under Section 73(1), may within thirty days appeal to the tribunal. *Appeal against order*

(2) A party aggrieved by the decision of the tribunal may within thirty days

appeal to the High Court on matters of law.

75. (1) Subject to subsection 74, an order made pursuant to section 73 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. *Recovery of surcharge*

(2) Without prejudice to the powers by the committee of a society to take action for recovery of the sum surcharged under section 73, the commissioner may, on behalf of the society, institute such action.

PART XIV - SETTLEMENT OF DISPUTES

76. (1) If any dispute concerning the business of a co-operative society arises:- *Disputes*

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between members, past members or deceased members, and the society, its committee, or any officer of the society; or
- (c) between the society and any other co-operative society;

it shall be referred to the 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 representative of a deceased member, whether such a debt or demand is admitted or not; or
- (b) a claim by a member or past member, or from 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.

77. (1) There is hereby established a Tribunal to be known as the Co-operative Tribunal which shall consist of five members: *Establishment of Co-operative Tribunal*

- (a) a Chairman and deputy Chairman appointed by the Minister on the nomination of the Judicial Service Commission;
- (b) an advocate of the High Court of Kenya appointed by the Minister on the nomination of the Law Society of Kenya;
- (c) three persons with at least ten years experience in the field of co-operative management and practice appointed by the Minister in consultation with

the apex society.

(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.

Cap. 16

(3) All appointments to the Tribunal shall be by notice in the Gazette issued by the Minister and shall be for a period of three years, provided that no one shall serve 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 appointments to office of a member of the Tribunal.
- (b) if he is removed from membership of the Tribunal by the Minister 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
- (c) if he fails to attend three consecutive sittings of the Tribunal without reasonable cause.

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

Proceedings of Tribunal

(2) The Tribunal shall, upon an application made to it in writing by any party or a reference made to it by the Commissioner, or any Committee or officer of a co-operative society on any matter relating to this Act, the rules made hereunder 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 there under, the Tribunal shall regulate its own procedure.

79. The Tribunal may:-

Award of Tribunal

- (a) make such orders for the purpose of securing the attendance of any person at any place, the discovery or production of any document or the investigation of contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths; or
- (c) on its own motion 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
 - (i) wilfully insults any member or officer of the Tribunal; or
 - (ii) 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 judgement 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.

80. (1) For the purposes of hearing and determining any cause or matter under this Act, the Chairman and two other members of the Tribunal shall form a quorum. *Quorum for Tribunal*

Provided that where for any reason either or both of 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 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 deliberate 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 authorizes the Deputy Chairman to exercise or perform that power or duty;

81. (1) Any party aggrieved by any order of the Tribunal may, within thirty days appeal against such order to the High Court: *Appeal to High Court*

Provided that the High Court may, extend the period within which the appeal may be made.

- (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, 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.

82. 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 appear to the Chairman that such special skills or knowledge are required for proper determination of the matter. *Power to appoint co-operative assessors*
83. 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. *Contempt of Tribunal*
84. There shall be paid to the Chairman and members of the Tribunal such remuneration and allowances as the Minister shall, from time to time determine. *Remuneration of members of Tribunal*
85. (1) The Minister shall appoint a public officer to be the secretary to the Tribunal who shall be paid such allowances as the Minister shall determine. *Appointment of secretary to Tribunal*
- (2) No person shall be appointed under subsection (1) unless he holds the qualification specified under section 12 and 13 of the Advocates Act.
86. The Minister may establish one or more benches of the Tribunal in any part of Kenya 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. *Powers to establish benches of Tribunal*
87. Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate. *Right of parties before Tribunal*
88. (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. *Immunity*

Provided that 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 procedures of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order of process which he would have been bound to execute if within the jurisdiction of the Tribunal issuing it.

PART IX - GENERAL

89. (1) No officer or member of a co-operative society shall receive any remuneration, salary, commission or 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.

Remuneration of officers and members of society

(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 of the society, authorize such remuneration, salary, commission or other payment being paid.

(3) Any officer or member of a registered society who receives any remuneration, salary, commission or other payment in contravention of this section shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment; and shall, if the offence is the contravention of subsection (1) of this section, be ordered to repay the amount of the remuneration, salary, commission or other payment received from the society in addition to or in lieu of any other punishment, and default in such payment shall be dealt with in the same manner as default in paying a fine imposed by a Court.

90. (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 Commissioner.

Restriction on use of word "Co-operative"

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

90A (1) The Minister may establish a fund to be known as the Co-operative Development Fund (herein referred to as "the Fund").

Co-operative Development Fund

(2) The object and purpose for which the fund is established is the promotion of the education, training, research, consultancy and other related activities in the co-

operative sector in Kenya.

(3) The fund shall consist of contributions by co-operative societies and any other lawful source.

(4) The Fund shall vest in a Board of nine trustees, six of whom shall be elected by the co-operative movement and three appointed by the Minister.

(5) The Minister may, in consultation with the apex society, prescribe the manner of the formation and maintenance of the Fund.

91. (1) The Minister may, **in consultation with the apex society**, make rules for the better carrying out of the provisions and purposes of this Act. *Minister to make Rules*

(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) prescribe the manner in respect of which a co-operative society may or shall make bylaws, and the procedure to be followed in making, varying and revoking by-laws, and the conditions to be satisfied before making, varying or revoking by-laws;
- (c) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and the payments to be made and the interest to be acquired before the exercise of the right of membership;
- (d) regulate the manner in which funds may be raised whether by means of shares or debentures or otherwise;
- (e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (f) provide for appointment, suspension and removal of members of the committee and other officers, and for the procedure at meetings of the committee, and for powers to be exercised and the duties to be performed by the committee and the officers;
- (g) prescribe the accounts and books to be kept by a co-operative society;
- (h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;
- (i) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and

for the liabilities of past members;

- (j) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified;
- (k) Provide for the inspection of documents and registers, at the Commissioner's office, and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;
- (l) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares or limited by guarantee, of the register of shares;
- (m) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to section 39 for the nomination of a person to whom such interest may be paid or transferred;
- (n) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing his affairs shall be ascertained, and for the nomination of any person to whom such interest may be paid or transferred;
- (o) Provide for the manner of formation and maintenance of reserve funds and the objects to which such funds may be applied and for the investments of any funds under the control of a co-operative society;
- (p) prescribe the procedure to be followed in appeals made to the Minister under this Act;
- (q) prescribe the returns to be submitted by a co-operative society to the Commissioner and the person by whom and the form in which such returns shall be submitted;
- (r) prescribe the fees to be paid on applications, registrations and other acts done by the Commissioner or his representative under this Act;
- (s) prescribe the procedure to be followed in the liquidation of societies; and
- (t) prescribe anything which under this Act may be prescribed.

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

91A (1) The Minister shall in consultation with the apex society constitute by notice in the Gazette a body to regulate the operations of savings and credit co-operative societies. *Regulatory body for Savings and Credit co-operative societies*

(2) The composition of the body constituted under subsection (1), its powers, duties and the terms of office of its members shall be as may be prescribed in the rules.

92. (1) Notwithstanding anything contained in this Act, the Minister may, by notice in the Gazette – *Exemption*

(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 Minister shall cause to be published in the Gazette fourteen days' notice of the intention to grant an exemption under subsection (1)

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

(4) The Minister may upon considering representations and objections made under this section, either:

(a) abstain from granting the intended exemption; or

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

93. The Minister may at any time and on any matter direct the commissioner as to the exercise of his powers and duties under this Act. *Powers of the Minister*

93A Without prejudice to any other powers under this Act the commissioner may – *Miscellaneous powers of Commissioner*

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

(b) attend meetings of a c-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 bylaws; and

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

94. (1) It shall be an offence under this Act if:

Offences

- (a) a co-operative society, or an officer or a member hereof, 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 there-under 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 there-under; or
- (c) a co-operative society, or an officer or a member thereof, wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Commissioner, or any person duly authorized in that behalf, by the Commissioner; or
- (d) a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any rules made there-under; or
- (e)) any person wilfully and without reasonable excuse disobeys any summons, requirements 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 rules made there-under; 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** year, or to both.

(3) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for cases arising under the provisions of this Act.

95. (1) The provisions of the Companies Act, other than those referred to in sections 64 and 71 of this Act, and the Registration of Business Names Act, shall not apply to a co-operative society.

*Certain laws not to apply
Cap 486*

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

96. (1) The Co-operative societies Act, 1966, is hereby repealed.

*Amendment and savings
Cap 490*

- (2) Notwithstanding the repeal of the Co-operative societies Act, 1966,
- (a) every society, and all by-laws of a society and any amendments thereof, registered under the amended Act shall be deemed to have been registered under this Act;
 - (b) any register kept in pursuance of the amended Act shall be deemed to be part of the register to be kept in pursuance of this Act;
 - (c) any document referring to a provision of the amended Act shall be construed as referring to the corresponding provision of this Act, and
 - (d) any orders, directions, appointments and other acts lawfully made or done under any of the provisions of the amended Act and in force immediately before the commencement of this Act shall be deemed to have been made or done under the corresponding provision of this Act and shall continue to have effect accordingly.