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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES

REPORT ON SACCO SOCIETIES AMENDMENT BILL, 2018

Clerks Chambers

Directorate of Committee Services

Parliament Buildings

NAIROBI

Table of Contents

CHAIRPERSON'S FOREWORD	3
EXECUTIVE SUMMARY	4
COMMITTEE OBSERVATIONS.....	5
COMMITTEE RECOMMENDATIONS.....	6
1.0 INTRODUCTION.....	7
1.1 Establishment of the Committee	7
1.2 Mandate of the Committee	7
1.3 Committee Membership.....	8
1.4 Committee Secretariat.....	8
2.0 CONSIDERATION OF THE BILL.....	9
2.1 Background Information	9
2.2 Clause by Clause Analysis	9
3.0 PUBLIC PARTICIPATION.....	13
3.1 SUBMISSION BY THE STATE DEPARTMENT FOR CO-OPERATIVES UNDER THE MINISTRY OF INDUSTRY, TRADE AND CO-OPERATIVES	14
3.2 SUBMISSION BY SACCO SOCIETIES REGULATORY AUTHORITY (SASRA).....	15
3.3 SUBMISSION BY COOPERATIVE ALLIANCE OF KENYA LTD.....	17
3.4 SUBMISSION BY KENYA UNION OF SAVINGS AND CREDIT CO-OPERATIVES LTD.	18
3.5 SUBMISSION BY THE COUNCIL OF GOVERNORS	19
4.0 COMMITTEE OBSERVATIONS.....	21
5.0 COMMITTEE STAGE AMENDMENTS	23
6.0 ANNEXES	

CHAIRPERSON'S FOREWORD

On behalf of the Departmental Committee on Trade, Industry and Cooperatives in pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Sacco Societies (Amendment) Bill, 2018.

This report contains the Committee's proceedings of the consideration of the Sacco Societies (Amendment) Bill, 2018, National Assembly Bills No. 1 that was published on 19th January, 2018 and read a First Time on 14th February, 2018. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation on 22nd February, 2018 pursuant to Article 118 of the Constitution. Stakeholders made oral submissions and written memoranda for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Bill seeks to amend the Sacco Societies Act, 2008, to provide for the registration and licensing of Sacco societies as deposit-taking savings and credit co-operatives. The Bill further expands the current credit information sharing mechanism to include Sacco societies with other licensed financial institutions. This is intended the Act with the banking Act, the Microfinance Act, 2008, thus bringing credit information sharing under a single regulatory framework.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

SIGNED..........DATE. 5/8/2018.....

HON. KANINI KEGA, M.P (CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVE

EXECUTIVE SUMMARY

The Sacco Societies (Amendment) Bill, 2018 (hereinafter referred to as the Bill) seeks to introduce new clauses 27A and 27B to the Sacco Societies Act, 2018 which obligates all Saccos or Co-operative Societies licensed under the Act as deposit-taking business to incorporate as part of their business name and use at all times the words “DT-SACCO” or any of its derivatives. The amendment seeks to prohibit Saccos that are registered as non-financial Saccos from providing financial services to the unsuspecting customer. This makes it easier for members of the public to be aware of the licensed Saccos or Co-operatives that offer quasi-banking facilities.

The Bill proposes to introduce new clause 48 that gives power to the Authority to determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society and may bar that person from serving in a Sacco Society. The clause also provides for the parameters the Authority shall consider in determining the suitability of a person. The amendment envisages that the Authority shall vet key officers of SACCOS, through the “Fit & Proper Test” form provided in the Regulations by providing for minimum criteria for assessing the fitness and propriety of senior officers of SACCOS, which includes the members of Board of Directors.

The Bill proposes to amend section 50 of the Act by substituting it with a new subsection (8) that gives power to the Authority to impose minimum standards on significant members and officers of a Sacco Society as prescribed including mandatory continuous or minimum professional development courses, trainings and certification. This amendment seeks to enable the Authority improve the quality and relevance of the trainings, to develop an enlightened and responsible leadership and management capable of directing and effectively controlling Sacco enterprises for the benefit of members.

Finally, the Bill proposes to amend section 54 to allow Sacco Societies to exchange information on performing and non-performing loans as maybe prescribed by the authority in the manner prescribed by the Banking Act. The import of this amendment is that both negative and positive credit information will be circulated amongst licensed financial institutions e.g the credit reference bureaus and if shared, it will enhance efficiency and reduce on systemic risks.

COMMITTEE OBSERVATIONS

The Committee made the following observations on the proposed Bill;

CLAUSE 2

Seeks to;

1. Amend section 27 of the principal Act by inserting section 27A and 27B to provide that a Sacco Society licensed to undertake deposit-taking business shall incorporate and use the phrase "DT-SACCO" as part of its name at all times; This will ensure that DT-SACCOs which are licensed and prudentially regulated can be separately, distinctively and uniquely distinguished from other cooperative societies, including other non-deposit taking SACCO Societies
2. Prohibit the use of the phrase "DT-SACCO" by a person who is not licensed to undertake deposit-taking Sacco business under the Act.
3. Accords all existing Sacco Societies a grace period of twelve months to comply with the requirement to incorporate "DT-SACCO" as part of their business name.
4. Make provisions requiring that a deposit-taking Sacco society shall not amend its registered by-laws without approval of Sacco Societies Regulatory Authority.
5. Make provisions requiring a co-operative society registered or incorporated as a deposit taking savings and credit co-operative society or Sacco society to obtain a license from the Sacco Societies Regulatory Authority (SASRA) to operate as such.
6. Make provisions that it is an offence for any person to continue using the phrase "DT-SACCO" or any of its derivatives without a licence issued by the Authority.
7. Prohibit Saccos that are registered as non-financial Saccos from providing financial services to the unsuspecting customer. This makes it easier for members of the public to be aware of the licensed Saccos or co-operatives that offer quasi-banking facilities.

CLAUSE 3

8. Proposes to insert anew section 48A immediately after 48 that gives power to the Authority to determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society and may bar that person from serving in a Sacco Society. The clause also provides for the parameters the Authority shall consider in determining the suitability of a person. The amendment envisages that the Authority shall vet key officers of SACCOs, by providing for minimum criteria for

assessing the fitness and propriety of senior officers of SACCOs, which includes the members of Board of Directors.

CLAUSE 4

9. The clause proposes to deleting subsection (8) and substituting it with a new subsection that imposes minimum standards on significant members and officers of a Sacco Society as prescribed including mandatory continuous or minimum professional development courses, trainings and certification which every director or officer of a Sacco Society must undertake or attain before serving or seeking to serve as Director or officer of a Sacco Society. This amendment seeks to enable the Authority improve the quality and relevance of the trainings, to develop an enlightened and responsible leadership and management capable of directing and effectively controlling Sacco enterprises for the benefit of members.

CLAUSE 5

10. Amend section 54 subsection (5) by deleting paragraph (b) and substituting it thereof with subsection that will allow Sacco Societies to exchange information on performing and non-performing loans as maybe specified by the authority in the manner prescribed by the Banking Act. This will allow circulation of both negative and positive credit information amongst licensed financial institutions including the credit reference bureau.
11. Notwithstanding the observations made on the proposed amendments, the Committee observed that the Bill seeks to amend Sacco Societies Act, 2008 which does not recognize county government.
12. As envisaged in the constitution of 2010, part II of the fourth schedule provides that cooperative Societies are devolved thus county function.
13. There is need therefore to repeal the pre- constitutional Sacco Societies Act, 2008 to have an Act that is aligned with the constitution thus accommodating comprehensive amendments.

COMMITTEE RECOMMENDATIONS

The Committee recommends as follows, that;-

The Sacco Societies Act, 2018 to be passed with the proposed Committee amendments.

1.0 INTRODUCTION

1.1 Establishment of the Committee

The Departmental Committee on Trade, Industry and Cooperatives is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may be deemed necessary, and as may be referred to the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.2 Mandate of the Committee

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee:-

Trade, securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.

In executing its mandate, the Committee oversees the Ministry of Industry, Trade and Cooperatives.

1.3 Committee Membership

The Committee on Trade, Industry and Cooperatives was constituted by the House on Thursday 14th December, 2017 and comprises of the following Members:-

Chairperson	Hon. Kanini Kega, MP
Vice Chairperson	Hon. Cornelly Serem, MP
	Hon. Alexander Kimutai Kigen Kosgey, MP
	Hon. Alois Musa Lentoimaga, MP
	Hon. Anab Mohamed Gure, MP
	Hon. Andrew Mwadime, MP
	Hon. Bunyasi John Sakwa, MP
	Hon. Daniel Maanzo, MP
	Hon. Wanyonyi Ferdinand, MP
	Hon. James Mukwe, MP
	Hon. Jones Mlolwa, MP
	Hon. Kipruto Moi, MP
	Hon. Murungi Kathuri, MP
	Hon. Gichimu Robert, MP
	Hon. Kimani Patrick Wainaina Jungle, MP
	Hon. Korir Generali Nixon Kiprotich, MP
	Hon. Nduati Joseph Ngugi, MP
	Hon. Wachira Rahab Mukami, MP
	Hon. (Dr.) Wilberforce Oundo, Phd, MP

1.4 Committee Secretariat

Mr. Erick Nyambati	-	Clerk Assistant III	(Lead Clerk)
Ms. Nuri Kitel Nataan	-	Clerk Assistant III	
Mr. Peter Mwaura	-	Legal Counsel II	
Mr. Chelang'a Rotich Maiyo	-	Research Officer III	
Mr. Yaqub Ahmed	-	Media Relation Officer III	

2.0 CONSIDERATION OF THE BILL

2.1 Background Information

The Sacco Societies (Amendment) was introduced in the National Assembly on 14th February, 2018 as National Assembly Bills No.1 of 2018 through Kenya Gazette Supplement no.2 of 2018. Following the First reading, of the bill stood committed to the Departmental Committee on Trade, Industry and Co-operatives pursuant to the National Assembly Standing Orders.

Subsequently, pursuant to Article 118 of the Constitution and Standing Order 130(1) the Committee during its fourth sitting considered the Bill and resolved to subject it to public participation. The Committee sought for submission of memoranda from the public/stakeholders through an advert that appeared in one of the common local dailies (standard newspaper) on 22nd February, 2018. The Committee engaged Sacco Societies Regulatory Authority (SASRA), Kenya Union of Savings and Credit (KUSCO), Cooperative Alliance of Kenya(CAK) Council of Governors and Mwalimu Sacco Ltd in Stakeholder engagement forums.

2.2 Clause by Clause Analysis

Clause 1

This Act may be cited as the Sacco Societies (Amendment) act, 2018.

Clause 2

The Sacco Societies Act, 2008, in this Act, referred to as the “Principal Act” is amended by inserting the following new sections immediately after section 27-

27A. (1) A Sacco Society licensed under this act to undertake deposit-taking business and use at all times, the phrase “DT-SACCO” or any of its derivatives.

(2) A person shall not use –

(a) the word “DT-SACCO” or any of its derivatives: or

(b) any words indicating the transaction word of a deposit-taking Sacco business or its equivalent, in the name, description or title under which that person transacts deposit taking Sacco business unless that person is licensed under this Act.

(3) every deposit-taking Sacco Society existing before the commencement of this section shall, within twelve months, comply with the provisions of subsection (1).

(4) A deposit-taking Sacco society licensed under this Act shall not amend its registered by-laws or any provisions thereof without prior written approval of the Authority.

27B(1) A co-operative society that has been registered or incorporated as a deposit taking savings and credit co-operative society shall, within one year of registration obtain a license from the Authority to operate as a deposit-taking savings and credit co-operative society or a Sacco society.

(2) A co-operative society which fails to obtain a license within one year of registration in accordance with subsection (1) shall stop using the word “DT-SACCO” or any derivatives in its name.

(3) A person who continues to use the word “DT-SACCO” or any of its derivatives in contravention of sub-section (2), commits an offence.

Clause 3

The principal Act is amended by inserting the following new section immediately after section 48-

48A.(1) The Authority shall determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society, and may bar or prohibit a person from serving in a Sacco society as a director or an officer based on its determination.

(2) The Authority shall, in determining if a person is suitable and proper to serve as a director or an officer of a Sacco society, consider the following –

(a) the financial status or solvency of the person:

(b) the academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform:

© the status of any other license or approval granted to the person by any financial sector regulator:

(d) the ability of the person to carry on the regulated activity competently, honestly and fairly:

(e) the reputation, character, financial integrity and reliability of the person: or

(f) any other material information that the Authority may, consider necessary.

(3) without prejudice to the generality of subsection (2), the Authority may, when determining whether a person is suitable and proper –

(a) take into account whether that person-

- i. Has contravened provisions of any law for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in dealing in marketable securities;
- ii. Has been convicted or is being investigated in respect of an offence involving financial impropriety, fraud, corruption or economic crimes;
- iii. Was a director of a Sacco society which was involuntarily liquidated, is under involuntary liquidation or has been placed under statutory management;
- iv. Has participated in any business practice which in the opinion of the Authority, was fraudulent, prejudicial to the market or public interest, was otherwise discredit the person's methods of conducting Sacco society business;
- v. Has participated in or has been associated with any business practice which casts doubt on the person's competence or soundness of judgement; or
- vi. Has acted in such a manner as to cast doubt on the person's competence and soundness of judgement; and

(b) take into account any information in the possession of the Authority, whether provided by that person or from other available sources.

(4) Before determining that a person is not suitable or proper to serve as a director or officer of a Sacco society, the Authority shall give that person an opportunity to be heard.

Clause 4

Section 50 of the principal Act is amended by deleting subsection (8) and substituting thereof the following new subsection-

(8) the Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including mandatory continuous or minimum professional development courses, trainings and certification which every director or an officer of a sacco society must undertake or attain before serving or seeking to serve as a director or officer of a Sacco society.

Clause 5

Section 54 of the principal Act is amended-

(a) in subsection (5) by deleting paragraph (b) and substituting therefor the following new paragraph(b)-

(b) Sacco societies shall, in the ordinary course of business and in such be prescribed under the Banking Act, exchange such information on performing and non-performing loans as may be specified by the Authority from time to time.”

(b) in subsection (6), by inserting a new paragraph immediately after paragraph (b) as follows-

(c) an institution licensed under the banking Act, Microfinance Act or any other entity as may be provided for under any other written law;

(c) by inserting the following new subsection immediately after subsection (6) –

(7) for the purposes of this section, “credit reference bureau “ means a credit reference bureau established and operated pursuant to the provisions of section 31 of the Banking Act or section 34 of the Microfinance Act, 2006.

Section 50 of Act No.14 of 2008 which it is intended to amend-

50. (8) the Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed.

Section 54 of Act No. 14 of 2008 which is intended to amend –

54. (5) Notwithstanding the provisions of this section-

(a) the Authority may disclose any information received by it under this Act to any financial regulatory authority or pursuant to a court order, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Authority, tax authority, investigation authority or court;

(b) Sacco societies shall in the ordinary course of business and in such manner and to such extent as the minister may, by regulation prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Authority;

(c) the Authority and any Sacco society may, in the Ordinary course of the business in such manner and to such extent as the Minister may, by regulation prescribe, exchange such information as is reasonably required for the proper discharge of their functions.

3.0 PUBLIC PARTICIPATION

Following the call for memoranda from the public on 22nd February, 2018, the Committee received written memoranda from KUSCCO and CAK. The Committee engaged and received submissions from the Council of Governors, the Ministry of Industry, Trade and Co-operatives - State Department for Co-operatives and the Sacco Societies Regulatory Authority. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

3.1 SUBMISSION BY THE STATE DEPARTMENT FOR CO-OPERATIVES UNDER THE MINISTRY OF INDUSTRY, TRADE AND CO-OPERATIVES

The Cabinet Secretary for Industry Trade and Enterprise Development, Mr Adan Mohamed appeared before the Committee and made the following submissions regarding the aforementioned Bill; That;

1. The prudential regulation of DT-SACCOs which commenced in 2010 has seen a tremendous improvement in their overall financial stability, and in addition has contributed to the expansion of access to financial services among Kenyans.
2. The *Kenya Vision 2030 Sector Plan for Financial Services 2013 -2017* acknowledges the need for a comprehensive policy and legislative review of the Sacco Societies Act in order to fully implant the new regulatory framework; remove the apparent regulatory arbitrage between DT-SACCOs and the non-deposit-taking Sacco Societies; consolidate the deposit-taking Sacco segment in order to effectively contribute in deepening access to financial services by members and their businesses.
3. Towards this end, four key policy areas were proposed for incorporation and implementation during the 2015/2016 and 2016/2017 fiscal years namely;
4. Legal protection of the identities of DTs: The proposal seeks to provide DT-SACCOs with a unique name that distinguishes them from other forms of cooperatives, particularly the non- DT-SACCOs. It further provides legal restrictions and limitations to the usage of the unique identity of DT-SACCOs.
5. Criteria for determining suitability of officers of SACCO Societies: The proposal seeks to inculcate integrity and propriety among officers serving in DT-SACCOs.
6. Credit Information Sharing: The proposal seeks to align the sharing of credit information emanating from the DT-SACCOs, with other credit players particularly the Banks; in addition to expanding the credit information that ought to be shared to include both positive and negative. It aligns the CIS platforms with that obtaining in the Banking sector.
7. These resulted in the publication of the Sacco Societies (Amendment) Bill 2016. The Bill successfully went through the National Assembly and was forwarded to the

Senate, as it touched on cooperatives affairs which are devolved. Parliament was however adjourned for elections before Senate could deal with the Bill.

8. This led to the re-publication of the Bill as the Sacco Societies (Amendment) Bill, 2018 which is similar to the 2016 version, but the consultation processes had to be done afresh.

3.2 SUBMISSION BY SACCO SOCIETIES REGULATORY AUTHORITY (SASRA)

The CEO SASRA submitted as follows, that:-

1. The introduction of the prudential regulatory framework for deposit taking SACCO Societies (DTS) in Kenya in 2010, raised concerns relating to the usage of the name “SACCO” or “SACCO Society” within the larger cooperative sector. In particular, a lot of concerns have emerged relating to the extent to which DTSs which are licensed and prudentially regulated can be separately, distinctively and uniquely distinguished from other cooperative societies, including other non-deposit taking SACCO Societies (**non-DTS**).
2. These concerns are borne out from the fact that many cooperative societies have been invariably using the name “SACCO” or “SACCO Society”, to the extent that in common parlance, it has become difficult to know the differences between a **Cooperative Society**, a **SACCO Society**, a **deposit taking SACCO Society (DTS)** and a **non-depositing taking SACCO Society (non-DTS)**. The emergence and exponential growth of “**Matatu or PSV SACCOS**” have further fuelled the concerns, with critical questions being asked as to the extent of the Authority’s (SASRA) jurisdictional mandate, and whether it extends to such entities like the “**Matatu or PSV SACCOS**”
3. In this maze of identity confusion and misinformation, the greatest losers are and have been the **DTSs** because of the unique quasi-banking business that they undertake; and besides the fact that they are the only segment of the cooperative network which is strictly subjected to prudential regulations, which gives them a competitive business edge, over the non-DTSs and other forms of cooperatives. In deed it is this competitive business edge that the non-DTSs and other forms of cooperative societies clamour for and/or ride upon when they use the name, “SACCO’ or “SACCO

Society” which is borne by the general public perception that the entire SACCO Society segment is prudentially regulated.

4. This misapprehended perception is practically evidenced by the number of public complaints and queries concerning the unregulated segment of the cooperative sector which are often referred to the Authority (SASRA) for resolution by members of the public, civil society and even government agencies. The fact that both the Sacco Societies Act and Cooperative Society Act did not secure the identities of the DTSSs or the usage of the word “**SACCO**” has further exacerbated the confusion.
5. Consequently, there is a legitimate call for drift in the legal and policy framework within the cooperative sector, in order to secure the legal identities of DTSSs, together with the unique regulatory framework that appertains to them thus supporting the proposed Amendment that seeks to amend the principal Act by inserting section 27A and 27B immediately after section 27 as in the Sacco Societies (Amendment) Bill, 2018.
6. The Sacco Societies Act envisaged that the Authority shall vet key officers of SACCOs, through the “*Fit & Proper Test*” form provided in the Regulations. However, there is no explicit provision in the Act, to authorize such vetting, as it is with the Capital Markets or the Banking sectors.
7. It is thus proposed that a legal provision to stipulate in non-ambiguous terms the minimum criteria for assessing the fitness and propriety of senior officers of SACCOs which includes the members of Board of Directors and senior managers be incorporated in the Sacco Societies Act. This proposal is tailored along the standard lines in the Capital Markets Act, Microfinance Act and the Banking Act, and is in line with the universal principles of regulations and supervision of financial institutions, particularly those that undertake deposit-taking business.
8. The policy proposal was adopted as a governmental policy position by the Cabinet Secretary for the National Treasury, in the Budget Statement for the 2015/2016 Fiscal Year presented to the National Assembly on 11th June 2015.
9. The proposal seeks to introduce a new Section 48A to the Sacco Societies Act as well as amend Section 50(8) of the Act as proposed in the as in the Sacco Societies (Amendment) Bill, 2018 to provide criteria for determining the suitability of officers holding positions of responsibility in SACCO Societies.

10. The current legal framework on credit information sharing (CIS) is limited to inter-Sacco sharing of negative information only, and with the Authority. It therefore excludes the sharing of positive information or sharing with other financial institutions. This is contrary to the prevailing policy direction in which the sharing of credit information has been expanded to both negative and positive.
11. In deed one of the critical strategies under the “Comprehensive financial sector reform and development (CFSRD) strategy“ under Vision 2030 slated for the period 2012-2017, is to expand the current credit information sharing (CIS) mechanism to SACCOs. Specifically CIS is recognized a key strategy in enhancing efficiency in SACCOs and MFIs and also reduce systemic risks.
12. There is therefore a need to amend the Sacco Societies Act to make provision for CIS by SACCOs with other licensed financial institutions through the licensed CRBs, and also the sharing of full-file information. This will equally align the Sacco Societies Act with the Banking Act as amended in 2013, the Microfinance Act, and the Credit Reference Bureau Regulations, 2013, thereby bringing CIS under a single regulatory framework.
13. The policy proposal was adopted as a governmental policy position by the Cabinet Secretary for the National Treasury, in the Budget Statement for the 2015/2016 Fiscal Year presented to the National Assembly on 11th June 2015.

3.3 SUBMISSION BY COOPERATIVE ALLIANCE OF KENYA LTD

The CEO Cooperative Alliance of Kenya ltd Mr Daniel Marube appeared before the Committee and submitted as follows in regard to proposed amendments, that;-

1. They did not oppose the entrenching of the word deposit taking for Saccos that carry out deposit taking business even though such would attract costs.
2. The Sacco Societies are registered under Cooperative Societies in which their bylaws are primary documents in the registration as contained in the Cooperatives Act and not in the Sacco Societies Act

3. Requiring Deposit taking Saccos to seek authority from SASRA requires a comprehensive amendments of all cooperative sector to align the sector to the constitution of Kenya, 2010
4. Not all bylaws of Deposit taking Sacco's are of financial matters, some are non-financial thus deposit taking Saccos may seek authority from SASRA before amending the bylaws that have financial implications only.
5. Seeking authority to change bylaws from SASRA is giving it too much latitude and powers
6. Registering with SASRA to carry out deposit taking business is too much borrowing from the Banking Act thus forcing such Saccos to conform to banking Act provision without recognizing the difference in formation, registration and difference in marketing environment.
7. Sacco Societies are founded on the cooperative principle of democracy and member control thus SASRA cannot determine suitability and propriety of every person seeking to serve as a director or officer of society. Imposing minimum standards on courses, trainings and certification will be too prescriptive for Saccos and may be abused by the regulator.
8. The Banking Act that prescribes the exchange of information on performing and non-performing loans should be specified.
9. Sharing of information on credit by logging in deposit Saccos into credit reference bureau is a good development in warding off bad borrowers.

3.4 SUBMISSION BY KENYA UNION OF SAVINGS AND CREDIT CO-OPERATIVES LTD.

The chief Executive officer of KUSCCO appeared before the Committee and submitted as follows, that;-

1. In regard to inserting Section 27A-, Name changing is the work of a registrar of cooperatives based in its members thus SACCOS can only change their identity to DT SACCO through resolution during Annual General Meetings.
2. Classifying SACCOs as DTS separates them from the rest of the movement.

3. Sub Section 4 of 27A to be, amended to read “a deposit taking SACCO shall notify the authority amendments in its by-laws” since stakeholders hold the view that a by-law creates co-operatives and as such, is the function of the registrar of co-operatives.
4. In reference to section 27B, segregation of duty is maintained for governance purposes since the stakeholders observed that SACCOs are co-operatives registered by the Commissioner of Co-operatives and are specified as financial co-operatives. SASRA cannot promote, supervise and regulate, all at the same time, since there will be no oversight and will lead to double registration.
5. The clause to eliminate the issue of registration of Saccos since it is a function of the Commissioner of cooperatives.
6. Section 48 A(1) of the bill be amended to, replace the word ‘Authority’ with ‘Annual General Meeting (AGM)’ or ‘the Board’ ‘nominations committee’ which are the decision making organs of a SACCO since directors go through the ‘fit and proper test’ according to Section 24(f), of the SACCO Societies Act 2008. Furthermore, directors are elected by members, who are the supreme decision makers in the SACCO.
7. SACCOs should elect and give elected board members to SASRA for vetting
8. Only directors and chief officers should be vetted.
9. SACCOs belong to members and training needs assessment can be done by Saccos.
10. On imposing minimum standards, form four certificate except for Jua Kali and Farmer Based Saccos that requires committee members to know how read and write.
11. In cooperative Societies all members are equal.

3.5 SUBMISSION BY THE COUNCIL OF GOVERNORS

The Chairman in charge of Trade H.E Governor appeared before the Committee and submitted that the Council considered the following:

1. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including cooperatives societies
2. Inclusion of the County Governments in the registration, licensing and regulations of the SACCO Societies.

1. In regard to the Constitutional threshold, he submitted that;

The constitution of Kenya, 2010 at Article 186 provides for functions of the two levels of government established under Article 6 (2) of the constitution. These functions are listed under part I and II of the Fourth Schedule to the constitution. Part II of the Schedule provides for the functions of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licenses, fair trading practice, local tourism and cooperative societies.

The SACCO Societies Act, 2008 does not provide for the functions of the devolved system of Government. This is despite the fact that it is a function of the country government to regulate and develop co-operative societies as provided for under section 7 of part II of the fourth schedule. This has left critical gaps that can be exploited to the detriment of the growth and development. The same apply in the Bill. The proposed amendments do not give counties the mandate to regulate the Sacco societies..

2. In regard to inclusivity of County Government in the Registration, Licensing and regulation of the Sacco Societies, he informed the Committee that;

The Council proposed that there is need to review the whole principal Act (Sacco's Societies Act 2008) since it was enacted pre-devolution when County Government were not in place. It would be a challenge for the council to review and give proposals of the proposed amendment since they had major issues with the Principal Act.

Some of the issues include but not limited to;

- i. Object and Function of the Authority
- ii. The powers given to the Minister giving the Authority to specify the non-deposit taking business and measure the conduct of the specified business
- iii. Composition of the Board Of Authority
- iv. The Sacco Society levy- the Act provides that the Authority may by order published in the Gazette, Impose a levy to be known as the Sacco Societies levy on the deposits held in deposit-taking Sacco Societies, or on such other base as the Authority may determine in case of Sacco societies carrying out non-deposit taking business specified under section 3(2). (2) A levy imposed under this section shall be payable at the opportunity to collect revenue from the SACCOs.

- v. Licensing of SACCO societies in the Act. The Principal Act requires Sacco's to have been registered under the Co-operative societies Act, it's important to note that the Act does not recognize the County Governments.
- vi. Regulation and supervision of SACCO societies.

The council noted that under the devolved system of Government, the county governments should be responsible for co-operative enterprise development in their respective counties thus the Act should clearly address the roles of the County Governments as envisaged in the constitution

The council recommended that;-

1. Formation of intergovernmental technical committee to review the entire principal Act(Sacco Societies Act, 2008) since it's a legislation that was passed before the coming in of county Governments and the Sacco Society (Amendment) Bill, 2018 only address a small part of the principal Act.
2. Further Amendments to the Cooperative Societies Act. The cooperative Society Act 1997 does not recognize counties yet the Sacco Societies Act keeps referring to it

3.0 COMMITTEE OBSERVATIONS

(I)On the Proposed amendment

The Committee made the following observations on the proposed amendments;

CLAUSE 2

Seeks to;

1. Amend section 27 of the principal Act by inserting section 27A and 27B to provide that a Sacco Society licensed to undertake deposit-taking business shall incorporate and use the phrase "DT-SACCO" as part of its name at all times; This will ensure that DT-SACCOs which are licensed and prudentially regulated can be separately, distinctively and uniquely distinguished from other cooperative societies, including other non-deposit taking SACCO Societies

2. Prohibit the use of the phrase “DT-SACCO” by a person who is not licensed to undertake deposit-taking Sacco business under the Act.
3. Accords all existing Sacco Societies a grace period of twelve months to comply with the requirement to incorporate “DT-SACCO” as part of their business name.
4. Make provisions requiring that a deposit-taking Sacco society shall not amend its registered by-laws without approval of Sacco Societies Regulatory Authority.
5. Make provisions requiring a co-operative society registered or incorporated as a deposit taking savings and credit co-operative society or Sacco society to obtain a license from the Sacco Societies Regulatory Authority (SASRA) to operate as such.
6. Make provisions that it is an offence for any person to continue using the phrase “DT-SACCO” or any of its derivatives without a licence issued by the Authority.
7. Prohibit Saccos that are registered as non-financial Saccos from providing financial services to the unsuspecting customer. This makes it easier for members of the public to be aware of the licensed Saccos or co-operatives that offer quasi-banking facilities.

CLAUSE 3

8. Proposes to insert anew section 48A immediately after 48 that gives power to the Authority to determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society and may bar that person from serving in a Sacco Society. The clause also provides for the parameters the Authority shall consider in determining the suitability of a person. The amendment envisages that the Authority shall vet key officers of SACCOs, by providing for minimum criteria for assessing the fitness and propriety of senior officers of SACCOs, which includes the members of Board of Directors.

CLAUSE 4

9. The clause proposes to deleting subsection (8) and substituting it with a new subsection that imposes minimum standards on significant members and officers of a Sacco Society as prescribed including mandatory continuous or minimum professional development courses, trainings and certification which every director or officer of a Sacco Society must undertake or attain before serving or seeking to serve as Director or officer of a Sacco Society. This amendment seeks to enable the Authority improve the quality and relevance of the trainings, to develop an enlightened and responsible leadership and

management capable of directing and effectively controlling Sacco enterprises for the benefit of members.

CLAUSE 5

10. Amend section 54 subsection (5) by deleting paragraph (b) and substituting it thereof with subsection that will allow Sacco Societies to exchange information on performing and non-performing loans as maybe prescribed by the authority in the manner prescribed by the Banking Act. This will allow circulation of both negative and positive credit information amongst licensed financial institutions including the credit reference bureau.

(II) On the Principal Act (Sacco Societies Act, 2008)

- ✓✓ 11. Notwithstanding the observations made on the proposed amendments, the Committee observed that the bill seeks to amend Sacco Societies Act, 2008 which does not recognize county government.
- ✓✓ 12. As envisaged in the constitution of 2010, part II of the fourth schedule provides that cooperative Societies are devolved thus county function.
- ✓✓ 13. There is need to repeal the pre- constitutional Sacco Societies Act, 2008 to align it with the constitution and in the process comprehensive amendments can be made.

5.0 COMMITTEE STAGE AMENDMENTS

The Committee proposed the following amendments, that:-

CLAUSE 1

This Act may be cited as the Sacco Societies (Amendment) act, 2018.

Committee Recommendation

Agreed to.

CLAUSE 2

The Sacco Societies Act, 2008, in this Act, referred to as the “Principal Act” is amended by inserting the following new sections immediately after section 27-

27A. (1) A Sacco Society licensed under this act to undertake deposit-taking business and use at all times, the phrase “DT-SACCO” or any of its derivatives.

(2) A person shall not use –

(a) the word “DT-SACCO” or any of its derivatives: or

(b) any words indicating the transaction word of a deposit-taking Sacco business or its equivalent, in the name, description or title under which that person transacts deposit taking Sacco business unless that person is licensed under this Act.

(3) every deposit-taking Sacco Society existing before the commencement of this section shall, within twelve months, comply with the provisions of subsection (1).

(4) A deposit-taking Sacco society licensed under this Act shall not amend its registered by-laws or any provisions thereof without prior written approval of the Authority.

27B(1) ~~A co-operative society that has been registered or incorporated as a deposit taking savings and credit co-operative society shall, within one year of registration obtain a license from the Authority to operate as a deposit-taking savings and credit co-operative society or a Sacco society.~~

(2) A co-operative society which fails to obtain a license within one year of registration in accordance with subsection (1) shall stop using the word “DT-SACCO” or any derivatives in its name.

(3) A person who continues to use the word “DT-SACCO” or any of its derivatives in contravention of sub-section (2), commits an offence.

Committee Recommendation

THAT, clause 2 of the Bill be amended by deleting subsection (4) of the proposed new section 27A and substituting therefor the following subsection—

- (4) A deposit-taking Sacco society licensed under this Act shall notify the Authority prior to amending its registered by-laws or any provisions thereof.

Justification

This is in tandem with section 5 the Sacco Societies Act, No. 14 of 2008. Section 5 (b) of the Act provides that the mandate of the Authority shall be to regulate and supervise Sacco societies.

CLAUSE 3

The principal Act is amended by inserting the following new section immediately after section 48-

48A.(1) The Authority shall determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society, and may bar or prohibit a person from serving in a Sacco society as a director or an officer based on its determination.

(2) The Authority shall, in determining if a person is suitable and proper to serve as a director or an officer of a Sacco society, consider the following –

(a) the financial status or solvency of the person:

(b) the academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform:

© the status of any other license or approval granted to the person by any financial sector regulator:

(d) the ability of the person to carry on the regulated activity competently, honestly and fairly:

(e) the reputation, character, financial integrity and reliability of the person: or

(f) any other material information that the Authority may, consider necessary.

(3) without prejudice to the generality of subsection (2), the Authority may, when determining whether a person is suitable and proper –

(a) take into account whether that person-

- i. Has contravened provisions of any law for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in dealing in marketable securities;
- ii. Has been convicted or is being investigated in respect of an offence involving financial impropriety, fraud, corruption or economic crimes;
- iii. Was a director of a Sacco society which was involuntarily liquidated, is under involuntary liquidation or has been placed under statutory management;
- iv. Has participated in any business practice which in the opinion of the Authority, was fraudulent, prejudicial to the market or public interest, was otherwise discredit the person's methods of conducting Sacco society business;
- v. Has participated in or has been associated with any business practice which casts doubt on the person's competence or soundness of judgement; or
- vi. Has acted in such a manner as to cast doubt on the person's competence and soundness of judgement; and

(b) take into account any information in the possession of the Authority, whether provided by that person or from other available sources.

(4) Before determining that a person is not suitable or proper to serve as a director or officer of a Sacco society, the Authority shall give that person an opportunity to be heard.

Committee Recommendation

THAT, clause 3 of the Bill be amended by deleting subsection (1) of the proposed new section 48A and substituting therefor the following new subsection—

48A (1) The Authority shall determine the suitability and propriety of every person seeking to serve as Board member, Chief Executive Officer or other officer of a Sacco

society, and may bar a person from serving in a Sacco society as a Board member, Chief Executive Officer or an officer based on its determination.

Justification

To include Board members in the scope of persons whose suitability and propriety shall be determined by the Authority. The amendment also seeks to delete the term 'Director' and substitute therefor the term 'Chief Executive Officer'. Sacco societies are as a matter of practice headed a Chief Executive Officer.

CLAUSE 4

Section 50 of the principal Act is amended by deleting subsection (8) and substituting thereof the following new subsection-

(8) the Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including mandatory continuous or minimum professional development courses, trainings and certification which every director or an officer of a sacco society must undertake or attain before serving or seeking to serve as a director or officer of a Sacco society.

Committee Recommendation

THAT, clause 4 of the Bill be amended by deleting the proposed new subsection (8) and substituting therefor the following—

(8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including mandatory continuous or minimum professional development courses, trainings and certification which every Board member, Chief Executive Officer or an officer of a Sacco Society shall undertake or attain before serving or seeking to serve as a Board member, Chief Executive Officer or an officer of a Sacco Society.

Justification

To require persons serving in the Board to undertake prescribed minimum professional development courses. This will in turn inculcate a culture of professionalism in the management of Saccos.

CLAUSE 5

Section 54 of the principal Act is amended-

(a) in subsection (5) by deleting paragraph (b) and substituting therefor the following new paragraph(b)-

(b) Sacco societies shall, in the ordinary course of business and in such be prescribed under the Banking Act, exchange such information on performing and non-performing loans as may be specified by the Authority from time to time.”

(b) in subsection (6), by inserting a new paragraph immediately after paragraph (b) as follows-

(c) an institution licensed under the banking Act, Microfinance Act or any other entity as may be provided for under any other written law;

(c) by inserting the following new subsection immediately after subsection (6) –

(7) for the purposes of this section, “credit reference bureau “ means a credit reference bureau established and operated pursuant to the provisions of section 31 of the Banking Act or section 34 of the Microfinance Act, 2006.

Section 50 of Act No.14 of 2008 which it is intended to amend-

50. (8) the Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed.

Section 54 of Act No. 14 of 2008 which is intended to amend –

54. (5) Notwithstanding the provisions of this section-

(a) the Authority may disclose any information received by it under this Act to any financial regulatory authority or pursuant to a court order, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Authority, tax authority, investigation authority or court;

(b) Sacco societies shall in the ordinary course of business and in such manner and to such extent as the minister may, by regulation prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Authority;

(c) the Authority and any Sacco society may, in the Ordinary course of the business in such manner and to such extent as the Minister may, by regulation prescribe, exchange such information as is reasonably required for the proper discharge of their functions.

Committee Recommendation

THAT, clause 5 of the Bill be amended by deleting paragraph (b) of the proposed new section 54 subsection (5) and substituting therefor the following—

(b) Sacco societies shall, in the ordinary course of business exchange information on performing and non-performing loans as may be specified by the Authority and in such manner and to such extent as shall be prescribed under regulations made under the Act

Justification


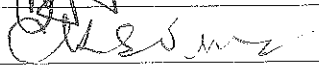

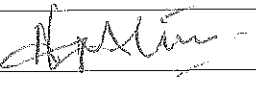
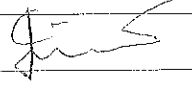

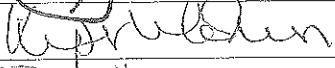
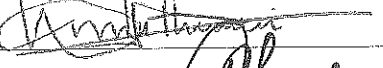
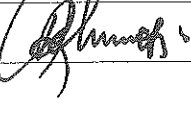
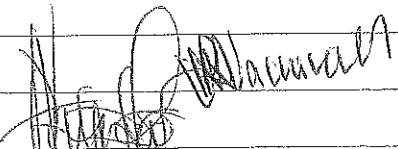
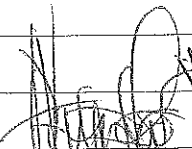
To make provision requiring Sacco societies to share information on performing and non-performing loans amongst themselves.

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES

Clerk's Chambers
National Assembly
NAIROBI

Adoption List for the Report on the Sacco Societies (Amendment) Bill, 2018

Date: 2nd May, 2018

NO.	NAME	SIGNATURE
1.	Hon. Kanini Kega, M.P. – Chairperson	
2.	Hon. Cornelly Serem, M.P. – Vice Chairman	
3.	Hon. Alexander Kimutai Kigen Kosgey, MP	
4.	Hon. Alois Musa Lentoimaga, MP	
5.	Hon. Anab Mohamed Gure, MP	
6.	Hon. Andrew Mwadime, MP	
7.	Hon. Bunyasi John Sakwa, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Wanyonyi Ferdinand, MP	
10.	Hon. James Mukwe, MP	
11.	Hon. Jones Mlolwa, MP	
12.	Hon. Kipruto Moi, MP	
13.	Hon. Murungi Kathuri, MP	
14.	Hon. Gichimu Robert, MP	
15.	Hon. Kimani Patrick Wainaina Jungle, MP	
16.	Hon. Korir Generali Nixon Kiprotich, MP	
17.	Hon. Nduati Joseph Ngugi, MP	
18.	Hon. Wachira Rahab Mukami, MP	
19.	Hon. (Dr.) Wilberforce Oundo, Phd, MP	

ERIC NYAMBATI
FOR: CLERK OF THE NATIONAL ASSEMBLY

E1401

REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – SECOND SESSION

Approved.
Jensen
20/2/18

In the Matter of consideration by the National Assembly -
The Sacco Societies (Amendment) Bill, 2018

SUBMISSION OF MEMORANDA

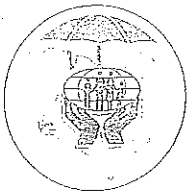
Article 118(1)(b) of the Constitution provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees*". Standing Order 127(3) provides that, "*the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House*".

The Sacco Societies (Amendment) Bill, 2018 seeks to amend several clauses of the Sacco Societies Act, 2008 and the general objective of the amendments is to expand the current credit information sharing mechanism to include Sacco Societies with other licensed financial institutions.

The Sacco Societies (Amendment) Bill, 2018, has undergone the First Reading pursuant to Standing Order 127(3) and is now committed to the Departmental Committee on Trade, Industry and Cooperatives for consideration and thereafter report to the House.

Pursuant to Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Committee invites members of the Public to submit any representations they may have on the Sacco Societies (Amendment) Bill, 2018. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Wednesday 28th February, 2018 at 5.00 pm.

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY



KUSCCO LTD.
Kenya Union of Savings & Credit Co-operatives Ltd.

-The SACCO Family Union-

KUSCCO Centre
Kilimanjaro Avenue, Upper Hill
P.O. Box 28403 - 00200, Nairobi, KENYA
Tel: 020 -2730191 / 2722927
Fax: 020 -2721274
Cell: 0734 699 974 / 0722 206 331
Email: info@kuscco.com
Web: www.kuscco.com

27/02

Our Ref:

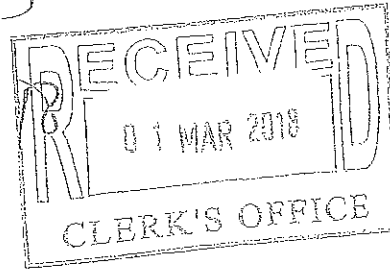
Your Ref:

KUSCCO/ADV/MOIT & C/ 007

27TH FEBRUARY, 2018

The Clerk of the National Assembly,
Parliament Buildings,
P. O. Box 41842 - 00100,
NAIROBI.

D/Amullos
2/3/18



Dear *Gov,*

RE: PROPOSALS ON THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

Receive compliments from the Board of Directors, Management and Staff of the Kenya Union of Savings and Credits Co-operatives (KUSCCO) Limited.

KUSCCO was established in 1973 as an umbrella body for SACCOs in Kenya, responsible for speaking on behalf of SACCOs and representing them in business and legal requirements.

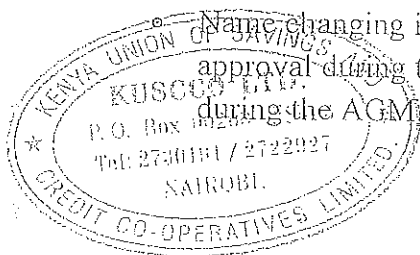
As SACCOs, we wish to reiterate our support for facilitative regulation of the sector to build market confidence. In this regard, we have made the following observations and proposals on the SACCO Societies (Amendment) Bill, 2018.

1. Section 27A- Use of the words 'Deposit -Taking SACCO' 'DT-SACCO', 'DTS' etc which reads, "A SACCO Society Licensed under this Act to undertake deposit-taking business shall incorporate, as part of its business name and use it at all times the words 'Deposit Taking SACCO', 'DTS', 'DT-SACCO' or any of its derivatives."

Comments

- 'SACCO Business' as defined in the SACCO Societies Act means 'receipt of withdrawable deposits or non-withdrawable deposits from members....' This means that all SACCOs are deposit-taking. Further, there is no substantial felt need and persistent requests from the members of SACCOs to justify the need for this change and drift. The amendment applied a top-down approach rather than a bottoms-up approach.
- Classifying SACCOs as DTS separates them from the rest of the movement

Name changing is a function of the registrar of co-operatives based on members' approval during the Annual General Meeting. Rebranding should be a resolution during the AGM.



Eric Mwangi
Chairman of the SACCO Societies
Committee
SAV



KUSCCO is ISO 9001:2008 Certified

Proposal

Deposit –taking SACCOs’ to be rebranded to DT-SACCO with the approval of AGM and registered with the Commissioner for Co-operatives

2. That Section 4 which reads, “a deposit-taking SACCO Society licensed under this Act shall not amend its registered by-laws or any provisions thereof without the prior written approval of the Authority” should be amended.

Comments

We hold the view that a by-law creates co-operatives and as such, is the function of the registrar of co-operatives. Amendments of by-laws should first be submitted to the Commissioner of Co-operatives for approval and registration. Therefore, a deposit-taking SACCO can only *notify* the Authority that they have amended their by-laws. Refer to Co-operatives Societies Act, Cap 490, Part III, section 8.

Proposal: Amend to read “a deposit taking SACCO shall notify the Authority of amendments in its by-laws”

3. That Section 27 B: *Registration and Licensing of deposit-taking SACCOs*, which reads:

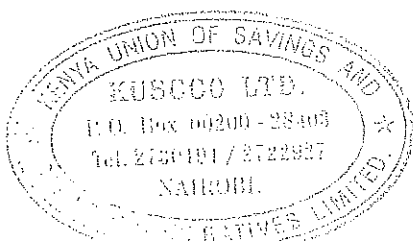
1. “A co-operative society shall not be registered or incorporated as a deposit-taking savings and credit co-operative society or deposit-taking SACCO society, without the written approval of the Authority.
2. A co-operative society that has been registered or incorporated as a deposit-taking savings and credit co-operative society shall within one year of registration, obtain a license from the Authority to operate as a deposit-taking savings and credit co-operative society or a SACCO Society,” should be aligned to Cap 490 Laws of Kenya.

Comments

SACCOs are co-operatives registered by the Commissioner for Co-operatives and are specified as financial co-operatives. SASRA cannot promote, supervise and regulate, all at the same time, since there will be no oversight and will lead to double registration. Refer to Co-operatives Societies Act Cap 490, Part III, section 4. With these overarching powers, who will regulate the regulator?

Proposal

Re-word the clause to eliminate the issue of ‘registration’ of SACCOs. This is a function of the Commissioner for Co-operatives.



4. That Section 3, amending Section 48 (2) (B), SACCO Societies Act, 2008 which reads "The Authority shall in determining if a person is suitable and proper to serve as a director or officer of a SACCO Society consider the following;-

b) The other academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform." The whole section should be deleted.

Comments

- Directors go through the 'fit and proper test' according to Section 24 (f), of the SACCO Societies Act 2008. Further, directors are elected by members, who are the supreme decision makers in a SACCO.

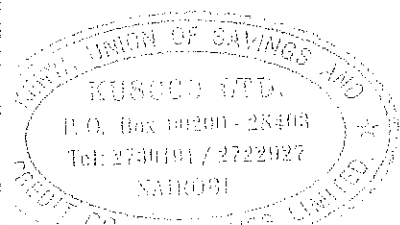
Proposal

- Only directors and chief officers should be vetted
- It was noted that 'academic qualifications' in part (b) was not defined and would be brought out further in the regulations
- SACCOs should elect and give elected board members to SASRA for vetting
- Replace the word 'Authority' with 'Annual General Meeting' (AGM) or 'the Board' 'nominations committee' which are the decision making organs of a SACCO.

5. That Section 4-Section 50 (8) which reads 'the Authority may impose minimum standards on significant members and officers of a SACCO Society as prescribed including mandatory, continuous or minimum professional development courses, trainings and certification which every director or an officer of a SACCO society must undertake or attain before serving or seeking to serve as a director or officer of a SACCO society.' This should be deleted. The Authority is to regulate and not train or recommend training of anybody.

Comments

- SACCOs belong to members and training needs assessment can be done by SACCOs.
- We hold the opinion that the section will be too harsh on rural SACCOs, who may not have the prescribed qualifications. The non-discriminative nature in co-operatives and in the constitution will bring problems in future.
- It is not clear who 'significant members' are as outlined in the clause



Proposal

- Minimum academic qualification of Form Four certificate except for Jua Kali and Farmer Based SACCOs. The Co-operative Societies Act, Section 28, 4(C), only requires Committee members to have the ability to read and write
- The Co-operative Societies Act allows members to elect anyone into the leadership. All are equal.
- We propose an extension to include the 'significant members' as directors and chief officers

6. That Memorandum of objects and reasons-

- a. *Statement of objects and reasons for the Bill* which states 'the object of this Bill is to amend the SACCO Societies Act 2008, to provide for the registration and licensing of SACCO societies as deposit-taking savings and credit co-operatives.'

Comments

Front Office business is a product in the SACCO and registration should be by the Commissioner. This is because SACCOs are financial co-operatives and are registered under the Co-operative Societies Act, Cap 490. Refer to Co-operatives Societies Act Cap 490, Part III, section 4.

Proposal

Replace the word '*registration*' with '*regulation*'.

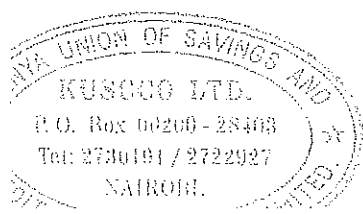
- b) *Statement of objects and reasons for the Bill* : ... 'This is intended the Act with the Banking Act, the Microfinance Act, 2008, thus bringing credit information sharing under a single regulatory framework.'

Proposal

Add the missing words before 'the Act with the Banking Act' for grammatical correctness and to remove ambiguity

Overall, to amend the SACCO Societies Act, it would be important to amend the following:

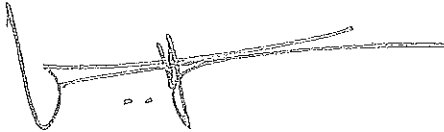
- Co-operative Societies Act, Cap 490
- The SACCO Societies Act
- Co-operative Societies Rules
- SACCO Societies Regulations



There is need to align these laws with the Constitution in terms of devolution of co-operatives, as this will help avoid conflict of laws.

Finally, in areas where reference to a "Minister" is made, it should be substituted with the word "Cabinet Secretary."

With Co-operative Regards,

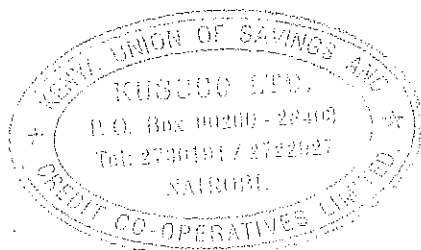


George Ototo, MBS, ICUDE
MANAGING DIRECTOR

CC: Principal Secretary, State Department of Co-operatives, Ministry of Industry,
Trade and Co-operatives.

Commissioner of Co-operative Development, State Department of Co-operatives,
Ministry of Industry, Trade and Co-operatives.

Chief Executive Officer, SASRA.



The Clerk of the National Assembly
Parliament Buildings
P.O. Box 41842-00100
NAIROBI.

THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

WRITTEN MEMORANDUM AND PROPOSALS BY THE CO-OPERATIVE ALLIANCE OF KENYA (CAK)

The above matter refers.

We bring you greetings from the Co-operative movement fraternity. Co-operative Alliance of Kenya (CAK) is an umbrella Apex Co-operative Organisation formed by the Co-operative Movement in Kenya. Its sole purpose is to represent the interests of co-operative societies both locally and internationally. This mandate inter alia extends to providing general consultancy and advocacy services to the co-operative movement. In executing its mandate, CAK draws its mandate from the Co-operative Societies Act CAP 490 under which it (CAK) is formed and registered. CAK, which also is an affiliate of the International Co-operative Alliance (ICA) operates within International Co-operative Principles as are constituted and periodically revised from time to time by the ICA.

Participation in the process of developing legal frameworks managing the Co-operative Sector is one of our core advocacy roles that we play. In this respect, we are concerned with some of the amendments proposed in the Sacco Societies (Amendment) Bill, 2018 which we hereby seek your leave to outline and present as follows:

PROPOSED AMENDMENTS TO THE SACCO SOCIETIES ACT

1. Insertion of Section 27A

27A (1),(2)&(3)-The words 'deposit-taking' are already provided for in Section 2 (interpretation) of the Sacco Societies Act and therefore not new in the Sacco sub-sector. Entrenching the words 'deposit-taking' as part and parcel of any Sacco licensed to carry out deposit-taking business is therefore not opposed. However, it must be remembered that this amendment will have a cost

implication on Saccos since they have to change their names to reflect the directive.

27A(4) Amendment of Bylaws

~~27A(4) Requiring a deposit-taking Sacco to seek authority of the Authority before amending its registered bylaws is fundamentally misdirected in the following terms~~

- (i) It should be emphasised that deposit-taking Saccos are first and foremost co-operative societies even though they offer financial services to their members through deposit-taking business as a core activity. They are at inception registered as Co-operative Societies their Bylaws being the primary document that incorporates and binds the members to corporate status. The Sacco Societies Act does not provide for registration and amendment of bylaws whereas on the contrary the same is provided in the Co-operative societies Act, Cap 490 Laws of Kenya.

If the intention is to change the registration regime in respect to Saccos, the same should be substantively provided in the Sacco Societies Act. It means therefore that if this amendment succeeds, it in essence will amend the Co-operative Societies Act in so far as registration and amendment of bylaws is concerned. This amounts to a backdoor approach as opposed to carrying out comprehensive amendments to all Co-operative sector laws to align the sector to the Constitution of Kenya, 2010 and the review to the National Co-operative Policy, currently pending before Parliament.

- (ii) The Sacco Societies Regulatory Authority (SASRA) is established under the Sacco Societies Act solely to regulate financial activities of Saccos, and more so those that carry deposit-taking business. It is therefore right to say that not all aspects of the Bylaws speak about financial matters. Some issues in the Bylaws are totally non-financial in nature. It is therefore true that some of the Bylaws a Sacco may intend to amend have no bearing on the financial activity of a Sacco-

which in this case is the focus of SASRA. Such do not need the authority of SASRA.

- (iii) Any amendment to the bylaws is done within the purview of the principle law. It is only enough to require that amendment to the bylaw be done intra vires the written principle law and the regulations or rules. Having to seek the approval of the Authority amounts to giving the regulator too much latitude and powers. This suffocates the market players who, in this case are subjected to double jeopardy for being answerable to two regulators over the same issue.
- (iv) It is doubtful whether the Authority has technical capacity to give direction and advice on all matters concerning amendments without the participation of the Commissioner for Co-operative Development. More reason why the authority should concentrate on matters that have a financial bearing.
- (v) The current template of Bylaws being in use by Saccos, (attached) either at registration stage or at any time they want to carry out amendment, is a joint product of SASRA; KUSCCO; KERUSSU and the Commissioner for Co-operative Development. To demand therefore for its authority in such circumstances will be asking for too much.

Our Proposal

It is our proposal that if it is imperative that this amendment has to go through, let the authority of SASRA be sought only in respect to Bylaws that have a financial implication. Day to day matters in regard to the amendment of the bylaws should better be left to the Commissioner for Co-operative Development, i.e. under the CAP 490.

2. Insertion of Section 27B -Registration of Deposit-Taking Saccos

27B(1)(2)(3)&(4) Requiring the approval of the Authority before a deposit-taking sacco is registered is a fundamentally flawed proposal for amendment. A co-operative society is registered as a sacco co-operative society, and not a deposit-taking co-operative society. Deposit-taking character is attained by

virtue of licensing of deposit-taking activity. This character is never attained at birth or inception but it is one earned through certifying the licensing requirements. Our legal regime allows for existence of two categories of saccos; those engaged in the back office operations and those licensed by the Authority to carry on deposit-taking business. It is our humble view that 'deposit-taking' character should not be attained at registration but should be earned by going through the rigours of licensing requirements. For this purpose, there is no need for this amendment so long as there is in existence provisions as to licensing both in the Sacco Societies Act and the Sacco Societies (Deposit-Taking Sacco) Regulations.

Though we appreciate the fact that this proposal for amendment is borrowed verbatim from the Banking Act, the same has not been given much thought how inapplicable it can be to the sacco sub-sector.

In the Banking Act, persons wishing carry out banking business must first be incorporated as a company with the written approval of Central Bank. As if that is not enough, the same company is taken through the rigours of application for a license all over again from the same regulator! What this portends is that co-operatives carrying out deposit-taking business are being made to conform to the banking Act provisions without caring a thing about their unique character as to formation and registration and services they offer to the ordinary citizens who at the same time patronise their (Saccos) products. What this portends is that, gradually, this regulator is heavily borrowing from the banking sector regulations and is imposing such regulatory standards on a not so equivalent market environment. From the aforesaid, this proposal for amendment should be rejected by the National Assembly.

3. Insertion of Section 48A

One of the conditions precedent in the Sacco Societies Act for issuance of a license is a declaration by the directors in the 'fit and proper test form' provided in the schedule, in accordance to regulation 4(2). As it is, it is a mere declaration on oath without the Authority actively participating in the process. In essence, this is a self regulatory mechanism given to those seeking license from the Authority.

However, what section 48A seeks to introduce brings the authority into centre stage by way of granting it exclusive powers to determine who can serve as director or officer of a deposit-taking sacco.

Saccos or Co-operative Societies are founded on the co-operative principle of democracy and member control. This means that each member of the Co-operative Society regardless of shares and deposits held has only one vote which each respective member exercises by electing their leaders to office through a democratic process. This principle connotes independence devoid of unnecessary outside interference. Once this is taken away, the very foundation of a Co-operative Society is greatly compromised. It is sufficient for Directors and chief officers to go through the 'fit and proper test' process where they swear under oath. Once they (directors and chief officers) have committed themselves on oath, SASRA, if it has any information contrary to what has been stated on oath has every opportunity to stop such persons from taking over management of a Sacco.

Aspects like academic qualifications if left to the regulator to determine without the participation of the stakeholders is likely to disadvantage a big cross-section of deposit-taking Saccos majorly patronised by the rural folk who have invested heavily in these entities.

SASRA should not be allowed these powers. It is our humble view that this amounts to handing over to SASRA a blank cheque thus a potential area for abuse. Kindly reject this amendment. Mechanisms of vetting provided vide the SASRA Regulations through the 'fit and proper test', in our view, is sufficient.

4. Amendment of Section 50.

50(8) Again, this is borrowed from the Banking Act whereby shareholders or Directors or Officers of the company with substantial shareholding are required to abide by certain minimum standards. Substantial holding in the company parlance may mean a shareholder with a given minimum shareholding (say more than 5 per cent). But in the deposit-taking Sacco parlance, it is not known who a 'significant members' is. The proposed

amendment should be stated with clarity for anyone to understand what the intention of the law is.

The minimum standards including their mandatory continuous or minimum professional qualifications, in our view, should better be left to the market to self regulate or develop. Saccos have their program of Education and Training to members and officers as is demanded by one of the Co-operative principles. This provision is therefore too prescriptive and should be done away with.

5. Amendment of Section 54

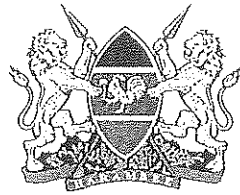
54 (5) This amendment seeks to introduce the sharing of information on performing and non-performing loans between deposit-taking saccos "as may be prescribed in the Banking Act". This proposed amendment is not clear at all. Sharing of information on credit between market players is a positive development but the guideline should be clear from the word go. Which section of the Banking Act prescribes the same, and what are the prescriptions are the questions that linger and deserve to be answered. The same should be rendered in clarity.

54(6) Amendment of subsection 6 of section 54 by inserting an additional paragraph whereby the banks and the micro finance institutions are included among institutions to share information without the same being necessarily termed as breach of duty on the part of officer occasioning such sharing of information is a good development and therefore it elicits no negative reaction on our part.

54(7) Sharing of information especially on credit by logging in deposit-taking Saccos into the credit reference bureau is a good development to ward off bad borrowers.

Yours

Daniel Marube
EXECUTIVE DIRECTOR



COUNCIL OF GOVERNORS

ADVISORY ON THE GAPS IN THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

Introduction

The Council of Governors is a non-partisan organization established under section 19 of the intergovernmental relations Act 2012. The Council of Governors comprises of the Governors of the forty seven counties. The mandate of the Council includes: (a)consultation amongst county governments; (b) sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practice and where necessary, initiating preventive or corrective action; (c) considering matters of common interest to county governments; dispute resolution between counties within the framework provided under this Act; (e) facilitating capacity building for governors; (f) receiving reports and monitoring the implementation of inter-county agreements on inter-county projects; (g) consideration of matters referred to the Council by a member of the public; (h) consideration of reports from other intergovernmental forums on matters affecting national and county interests or relating to the performance of counties; and (i) performing any other function as may be conferred on it by this Act or any other legislation or that it may consider necessary or appropriate.

Key objective of the Bill

The object of this Bill is to amend the Sacco Societies Act, 2008, to provide for the registration and licensing of Sacco societies as deposit-taking savings and credit co-operatives. The Bill further expands the current credit information sharing mechanism to include Sacco societies with other licensed financial institutions. This is intended the Act with the banking Act, the Microfinance Act, 2008, thus bringing credit information sharing under a single regulatory framework.

Considerations in reviewing the Sacco Societies (Amendment) Bill, 2018

The Council of Governors considered the following:

1. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including Cooperative Societies.

2. Inclusion of County Governments in the registration, licensing and regulations of the SACCO Societies.

Constitutional threshold

The Constitution of Kenya, 2010 at Article 186 provides for the functions of the two levels of government established under Article 6(2) of the Constitution. These functions are listed under Part I and II of the Fourth Schedule to the Constitution. Part II of the Fourth Schedule provides for the functions of the county level of government. Section 7 of Part II states that it shall be a function of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licences, fair trading practices, local tourism and cooperative societies.

The SACCO Societies Act, 2008 do not provide for the functions of the devolved system of Government. This is despite the fact that it is a function of the county government to regulate and develop co-operative societies as provided for under section 7 of Part II of the Fourth Schedule. This has left critical gaps that can be exploited to the detriment of the growth and development of co-operative enterprises as well as in the undermining of the county level of government. The same apply in this Bill. The proposed amendments do not give counties the mandate to regulate the Sacco Societies. It is important to highlight the role played by the county governments in matters relating to the development of cooperative societies in Kenya.

Inclusion of County Governments in the registration, licensing and regulations of the Sacco Societies .

The Council proposes that there is need to review the whole principal Act (Saccos Societies Act 2008) since it was enacted pre- devolution when County Governments were not in place. It would be a challenge for the Council to review and give proposals of the proposed amendment that is before the house, if already, we have major issues with the principal Act. Some of the issues include but not limited to;

1. Object and Functions of the Authority
2. The powers given to the Minister giving the Authority to specify the non-deposit taking business and measure the conduct of the specified business
3. Composition of the Board of Authority
4. The Sacco Society Levy- The Act provides that The Authority may by order published in the *Gazette*, impose a levy to be known as the Sacco societies levy on the deposits held in deposit-taking Sacco societies, or on such other base as the Authority may

determine in the case of Sacco societies carrying out non-deposit taking business specified under section 3(2). (2) A levy imposed under this section shall be payable at such rate as may be specified in the order. This section denies County Governments the opportunity to collect revenue from the SACCOs.

5. Licensing of SACCO Societies in the Act. The Principal Act requires SACCOs to have been registered under the Co-operative Societies Act, it's important to note that the Act does not recognize the County Governments.
6. Regulation and Supervision of SACCO Societies.

The Council notes that under the devolved system of Government, the county governments should be responsible for co-operative enterprise development in their respective Counties. To achieve this, County Governments are supposed to carry out the following functions;

1. Promotion of co-operative enterprises (pre co-operative, appraisals, documentation)
2. Inspections of co-operative enterprises
3. Development of human resources in local co-operative enterprises (TNA, training)
4. Market information dissemination
5. Co-operative advisory services
6. Coordination and monitoring of co-operative indemnity by co-operative leaders
7. Promotion of co-operative ventures and innovation for local co-operative enterprises
8. Carrying out co-operative audits
9. Funding and implementing growth, revival and restructuring programmes
10. Mainstreaming youth and women's involvement in co-operative enterprises
11. Co-operative research and development.

The Act should clear address the above roles of the County Governments.

Recommendations

The Council recommends the following.

1. Formation of intergovernmental technical committee to review the entire principal Act since it's a legislation that was passed before the coming in of County Governments
2. Further Amendments to the Cooperative Societies Act. The Cooperative Society Act 1997 does not recognize Counties yet the Sacco Societies Act keeps referring to it
3. The Sacco Society (Amendment) Bill, 2018 only address a small part of the principal Act.

DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

No	CLAUSE	PROPOSED AMENDMENT	JUSTIFICATION
1.	New Clause 27A	<p>Use of phrase "DT-Sacco"</p> <p>27A. (1) A Sacco Society licensed under this Act to undertake deposit-taking business shall incorporate, as part of its business and use at all times, the phrase "DT-SACCO" or any of its derivatives.</p> <p>(2) A person shall not use—</p> <p>(a) The word "DT-SACCO" or any of its derivatives; or</p> <p>(b) Any words indicating the transaction word of a deposit-taking Sacco business or its equivalent, in the name, description or title under which that person transacts business in Kenya or make any representation that the person transacts deposit-taking Sacco business unless that person is licensed under this Act.</p> <p>(3) Every deposit taking Sacco Society existing before the commencement of this section shall within twelve months, comply with the provisions of subsection (1).</p> <p>(4) <i>A deposit-taking Sacco Society licensed under this Act shall not amend its registered by-laws or any provision thereof without the prior written approval of the Authority.</i></p>	<p>To distinguish DTs which are licensed and prudentially regulated from other cooperative societies, including other non-deposit taking SACCO Societies (non-DTS).</p>
	KUSCCO	<p>Deposit taking Saccos to be re-branded to DT-Saccco with the approval of the AGM and registered with the Commissioner of Cooperatives.</p>	<p>Name changing is a function of the Registrar of Cooperatives following approval of the same during an AGM.</p>
	KUSCCO – 27A (4) A deposit-taking Sacco Society licensed under this Act shall not amend its registered by-laws or	<p>A deposit taking Sacco shall notify the Authority of amendments in its by-laws.</p>	<p>Pursuant to section 8 of the Cooperative Societies Act, Amendment of by-laws is a</p>

**DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018**

	any provision thereof without the prior written approval of the Authority.		function of the Registrar of Cooperatives.
2.	New clause 27B	<p>Registration and Licensing of Deposit Taking Sacco Society</p> <p>27B (1) A co-operative society that has been registered or incorporated as a deposit-taking savings and credit co-operative society or Sacco society shall, within one year of registration, obtain a licence from the Authority to operate as a deposit-taking savings and credit co-operative society or a Sacco society.</p> <p>(2) A co-operative society which fails to obtain a licence within one year of registration in accordance with subsection (1) shall stop using the word "DT-SACCO" or any of its derivatives in its name.</p> <p>(3) A person who continues to use the word "DT-SACCO" or any of its derivatives in contravention of sub-section (2) commits an offence.</p>	
	KUSSCO	<p>Reword the clause to delete the aspect of "Registration"</p> <p><i><u>In practice, what is the distinction if any, between a "Cooperative society" and a "Sacco"</u></i></p>	Saccos are Cooperatives registered by the Commissioner.
3.	New clause 48A	<p>Determination of Suitability.</p> <p>48A. (1) The Authority shall determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society, and may bar or prohibit a person from serving in a Sacco society as a director or an officer based on its determination.</p>	

DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

	<p>(2) The Authority shall, in determining if a person is suitable and proper to serve as a director or an officer of a Sacco society, consider the following—</p> <ul style="list-style-type: none"> (a) the financial status or solvency of the person; (b) the academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform; (c) the status of any other licence or approval granted to the person by any financial sector regulator; (d) the ability of the person to carry on the regulated activity competently, honestly and fairly; (e) the reputation, character, financial integrity and reliability of the person; or any other material information that the Authority may consider necessary; or (f) any other material information that the Authority may consider necessary. <p>(3) Without prejudice to the generality of subsection (2), the Authority may, when determining whether a person is suitable and proper—</p> <ul style="list-style-type: none"> (a) take into account whether that person— <ul style="list-style-type: none"> (i) has contravened provisions of any law for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in dealing in marketable securities; (ii) has been convicted or is being investigated in respect of an offence involving financial impropriety, fraud, corruption or economic crimes; 	
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**DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018**

	<p>(iii) was a director of a Sacco society which was involuntarily liquidated, is under involuntary liquidation or has been placed under statutory management;</p> <p>(iv) has participated in any business practice which, in the opinion of the Authority, was fraudulent, prejudicial to the market or public interest, was otherwise improper or would otherwise discredit the person's methods of conducting Sacco society business;</p> <p>(v) has participated in or has been associated with any business practice which casts doubt on the person's competence or soundness of judgment; or</p> <p>(vi) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment; and</p> <p>(b) Take into account any information in the possession of the Authority, whether provided by that person or from other available sources.</p> <p>(4) Before determining that a person is not suitable or proper to serve as a director or officer of a Sacco society, the Authority shall give that person an opportunity to be heard.</p>	
<p>KUSCCO</p>	<p>Only Directors and Chief Officers should be vetted. The requisite academic qualifications should be defined with precision vide regulations.</p>	<p>Directors undergo the "fit and proper test pursuant to section 24 (f) of the Sacco Societies Act.</p>
<p>4. Powers of the Authority to advise and direct.</p> <p>(8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed.</p>	<p>4. Section 50 of the principal Act is amended by deleting subsection 8 and substituting therefor the following new subsection—</p> <p>(8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including</p>	<p>To impose minimum qualifications for persons seeking to serve in the capacity of Director or other positions within a Sacco as may be prescribed.</p>

DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

	<p>mandatory continuous or minimum professional development courses, trainings and certification, which every director or an officer of a Sacco must undertake or attain before serving or seeking to serve as a Director or officer of a Sacco society.</p>	
<p>KUSCCO</p>	<p>The proposed amendment should be deleted.</p>	<p>The Authority's mandate is to regulation and supervision of Saccos, not training of Sacco officers. Recommendation of training is an intergral component of supervision.</p>
<p>5. 54. Publication and sharing of information</p> <p>(5) Notwithstanding the provisions of this section—</p> <p>(a) the Authority may disclose any information received by it under this Act to any financial regulatory authority, tax authority, fraud investigations authority or pursuant to a court order, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Authority or the requesting financial regulatory authority, tax authority, investigation authority or court;</p> <p>(b) Sacco societies shall, in the ordinary course of business and in such manner and to such extent as the Minister may, by regulation</p>	<p>Section 54 of the principal Act is amended—</p> <p>(a) in subsection (5) by deleting paragraph (b) and substituting therefor the following new paragraph (b)—</p> <p><i>“(b) Sacco societies shall, in the ordinary course of business and in such a manner and to such extent as shall be prescribed under the Banking Act, exchange such information on performing and non-performing loans as may be specified by the Authority from time to time.”</i></p>	<p>To facilitate exchange of financial information amongst the relevant financial agencies.</p>

**DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018**

<p>prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Authority;</p> <p>(c) the Authority and any Sacco society may, in the ordinary course of business in such manner and to such extent as the Minister may, by regulation prescribe, exchange such information as is reasonably required for the proper discharge of their functions.</p>		
<p>(6) No duty, to which a Sacco society or its officers may be subject, shall be breached by reason only of the disclosure, in good faith, of any information under this section to—</p> <p>(a) the Authority or to another Sacco society; or</p> <p>(b) a credit reference bureau, in the course of the performance of their duties and no action shall lie against the Sacco society or any of its officers on account of such disclosures.</p>	<p>(b) in subsection (6), by inserting a new paragraph immediately after paragraph (b) as follows—</p> <p><i>“(c) an institution licensed under the Banking Act, Micro Finance Act or any other entity as may be provided for under any other written law;”</i></p>	<p>To expand the list of institutions to which a Sacco society may disclose information.</p>
	<p>(c) by inserting the following new subsection immediately after subsection (6)—</p> <p><i>“(7) For the purposes of this section, “Credit Reference Bureau” means a credit reference bureau established and operated pursuant to the provisions of section 31 of the Banking Act or section 34 of the Micro Finance Act, 2006.</i></p>	<p>To provide for a more concise definition of the terms “Credit Reference Bureau”.</p>

DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

GUIDING NOTES

The Cooperative Societies Act and the Sacco Societies Act (Cap 490B) are the main statutes governing the cooperatives sector in Kenya. The Cooperative Societies Act has been in force since the early independence days, the Act has been subjected to various amendments. It is primarily concerned with the registration, incorporation and general supervision of all cooperatives societies, including SACCOs. The Act administered by the office of the Commissioner for Cooperative Development.

The Cooperative Societies Act does not provide for a framework for the prudential supervision of deposit-taking Sacco Societies (DTS). Thus, the enactment of the Sacco Societies Act in 2008 to make provision for legal mechanisms for the prudential regulations of DTSs in Kenya. This is in keeping with international best practices for financial regulation and supervision of deposit-taking financial institutions. The Sacco Societies Act is administered by the Sacco Societies Regulatory Authority.

It is noteworthy that the Cooperative Societies Act is applicable to all cooperatives, whilst the Sacco Societies Act is applicable only to the prudential aspects of supervision and regulation of deposit-taking SACCOs. Though the Sacco Societies Act was fashioned apply to certain "specified" non-deposit taking SACCOs (non-DTSs), the regulations to specify such non-DTS to which it would apply have not been developed. Subsequently, therefore, its application remains with the DTSs only.

DIRECTORATE OF LEGAL SERVICES
ANALYSIS OF THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

COMPARATIVE ANALYSIS

By way of comparative analysis, the domestic and international policy and legal frameworks governing the regulation and supervision of deposit-taking financial institutions make it evident that the Kenyan deposit-taking Sacco Societies (DTSS) sector is the only segment of regulated financial institutions that have no specific legal identity and legal protection in the usage of their titles. Commercial banks and Micro-finance Banks have their legal identities protected via the legal restrictions imposed in the usage of the name Banks as provided for under the Banking Act.

Internationally, cooperative financial services institutions, from South African, Canada and India reveal a similar trend where legal provisions making a case for unique identity of cooperative financial institutions (Credit Unions, Cooperative Banks etc) and restrictions to the usage of the said unique identity/identifier are as a matter of practice accorded legal protection.

MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON WENESDAY 2ND MAY, 2018 IN
THE COMMITTEE ROOM ON 2ND FLOOR PROTECTION HOUSE, AT 10.00 AM

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Andrew Mwadime, MP
4. Hon. Kipruto Moi, MP
5. Hon. James Mukwe, MP
6. Hon. Jones Mlolwa, MP
7. Hon. Alois Musa Lentoimaga, MP
8. Hon. Murungi Kathuri, MP
9. Hon. Wachira Rahab Mukami, MP
10. Hon. Gichimu Robert, MP
11. Hon. (Dr.) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Daniel Maanzo, MP
3. Hon. Wanyonyi Ferdinand, MP
4. Hon. Korir Generali Nixon Kiprotich, MP
5. Hon. Kimani Patrick Wainaina Jungle, MP
6. Hon. Nduati Joseph Ngugi, MP
7. Hon. Anab Mohamed Gure, MP
8. Hon. Bunyasi John Sakwa, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | |
|-----------------------|---------------------------------|
| 1. Mr. Erick Nyambati | Clerk Assistant III |
| 2. Ms. Nuri K. Nataan | Clerk Assistant III |
| 3. Mr. Peter Mwaura | Legal Counsel II |
| 4. Mr. Chelanga Maiyo | Research and Policy Analyst III |

MIN. NO.055/DC-N/2018

PRELIMINARY/COMMUNICATION FROM THE CHAIR

The Chairman called the meeting to order at 10:20 am and proceeded to say the prayer. The agenda was adopted as it was having been proposed and seconded by Hon. Cornelly Serem, M.P. and Hon. Gichimu Robert, MP respectively.

MIN. NO.056/DC-N/2018

CONSIDERATION OF THE REPORT ON THE SACCO SOCIETIES (AMENDMENTS) BILL, 2018

The report on the Sacco Societies (Amendment) Bill, 2018 was considered and the following observations were made:-

- (I) On the Proposed amendment

CLAUSE 2

Seeks to;

1. Amend section 27 of the principal Act by inserting section 27A and 27B to provide that a Sacco Society licensed to undertake deposit-taking business shall incorporate and use the phrase "DT-SACCO" as part of its name at all times; This will ensure that DT-SACCOs which are licensed and prudentially regulated can be separately, distinctively and uniquely

distinguished from other cooperative societies, including other non-deposit taking SACCO Societies

2. Prohibit the use of the phrase “DT-SACCO” by a person who is not licensed to under-take deposit-taking Sacco business under the Act.
3. ~~Accords all existing Sacco Societies a grace period of twelve months to comply with the requirement to incorporate “DT-SACCO” as part of their business name.~~
4. Make provisions requiring that a deposit-taking Sacco society shall not amend its registered by-laws without approval of Sacco Societies Regulatory Authority.
5. Make provisions requiring a co-operative society registered or incorporated as a deposit taking savings and credit co-operative society or Sacco society to obtain a license from the Sacco Societies Regulatory Authority (SASRA) to operate as such.
6. Make provisions that it is an offence for any person to continue using the phrase “DT-SACCO” or any of its derivatives without a licence issued by the Authority.
7. Prohibit Saccos that are registered as non-financial Saccos from providing financial services to the unsuspecting customer. This makes it easier for members of the public to be aware of the licensed Saccos or co-operatives that offer quasi-banking facilities.

CLAUSE 3

8. Proposes to insert anew section 48A immediately after 48 that give power to the Authority to determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society and may bar that person from serving in a Sacco Society. The clause also provides for the parameters the Authority shall consider in determining the suitability of a person. The amendment envisages that the Authority shall vet key officers of SACCOs, by providing for minimum criteria for assessing the fitness and propriety of senior officers of SACCOs, which includes the members of Board of Directors.

CLAUSE 4

9. The clause proposes to deleting subsection (8) and substituting it with a new subsection that imposes minimum standards on significant members and officers of a Sacco Society as prescribed including mandatory continuous or minimum professional development courses, trainings and certification which every director or officer of a Sacco Society must undertake

or attain before serving or seeking to serve as Director or officer of a Sacco Society. This amendment seeks to enable the Authority improve the quality and relevance of the trainings, to develop an enlightened and responsible leadership and management capable of directing and effectively controlling Sacco enterprises for the benefit of members.

CLAUSE 5

10. Amend section 54 subsection (5) by deleting paragraph (b) and substituting it thereof with subsection that will allow Sacco Societies to exchange information on performing and non-performing loans as maybe prescribed by the authority in the manner prescribed by the Banking Act. This will allow circulation of both negative and positive credit information amongst licensed financial institutions including the credit reference bureau.

(II) On the Principal Act (Sacco Societies Act,2008)

11. Notwithstanding the observations made on the proposed amendments, the Committee observed that the bill seeks to amend Sacco Societies Act, 2008 which does not recognize county government.

12. As envisaged in the constitution of 2010, part II of the fourth schedule provides that cooperative Societies are devolved thus county function.

13. There is need to repeal the pre- constitutional Sacco Societies Act, 2008 to align it with the constitution and in the process comprehensive amendments can be made.

MIN. NO.057/DC-N/2017

ADOPTION OF THE REPORT ON THE SACCO SOCIETIES (AMENDMENTS) BILL, 2018

The Committee adopted the report with the following amendments, that:-

CLAUSE 1

Agreed to.

CLAUSE 2

THAT, clause 2 of the Bill be amended by deleting subsection (4) of the proposed new section 27A and substituting therefore the following subsection---

(4) A deposit-taking Sacco society licensed under this Act shall notify the Authority prior to amending its registered by-laws or any provisions thereof.

Justification

This is in tandem with section 5 the Sacco Societies Act, No. 14 of 2008. Section 5 (b) of the Act provides that the mandate of the Authority shall be to regulate and supervise Sacco societies.

CLAUSE 3

THAT, clause 3 of the Bill be amended by deleting subsection (1) of the proposed new section 48A and substituting therefore the following new subsection—

48A (1) The Authority shall determine the suitability and propriety of every person seeking to serve as Board member, Chief Executive Officer or other officer of a Sacco society, and may bar a person from serving in a Sacco society as a Board member, Chief Executive Officer or an officer based on its determination.

Justification

To include Board members in the scope of persons whose suitability and propriety shall be determined by the Authority. The amendment also seeks to delete the term 'Director' and substitute therefore the term 'Chief Executive Officer'. Sacco societies are as a matter of practice headed by a Chief Executive Officer.

CLAUSE 4

THAT, clause 4 of the Bill be amended by deleting the proposed new subsection (8) and substituting therefore the following—

(8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including mandatory continuous or minimum professional

development courses, trainings and certification which every Board member, Chief Executive Officer or an officer of a Sacco Society shall undertake or attain before serving or seeking to serve as a Board member, Chief Executive Officer or an officer of a Sacco Society.

Justification

To require persons serving in the Board to undertake prescribed minimum professional development courses. This will in turn inculcate a culture of professionalism in the management of Saccos.

CLAUSE 5

THAT, clause 5 of the Bill be amended by deleting paragraph (b) of the proposed new section 54 subsection (5) and substituting therefore the following—

(b) Sacco societies shall, in the ordinary course of business exchange information on performing and non-performing loans as may be specified by the Authority and in such manner and to such extent as shall be prescribed under regulations made under the Act

Justification

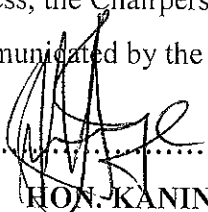
To provide that Sacco societies share information on performing and non-performing loans amongst themselves.

MIN. NO.058/DC-N/2017

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 12.40 p.m. The date for the next meeting to be communicated by the secretariat.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

74.5/2018

MINUTES OF THE 11TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON WENESDAY 28TH MARCH,
2018 IN THE COMMITTEE ROOM ON 4TH FLOOR CONTINENTAL HOUSE, AT 10.00
AM

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Andrew Mwadime, MP
4. Hon. Wanyonyi Ferdinand, MP
5. Hon. Kipruto Moi, MP
6. Hon. Gichimu Robert, MP
7. Hon. Korir Generali Nixon Kiprotich, MP
8. Hon. Kimani Patrick Wainaina Jungle, MP
9. Hon. Nduati Joseph Ngugi, MP
10. Hon. Dr. Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alois Musa Lentoimaga, MP
2. Hon. Alexander Kimutai Kigen Kosgey, MP
3. Hon. Daniel Maanzo, MP
4. Hon. James Mukwe, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Anab Mohamed Gure, MP
7. Hon. Bunyasi John Sakwa, MP
8. Hon. Murungi Kathuri, MP
9. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

STAKEHOLDERS

- | | |
|---------------------------|-----------------------|
| 1. H.E Fahim Yassin Twaha | Governor- Lamu County |
| 2. Mr. Lawi Eugene | CoG Secretariat |
| 3. Mr. Joseph Kung'u | CoG Secretariat |
| 4. Mr. Ronald Odanga | CoG Secretariat |

NATIONAL ASSEMBLY

- | | |
|------------------------|---------------------------------|
| 1. Mr. Erick Nyambati | Clerk Assistant III |
| 2. Ms. Nuri K. Nataan | Clerk Assistant III |
| 3. Mr. Peter Mwaura | Legal Counsel II |
| 4. Mr. Chelanga Maiyo | Research and Policy Analyst III |
| 5. Mr. Yaqub Ahmed | Media Officer III |
| 6. Ms. Winifred Atieno | Audio Officer |

MIN. NO.047/DC-N/2018

PRELIMINARY/COMMUNICATION FROM THE CHAIR

The Chairman called the meeting to order at 10:20 am, proceeded to say the prayer and introductions.

MIN. NO.048/DC-N/2018

MEETING WITH THE COUNCIL OF GOVERNORS.

The Council of Governors Chairman in charge of Trade H.E Fahim Yassin Twaha, Governor Lamu County appeared before the Committee and submitted that the Council considered the following:

- i. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including cooperatives societies
- ii. Inclusion of the County Governments in the registration, licensing and regulations of the SACCO Societies.

In regard to the Constitutional threshold, he submitted that;

The constitution of Kenya, 2010 at Article 186 provides for functions of the two levels of government established under Article 6 (2) of the constitution. These functions are listed under part I and II of the Fourth Schedule to the constitution. Part II of the Schedule provides for the functions of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licenses, fair trading practice, local tourism and cooperative societies.

The SACCO Societies Act, 2008 does not provide for the functions of the devolved system of Government. This is despite the fact that it is a function of the country government to regulate and develop co-operative societies as provided for under section 7 of part II of the fourth schedule. This has left critical gaps that can be exploited to the detriment of the growth and development. The same apply in the Bill. The proposed amendments do not give counties the mandate to regulate the Sacco societies..

In regard to inclusivity of County Government in the Registration, Licensing and regulation of the Sacco Societies, he informed the Committee that;

The Council proposed that there is need to review the whole principal Act (Sacco's Societies Act 2008) since it was enacted pre-devolution when County Government were not in place. It would be a challenge for the council to review and give proposals of the proposed amendment that is before the house, if already, we have major issues with the Principal Act.

Some of the issues include but not limited to;

- 1) Object and Function of the Authority
- 2) The powers given to the Minister giving the Authority to specify the non-deposit taking business and measure the conduct of the specified business
- 3) Composition of the Board Of Authority

- 4) The Sacco Society levy- the Act provides that the Authority may by order published in the Gazette, Impose a levy to be known as the Sacco Societies levy on the deposits held in deposit-taking Sacco Societies, or on such other base as the Authority may determine in case of Sacco societies carrying out non-deposit taking business specified under section 3(2). (2) A levy imposed under this section shall be payable at the opportunity to collect revenue from the SACCOs.
- 5) Licensing of SACCO societies in the Act. The Principal Act requires Sacco's to have been registered under the Co-operative societies Act, it's important to note that the Act does not recognize the County Governments.
- 6) Regulation and supervision of SACCO societies.

The council noted that under the devolved system of Government, the county governments should be responsible for co-operative enterprise development in their respective counties thus the Act should clearly address the roles of the County Governments as envisaged in the constitution

The council recommended as follows;

- 1) Formation of intergovernmental technical committee to review the entire principal Act since it's a legislation that was passed before the coming in of county Governments
- 2) Further Amendments to the Cooperative Societies Act. The cooperative Society Act 1997 does not recognize counties yet the Sacco Societies Act keeps referring to it
- 3) The Sacco Society (Amendment) Bill, 2018 only address a small part of the principal Act.

MIN. NO.049/DC-N/2017

COMMITTEE OBSERVATION

The Committee observed the following from the presentation, that;-

1. The council of governors have no objection to the amendments,
2. Levies at county level should be restricted to Sacco's at the county level only,

3. There is need overhaul the Cooperatives Act, 2008 to make sure it encompass the County Governments,
4. Academic and integrity of the leaders of Sacco's should be pressed upon as this will ensure the success of Sacco's.

MIN. NO.050/DC-N/2017

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 10.50 a.m. Date for the next meeting to be communicated by the secretariat.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

14. 5 / 2018

MINUTES OF THE 10TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 27TH MARCH, 2018
IN THE MAIN CHAMBER, PARLIAMENT BUILDINGS, AT 10.00 AM

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Andrew Mwadime, MP
3. Hon. Daniel Maanzo, MP
4. Hon. Jones Mlofwa, MP
5. Hon. Wanyonyi Ferdinand, MP
6. Hon. Kipruto Moi, MP
7. Hon. Wachira Rahab Mukami, MP
8. Hon. Gichimu Robert, MP
9. Hon. Korir Generali Nixon Kiprotich, MP
10. Hon. Nduati Joseph Ngugi, MP
11. Hon. (Dr) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Cornelly Serem, M.P. –**Vice Chairperson**
2. Hon. Alois Musa Lentoimaga, MP
3. Hon. Alexander Kimutai Kigen Kosgey, MP
4. Hon. James Mukwe, MP
5. Hon. Anab Mohamed Gure, MP
6. Hon. Bunyasi John Sakwa, MP
7. Hon. Kimani Patrick Wainaina Jungle, MP
8. Hon. Murungi Kathuri, MP

IN ATTENDANCE

STAKEHOLDERS

- | | |
|----------------------------|--|
| 1. Mr. George Ototo, MBS | Managing Director - KUSCCO |
| 2. Mr. Daniel Ogera Marube | Executive Director - Cooperative alliance of Kenya |
| 3. Mr. Alphonse M. Kaio | CEO - Mwalimu National SACCO |
| 4. Ms. Mercy Njeru | Advocacy Manager - KUSCCO |
| 5. Ms. Linda Karimi | Corporate Affairs - KUSCCO |

NATIONAL ASSEMBLY

- | | |
|------------------------|---------------------------------|
| 1. Mr. Erick Nyambati | Clerk Assistant III |
| 2. Ms. Nuri K. Nataan | Clerk Assistant III |
| 3. Mr. Peter Mwaura | Legal Counsel II |
| 4. Mr. Chelanga Maiyo | Research and Policy Analyst III |
| 5. Mr. Yaqub Ahmed | Media Officer III |
| 6. Ms. Winifred Atieno | Audio Officer |

MIN. NO.044/DC-N/2018

**PRELIMINARY/COMMUNICATION FROM
THE CHAIR**

The Chairman called the meeting to order at 10:05 am, proceeded to say a word of prayer and introductions.

MIN. NO.045/DC-N/2018

**CONSIDERATION OF THE SACCO
SOCIETIES (AMENDMENTS) BILL, 2018**

Submission by Cooperative Alliance of Kenya Ltd

The CEO Cooperative Alliance of Kenya ltd Mr. Daniel Marube appeared before the Committee and submitted as follows in regard to proposed amendments; That

1. They did not oppose the entrenching of the word deposit taking for Saccos that carry out deposit taking business even though such would attract costs.
2. The Sacco Societies are registered under Cooperative Societies in which their bylaws are primary documents in the registration as contained in the Cooperatives Act and not in the Sacco Societies Act
3. Requiring Deposit taking Saccos to seek authority from SASRA requires a comprehensive amendments of all cooperative sector to align the sector to the constitution of Kenya, 2010
4. Not all bylaws of Deposit taking Saccos are of financial matters, some are non-financial thus deposit taking Saccos may seek authority from SASRA before amending the bylaws that have financial implications only.
5. Seeking authority to change bylaws from SASRA is giving it too much latitude and powers
6. Registering with SASRA to carry out deposit taking business is too much borrowing from the Banking Act thus forcing such Saccos to conform to banking Act provision without recognizing the difference in formation, registration and difference in marketing environment.
7. Sacco Societies are founded on the cooperative principle of democracy and member control thus SASRA cannot determine suitability and propriety of every person seeking to serve as a director or officer of society.
Imposing minimum standards on courses, trainings and certification will be too prescriptive for Saccos and may be abused by the regulator
8. The Banking Act that prescribes the exchange of information on performing and non-performing loans should be specified
9. Sharing of information on credit by logging in deposit Saccos into credit reference bureau is a good development in warding off bad borrowers.

Submission by Kenya Union of Savings and Credit Co-Operatives Ltd.

The chief Executive officer of KUSCCO appeared before the Committee and submitted as follows, that:-

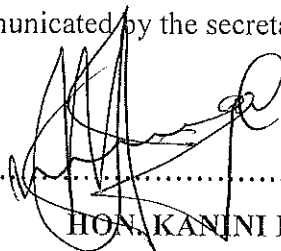
1. In regard to inserting Section 27A-, SACCOS should retain their identity as per the SACCO Act 2008, since all SACCOS are deposit taking.
2. Sub Section 4 of 27A to be, amended to read “a deposit taking SACCO shall notify the authority amendments in its by-laws” since stakeholders hold the view that a by-law creates co-operatives and as such, is the function of the registrar of co-operatives.
3. In reference to section 27B, segregation of duty be maintained for governance purposes since the stakeholders observed that SACCOS are co-operatives registered by the Commissioner of Co-operatives and are specified as financial co-operatives. SASRA cannot promote, supervise and regulate, all at the same time, since there will be no oversight and will lead to double registration.
4. Section 48 A(1) of the bill be amended to, replace the word ‘Authority’ with ‘Annual General Meeting (AGM)’ or ‘the Board’ ‘nominations committee’ which are the decision making organs of a SACCO since directors go through the ‘fit and proper test’ according to Section 24(f), of the SACCO Societies Act 2008. Furthermore, directors are elected by members, who are the supreme decision makers in the SACCO.

MIN. NO.046/DC-N/2018

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11.55 a.m. Date for the next meeting to be communicated by the secretariat.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

MINUTES OF THE 9TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON FRIDAY 9TH MARCH, 2018 IN
ARABUKO II CONFERENCE ROOM, PRIDE INN HOTEL AND SPA, MOMBASA, AT
2.30 PM

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Bunyasi John Sakwa, MP
6. Hon. Daniel Maanzo, MP
7. Hon. James Mukwe, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Murungi Kathuri, MP
10. Hon. Wanyonyi Ferdinand, MP
11. Hon. Gichimu Robert, MP
12. Hon. Kimani Patrick Wainaina Jungle, MP
13. Hon. Korir Generali Nixon Kiprotich, MP
14. Hon. Nduati Joseph Ngugi, MP
15. Hon. Dr. Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Kipruto Moi, MP
3. Hon. Anab Mohamed Gure, MP
4. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

1. Mr. Erick Nyambati
2. Ms. Nuri K. Nataan
3. Mr. Peter Mwaura
4. Mr. Chelanga Maiyo
5. Mr. Yaqub Ahmed
6. Ms. Winifred Atieno

NATIONAL ASSEMBLY

- Clerk Assistant III
Clerk Assistant III
Legal Counsel II
Research and Policy Analyst III
Media Officer III
Audio Officer

MIN. NO.038/DC-N/2018

**PRELIMINARY/COMMUNICATION FROM
THE CHAIR**

The Chairman called the meeting to order at 2:30 pm and proceeded to say the prayer.

MIN. NO.039/DC-N/2018

**CONSIDERATION OF DRAFT REPORT ON
THE SACCO SOCIETIES (AMENDMENTS)
BILL, 2018**

The Committee considered the draft report of the Sacco Societies Amendment Bill Clause by Clause and resolved that;

1. The Committee to request the Speaker for more time preferably three weeks for more public participation and to understand what the Bill seeks to amend in order to come up with solid recommendations,
2. The following stakeholders to be invited to give their submissions regarding the Bill
 - a) Council of Governors
 - b) Mwalimu Sacco Society Ltd
 - c) Harambee Sacco Society Ltd
 - d) Cooperative Alliance of Kenya
 - e) Kenya Union Of Savings and Credit Cooperatives Ltd

MIN. NO.040/DC-N/2017

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 3.45 p.m. Date for the next meeting to be communicated by the secretariat.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

14/05/2018

MINUTES OF THE 8TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON FRIDAY 9TH MARCH, 2018 IN
ARABUKO II CONFERENCE ROOM, PRIDE INN HOTEL AND SPA, MOMBASA, AT
9.00 AM.

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Bunyasi John Sakwa, MP
6. Hon. Daniel Maanzo, MP
7. Hon. James Mukwe, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Murungi Kathuri, MP
10. Hon. Wanyonyi Ferdinand, MP
11. Hon. Gichimu Robert, MP
12. Hon. Kimani Patrick Wainaina Jungle, MP
13. Hon. Korir Generali Nixon Kiprotich, MP
14. Hon. Nduati Joseph Ngugi, MP
15. Hon. (Dr) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Kipruto Moi, MP
3. Hon. Anab Mohamed Gure, MP
4. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

1. Mr. Erick Nyambati
2. Ms. Nuri K. Nataan
3. Mr. Peter Mwaura
4. Mr. Chelanga Maiyo
5. Mr. Yaqub Ahmed
6. Ms. Winifred Atieno

NATIONAL ASSEMBLY

- Clerk Assistant III
Clerk Assistant III
Legal Counsel II
Research and Policy Analyst III
Media Officer III
Audio Officer

MIN. NO.035/DC-N/2018

**PRELIMINARY/COMMUNICATION FROM
THE CHAIR**

The Chairman called the meeting to order at 9:30 am and proceeded to say the prayer.

MIN. NO.036/DC-N/2018

**CONSIDERATION OF MEMORANDA FROM
KUSCCO REGARDING THE SACCO
SOCIETIES (AMENDMENTS) BILL, 2018**

The Chair informed the Committee that after placing an advert in the dailies on 22nd February, 2018 requesting for submission of memoranda from the public, the Committee received only one memorandum from Kenya Union of Savings and Credit Cooperatives Ltd.

The Committee proceeded to consider the memoranda as follows, that:-

Committee Observations

The Committee observed the following while considering the memoranda, that:-

1. All Sacco's are deposit taking business,
2. There is need to understand criteria for Sacco's that are to be regulated by SASRA and those that are regulated by the Commissioner of Cooperatives,

3. Academic qualifications for the directors of SACCOs should be clear and within the framework of social equity,
4. Need for a different framework to address the PSV menace in the Sacco sector,
5. There need for further public participation in order to capture the views of players in the industry.

MIN. NO.037/DC-N/2017

ADJOURNMENT

The Chairperson adjourned the meeting at 12.25 p.m. The next meeting will be held the same day at 2.30 pm in the same venue.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

14.5.2018

MINUTES OF THE 7TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY 8TH MARCH, 2018
IN ARABUKO II CONFERENCE ROOM, PRIDE INN HOTEL AND SPA, MOMBASA,
AT 2.30 PM.

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Bunyasi John Sakwa, MP
6. Hon. Daniel Maanzo, MP
7. Hon. James Mukwe, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Murungi Kathuri, MP
10. Hon. Wanyonyi Ferdinand, MP
11. Hon. Gichimu Robert, MP
12. Hon. Kimani Patrick Wainaina Jungle, MP
13. Hon. Korir Generali Nixon Kiprotich, MP
14. Hon. Nduati Joseph Ngugi, MP
15. Hon. Dr. Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Kipruto Moi, MP
3. Hon. Anab Mohamed Gure, MP
4. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

1. Mr. Nicholas Emejien
2. Mr. Erick Nyambati
3. Ms. Nuri K. Nataan
4. Mr. Peter Mwaura
5. Mr. Chelanga Maiyo
6. Mr. Yaqub Ahmed
7. Ms. Winifred Atieno

NATIONAL ASSEMBLY

- Deputy Director, Committee Services
- Clerk Assistant III
- Clerk Assistant III
- Legal Counsel II
- Research and Policy Analyst III
- Media Officer III
- Audio Officer

IN ATTENDANCE

1. Mr. Ali Noor Ismael
2. Mr. John Mwaka
3. Ms. Mary Mungai
4. Ms. Roselyne Ragama
5. Mr. Jeremiah Were

Sacco Societies Regulatory Authority (SASRA)

- PS MOITC
- CEO SASRA
- Commissioner for Cooperatives
- Head Of Legal
- Head of Policy

MIN. NO.032/DC-N/2018**PRELIMINARY/COMMUNICATION FROM
THE CHAIR**

The Chairman called the meeting to order at 3:00 pm and proceeded to say the prayer.

MIN. NO.033/DC-N/2018**MEETING WITH SASRA**

The Chairperson invited the Members for a plenary session on the presentations made during the morning session by SASRA in which the following was noted, that;-

1. All Saccos are deposit taking and are classified as Back Office Sacco (BOSA) and Front Office Sacco (FOSA) however there is a clear distinction between the Deposit Taking

and Non Deposit Taking SACCOs as defined in the SACCOs Societies Act, 2008 under section 2,

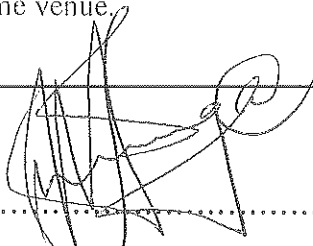
2. The prudential guidelines that apply to the SACCOs are lower level from the Ones used by banks authored by the Central Bank. The Microfinance Banks are regulated by the ~~Central Bank of Kenya under the Microfinance Act~~
3. In regards to licensing and regulation framework, all SACCOs are registered by the Commissioner of cooperatives under the Cooperatives Act. SASRA was created to enhance supervision of SACCOs in a prudent manner. There are 174 SACCOs which are regulated by SASRA and they controls about 80% of the sector capital. SASRA runs the affairs of SACCOs in consistent with the Legislation
4. The objective of the Matatu Cooperatives is to enhance savings therefore the sector should be distinguished from SACCOS.
5. Microfinance institutions have its membership from the public while the SACCOs are internal membership with common goal.
6. The prudential guidelines are defined within the capital requirements, liquidity and investment portfolio
7. Justification for amendment is to protect the members' interest on savings and investment
8. There are 12,500 Non deposit talking SACCOs licensed, but there is need for more significant SACCOs to be monitored through licensing as they have a great impact on the economy hence the need for Amendments in the by-laws to graduate the Non DT Saccos to the DT level,
9. All SACCOs are cooperatives and protect the public interest in SACCOs
10. The role of the two tier levels of government is clear. The regulatory framework is defined on the coverage. Supervision is done by the county government- the CCD is developing a policy on intergovernmental relations to enhance coordination of the SACCO sector.
11. Enlightenment of the Committee on the need to amend the SACCO Societies Act, 2008 is very important as it impacts greatly on the legislation and management of SACCOs. The SASRA team will endeavor to enhance cooperation with the committee on Trade Industry and Cooperatives to ensure clarity in the legislative framework in the sector.

12. The Ministry has developed a framework to support the operational approach however the budget requirements is low hence the need for the Committee to champion for more budgetary allocation to fast track the implementation of policy guidelines. The Regulations on the SACCO sector were adopted in 2010.
13. International credit information sharing as well as the credit financial institutions needs to be interrogated further to see if it will make Saccos vulnerable. Ensure that best practices are adopted by the SACCOs with regard to the World Credit Cooperative Union (WOCCU)
14. Governance remains key thematic area in the management of Saccos
15. There is need for flexibility in the management of SACCOs and the application of the prudential guidelines as set out in the CBK regulations
16. There is need to define the operational meaning of the word SACCO to discern the performance of the sector.
17. Understand the best practice of Saccos in other jurisdictions
18. Rationalize the use of the SACCO name by the transport PSV sector
19. Members to be appraise on the extent of licensing role by the sector regulators
20. Concerned with the **ponzi** schemes within the sector, these SACCOs are failing their members.
21. There is need for a framework to protect members' deposits for those outside the SASRA
22. Over regulation causes distortion in the management of SACCOs
23. Academic qualifications for the directors of SACCOs should be clear and within the framework of social equity and time frame for directors in office
24. The regulator to develop proposal on how to deal with Non- Deposit taking Saccos given that group is critical in the economy to protect the sector players other than the 174 Sacco's which are regulated by SASRA
25. Bearing in mind the County governments' mandate on Cooperative Societies, there in need to find a better way to coordinate the sector regulation

MIN. NO.034/DC-N/2017

ADJOURNMENT

The Chairperson adjourned the meeting at 5.45 p.m. The next meeting is to be held on Friday 9th March, 2018 at 9.00 am in the same venue.



SIGNED.....

HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

14.5/2018

MINUTES OF THE 6TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY 8TH MARCH, 2018
IN ARABUKO II CONFERENCE ROOM, PRIDE INN HOTEL AND SPA, MOMBASA,
AT 9.00 AM.

PRESENT

1. Hon. Kanini Kega, M.P. – **Chairperson**
2. Hon. Cornelly Serem, M.P. – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Bunyasi John Sakwa, MP
6. Hon. Daniel Maanzo, MP
7. Hon. James Mukwe, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Murungi Kathuri, MP
10. Hon. Wanyonyi Ferdinand, MP
11. Hon. Gichimu Robert, MP
12. Hon. Kimani Patrick Wainaina Jungle, MP
13. Hon. Korir Generali Nixon Kiprotich, MP
14. Hon. Nduati Joseph Ngugi, MP
15. Hon. Dr. Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Kipruto Moi, MP
3. Hon. Anab Mohamed Gure, MP
4. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

1. Mr. Nicholas Emejen
2. Mr. Erick Nyambati
3. Ms. Nuri K. Nataan
4. Mr. Peter Mwaura
5. Mr. Chelanga Maiyo
6. Mr. Yaqub Ahmed
7. Ms. Winifred Atieno

NATIONAL ASSEMBLY

- Deputy Director, Committee Services
Clerk Assistant III
Clerk Assistant III
Legal Counsel II
Research and Policy Analyst III
Media Officer III
Audio Officer

IN ATTENDANCE

1. Mr. Ali Noor Ismael
2. Mr. John Mwaka
3. Ms. Mary Mungai
4. Ms. Roselyne Ragama
5. Mr. Jeremiah Were

SASRA

- PS MOITC
CEO SASRA
Commissioner for Cooperatives
Head of Legal
Head of Policy

MIN. NO.028/DC-N/2018

**PRELIMINARY/COMMUNICATION FROM
THE CHAIR**

The Chairman called the meeting to order at 9:30 am and proceeded with a word of prayer. After introductions he welcomed the Members to deliberate on the day's agenda. The agenda was adopted having been proposed by Hon. Cornelly Serem, MP and seconded by Hon Daniel Maanzo, MP.

The minutes of the previous sittings were confirmed as the true records of the proceedings and signed by the Chairperson the Hon. Kanini Kega, MP as follows:-

- i. ~~The minutes of the 1st sitting was proposed and seconded by Hon. Ferdinand Wanyonyi, MP and Nixon Korir, MP respectively.~~
- ii. The minutes of the 2nd sitting was proposed and seconded by Hon. Andrew Mwadime, MP and Hon. James Mukwe, MP respectively.
- iii. The minutes of the 3rd sitting was proposed and seconded by Hon. (Dr) Wilberforce Oundo, Phd, MP and Robert Gichimu, MP respectively.
- iv. The minutes of the 4th sitting was proposed and seconded by Hon. Jones Mlolwa, MP and Hon. Ferdinand Wanyonyi, MP respectively.
- v. The minutes of the 5th sitting was proposed and seconded by Hon. Alois Lentoimaga, MP and Hon. Nixon Korir, MP respectively.

The Principal Secretary for State Department of Cooperatives Mr. Ismail Noor accompanied with Mr. Mwaka the CEO SASRA appeared before the Committee and submitted as follows;

Principal Secretary State Department of Cooperatives

The Principal Secretary for State Department of Cooperatives Mr. Ismail Noor appeared before the Committee and made the following submissions regarding the aforementioned Bill; That; The prudential regulation of DT-SACCOs which commenced in 2010 has seen a tremendous improvement in their overall financial stability, and in addition has contributed to the expansion of access to financial services among Kenyans.

The *Kenya Vision 2030 Sector Plan for Financial Services 2013 -2017* acknowledges the need for a comprehensive policy and legislative review of the Sacco Societies Act in order to fully

implant the new regulatory framework; remove the apparent regulatory arbitrage between DT-SACCOs and the non-deposit-taking Sacco Societies; consolidate the deposit-taking Sacco segment in order to effectively contribute in deepening access to financial services by members and their businesses.

Towards this end, four key policy areas were proposed for incorporation and implementation during the 2015/2016 and 2016/2017 fiscal years namely;

- a) Legal protection of the identities of DTs: The proposal seeks to provide DT-SACCOs with a unique name that distinguishes them from other forms of cooperatives, particularly the non- DT-SACCOs. It further provides legal restrictions and limitations to the usage of the unique identity of DT-SACCOs.
- b) Criteria for determining suitability of officers of SACCO Societies: The proposal seeks to inculcate integrity and propriety among officers serving in DT-SACCOs.
- c) Credit Information Sharing: The proposal seeks to align the sharing of credit information emanating from the DT-SACCOs, with other credit players particularly the Banks; in addition to expanding the credit information that ought to be shared to include both positive and negative. It aligns the CIS platforms with that obtaining in the Banking sector.

These resulted in the publication of the Sacco Societies (Amendment) Bill 2016. The Bill successfully went through the National Assembly and was forwarded to the Senate, as it touched on cooperatives affairs which are devolved. Parliament was however adjourned for elections before Senate could deal with the Bill.

This led to the re-publication of the Bill as the Sacco Societies (Amendment) Bill, 2018 which is similar to the 2016 version, but the consultation processes had to be done afresh.

Sacco Societies Regulatory Authority (SASRA)

The CEO SASRA submitted as follows; that;-

1. The introduction of the prudential regulatory framework for deposit taking SACCO Societies (DTS) in Kenya in 2010, raised concerns relating to the usage of the name “SACCO” or “SACCO Society” within the larger cooperative sector. In particular, a lot of concerns have emerged relating to the extent to which DTSs which are licensed and prudentially regulated can be separately, distinctively and uniquely distinguished from other cooperative societies, including other non-deposit taking SACCO Societies (**non-DTS**).
2. These concerns are borne out from the fact that many cooperative societies have been invariably using the name “SACCO” or “SACCO Society”, to the extent that in common parlance, it has become difficult to know the differences between a **Cooperative Society**, a **SACCO Society**, a **deposit taking SACCO Society (DTS)** and a **non-depositing taking SACCO Society (non-DTS)**. The emergence and exponential growth of “**Matatu or PSV SACCOs**” have further fueled the concerns, with critical questions being asked as to the extent of the Authority’s (SASRA) jurisdictional mandate, and whether it extends to such entities like the “**Matatu or PSV SACCOs**”
3. In this maze of identity confusion and misinformation, the greatest losers are and have been the **DTSs** because of the unique quasi-banking business that they undertake; and besides the fact that they are the only segment of the cooperative network which is strictly subjected to prudential regulations, which gives them a competitive business edge, over the non-DTSs and other forms of cooperatives. In deed it is this competitive business edge that the non-DTSs and other forms of cooperative societies clamor for and/or ride upon when they use the name, “SACCO’ or “SACCO Society” which is borne by the general public perception that the entire SACCO Society segment is prudentially regulated.
4. This misapprehended perception is practically evidenced by the number of public complaints and queries concerning the unregulated segment of the cooperative sector which are often referred to the Authority (SASRA) for resolution by members of the public, civil society and even government agencies. The fact that both the Sacco Societies

Act and Cooperative Society Act did not secure the identities of the DTSSs or the usage of the word “SACCO” has further exacerbated the confusion.

5. Consequently, there is a legitimate call for drift in the legal and policy framework within the cooperative sector, in order to secure the legal identities of DTSSs, together with the unique regulatory framework that appertains to them thus supporting the proposed Amendment that seeks to amend the principal Act by inserting section 27A and 27B immediately after section 27 as in the Sacco Societies (Amendment) Bill, 2018.
6. The Sacco Societies Act envisaged that the Authority shall vet key officers of SACCOs, through the “*Fit & Proper Test*” form provided in the Regulations. However, there is no explicit provision in the Act, to authorize such vetting, as it is with the Capital Markets or the Banking sectors.
7. It is thus proposed that a legal provision to stipulate in non-ambiguous terms the minimum criteria for assessing the fitness and propriety of senior officers of SACCOs which includes the members of Board of Directors and senior managers be incorporated in the Sacco Societies Act. This proposal is tailored along the standard lines in the Capital Markets Act, Microfinance Act and the Banking Act, and is in line with the universal principles of regulations and supervision of financial institutions, particularly those that undertake deposit-taking business.
8. The policy proposal was adopted as a governmental policy position by the Cabinet Secretary for the National Treasury, in the Budget Statement for the 2015/2016 Fiscal Year presented to the National Assembly on 11th June 2015.
9. The proposal seeks to introduce a new Section 48A to the Sacco Societies Act as well as amend Section 50(8) of the Act as proposed in the as in the Sacco Societies (Amendment) Bill, 2018 to provide criteria for determining the suitability of officers holding positions of responsibility in SACCO Societies.
10. The current legal framework on credit information sharing (CIS) is limited to inter-Sacco sharing of negative information only, and with the Authority. It therefore excludes the sharing of positive information or sharing with other financial institutions. This is contrary to the prevailing policy direction in which the sharing of credit information has been expanded to both negative and positive.

11. In deed one of the critical strategies under the “Comprehensive financial sector reform and development (CFSRD) strategy” under Vision 2030 slated for the period 2012-2017, is to expand the current credit information sharing (CIS) mechanism to SACCOs. Specifically CIS is recognized a key strategy in enhancing efficiency in SACCOs and MFIs and also reduce systemic risks.

12. There is therefore a need to amend the Sacco Societies Act to make provision for CIS by SACCOs with other licensed financial institutions through the licensed CRBs, and also the sharing of full-file information. This will equally align the Sacco Societies Act with the Banking Act as amended in 2013, the Microfinance Act, and the Credit Reference Bureau Regulations, 2013, thereby bringing CIS under a single regulatory framework.

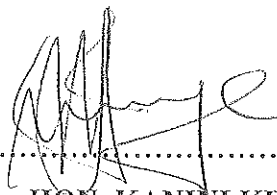
13. The policy proposal was adopted as a governmental policy position by the Cabinet Secretary for the National Treasury, in the Budget Statement for the 2015/2016 Fiscal Year presented to the National Assembly on 11th June 2015.

MIN. NO.031/DC-N/2017

ADJOURNMENT

The Chairperson adjourned the meeting at 12.45 p.m. The next meeting is to be held at 2.30pm in the same venue.

SIGNED.....



HON. KANINI KEGA, M.P

(Chairperson)

DATE.....

14/05/2018

