



REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – SECOND SESSION

REPORT OF THE COMMITTEE
ON
REGIONAL INTEGRATION ON THE CONSIDERATION OF
THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2014; THE
EAST AFRICAN COMMUNITY INTEGRATION (EDUCATION) BILL, 2014; AND THE EAST
AFRICAN COMMUNITY COOPERATIVE SOCIETIES BILL, 2014

PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2014

PREFACE

Mr. Speaker, Sir

The Committee on Regional Integration one of the select committees of the National Assembly established under Standing Order 212 and mandated to, inter alia; 'examine the Bills introduced in East African Legislative Assembly and Acts of the East African Community'.

Mr. Speaker, Sir

The Committee on Regional Integration was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

The Hon. Florence Kajuju, MP (**Chairperson**)

The Hon. Christopher Nakuleu, MP (**Vice Chairperson**)

The Hon. David Ouma Ochieng, MP

The Hon. Dan Kazungu, MP

The Hon. Bady Twalib Bady, MP

The Hon. Robert Mbui, MP

The Hon. Anyanga Andrew Toboso, MP

The Hon. Florence Mwikali Mutua, MP

The Hon. Ogendo Rose Nyamunga, MP

The Hon. Charles Mutisya Nyamai, MP

The Hon. Alois Lentoimaga, MP

The Hon. Anthony Kimaru, MP

The Hon. David Kariithi, MP

The Hon. Wanjiku Muhia, MP

The Hon. Murungi Kathuri, MP

The Hon. Ali Wario, MP

The Hon. Eric Keter, MP

The Hon. Mary Seneta, MP

The Hon. Gideon Konchella, MP

The Hon. Dido Ali Rasso, MP

The Hon. Ann Nyokabi, MP

The Hon. Emmanuel Wangwe, MP

The Hon. Peter Shehe, MP

The Hon. Alex Mwiru, MP

The Hon. Mark Lomunokol, MP

The Hon. Sarah Korere, MP

The Hon. Cyprian Kubai Iringo, MP

The Hon. Timothy Bosire, MP

The Hon. Joseph Kahangara, MP

Mr. Speaker, Sir,

On 11th February, 2014, the following Bills from East African Legislative Assembly were tabled in the House by the Majority Leader:

1. East African Community Cross Border Legal Practice Bill, 2014 sponsored by the The Hon. Dora C. Kanabahita Byamukama, Member of East African Legislative Assembly
2. The East African Community Integration (Education) Bill, 2014 by the The Hon. Abubakar Zein Abubakar, Member of East African Legislative Assembly
3. The East African Community Cooperative Societies Bill, 2014 by the The Hon. Mike Kennedy Sebalu, Member of East African Legislative Assembly

Mr. Speaker, Sir,

Standing Order 251 provides that whenever the Clerk of the National Assembly receives copies of the records of relevant debates of the meetings of the East African Legislative Assembly, or copies of Bills introduced into the East African Legislative Assembly and Acts of the East African Community, the Clerk shall forward the records of debates, Bills or Acts of the Community to the relevant Committee. The Committee shall consider this report and submit its report to the House within twenty one days (21) for Consideration. Upon consideration of the Committee's report, the Clerk of the National Assembly shall forward the House's resolutions to the Clerk of the East African Legislative Assembly within seven days.

In accordance with Article 65(b) of the Treaty, the Clerk of the East African Legislative Assembly requested the Kenya National Assembly (in his forwarding letter) to consider the Bills and submit its views by 25th March, 2014.

In processing the Bills, the Committee called for memoranda from the stakeholders pursuant to Standing Order 127(3) and Article 118(b) of the Constitution. The following institutions sent their memoranda on the Bills:

1. The Ministry of East African Affairs, Commerce & Tourism
2. The Kenya Law Society
3. Kenya Private Sector Alliance
4. Attorney General
5. Kenya Law Reform Commission
6. Ministry of Education
7. Council for University Education
8. Sacco Regulatory Authority (SASRA)
9. Kenya Union of Savings & Credit Co-operatives Ltd (KUSCCO)
10. Council for Legal Education

Consideration of the Bills

Mr. Speaker, Sir,

In examining the Bills, the Committee noted the following:

1. Cross East African Community Cross Border Legal Practice, 2013

The object of the Bill is to provide for conduct and regulation of cross border legal practice in the East African Community. The Bill operationalises Article 126 of the Treaty by harmonizing the legal training and certification with the partner states. It will also operationalise Articles 10, 76 and 11 of the Treaty on the free movement of labour.

In considering the Bill, the Committee observed that the proposed East African Community Council will be not having a representative from the Institutions offering legal training among the Partner states if the Bill was to pass in its current form. To effectively harmonize legal training, there is need for inclusion of a representative of academia from each partner state.

2. East African Community Cooperative Societies Bill, 2014

The Bill makes minimal reference to the East African Community Treaty and the relevant statutes governing Saccos in individual partner States. It merely creates a regional Cooperative Society without providing how these Saccos will be interlinked and regulated both within their countries and regionally. Mode of formation of the cooperative is not clear as the integration component has not been addressed by the Bill. The Constitution of Kenya recognizes that Saccos is a devolved function and therefore there it is apparent that there will be divergent rules and regulations governing them from one county to the other.

If passed in its current form, the Bill will override all national legislations governing Saccos as provided in clause 54. It should take cognizance of the fact that the licensing, supervision and regulation of SACCOs as deposit taking institution is not covered in the bill, and thus domestic laws such as Sacco Societies Act, 2008 ought to take precedence when it comes to prudential regulations of SACCOs.

3. The East African Community Integration (Education) Bill, 2014

The Bill proposes the creation of an Integration Education Unit within the Secretariat with a mandate to coordinate integration education activities in the partner states, develop relevant materials and set standards and quality control measures amongst other functions.

In examining the Bill, the Committee observed that there is a clear mismatch of the title from the contents of the Bill. Whereareas the Bill sets its object as that of providing civic education to the

people of the community in line with the people centeredness initiative of integration, the content of the Bill goes beyond civic education by regulating standards of education in partner states.

Appreciation

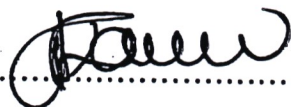
Mr. Speaker, Sir,

The Committee is thankful 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 all the stakeholders for their participation in scrutinizing the Bills. Finally, I wish to express my appreciation to the Honourable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

Mr. Speaker, Sir,

It is therefore my pleasant duty and privilege, on behalf of the Committee on Regional Integration, to table its report in the House on the consideration of the East African Community Cross Border Legal Practice Bill, 2014; East African Community Cooperative Societies Bill, 2014; and East African Community Integration (Education) Bill, 2014.

Signed



THE HON. FLORENCE KAJUJU, MP

CHAIRPERSON,

COMMITTEE ON REGIONAL INTEGRATION

Date:

25/3/2014

CONSIDERATION OF THE BILLS

1. EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2014

The Committee considered the Bill clause by clause and deduced the following:-

The definitions/ interpretations under clause 2 should be made in such a manner that they recognize that an advocate would be licenced by the National Bar Associations having met the stipulated qualifications in that partner state. Having been registered by the National Bar Association, an advocate will automatically be enrolled in the EAC advocates register and therefore eligible to practice in other Partner States. This will avoid double registration.

The proposal in Clause 4(2) to have the a representative of the East African Law Society as the Secretary to the Council will defeats the law of fair play. It is important for the Council to competitively recruit its secretary from among the partner states.

The proposed composition of the Council under clause 4 excludes the important role played by the academia in legal training. To achieve the objective of harmonization of legal training and certification as contained in clause 3(b), there is need for inclusion of a representative of the universities offering legal education from each partner state. It would also be important for the partner states to ensure gender representation when making nominations to the council.

The envisaged council in the Bill will be a unit of the EAC and therefore it should be funding from the EAC budget as opposed to fees charged on issuance of a practicing certificate. It will be important if the council was allowed to raise funds through any other means to support the performance of its functions. Regional practicing certificates should be issued by the National Bar associations; who will retain the fees charged for that service.

2. EAST AFRICAN COMMUNITY COOPERATIVE SOCIETIES BILL, 2014

The Committee considered the Bill clause by clause and deduced the following:

The Constitution of Kenya 2010

The principal legislation/statute governing the registration of Co-operative Societies is the Cooperative Societies Act (CSA) Cap 490 under the administration of the Commissioner of Cooperative Development. However, the 4th schedule to the Constitution classifies Cooperative societies as a devolved function of the County Governments meaning that registration of Cooperative Societies shall be devolved to the County Governments giving power to County governments to enact their own county legislations to govern registration and regulation of the Cooperative Societies with the counties jurisdictions.

The bill ought to recognize the fact that there may be more than one "appropriate authority" in Kenya as defined in Clause 7 and read with Clause 2 thereof.

With the exception of internationally best practices in cooperatives, there is a possibility that the various Cooperative Societies legislations which may crop up from the County governments to govern registration may markedly differ. This may only be addressed through a national policy and legislation prescribing the minimum contents of such county legislation.

The Co-operative Societies and Sacco Societies

Cooperative Societies Act governs the registration and other administration of all types of Cooperative Societies. The enactment of SACCO Societies Act, 2008 as principal legislation providing for the licensing, supervision and regulation of deposit-taking (FOSA) SACCOs provided that the Act supersede the Cooperative Societies Act in cases of conflict, while the Cooperative Societies Act continued to apply to SACCOs in case in which the Sacco Societies Act, 2008 is silent.

The Bill should clearly recognize this special type of cooperative societies, namely SACCOs especially those engaged in the quasi-banking businesses (FOSA) and the need to have them prudentially regulated by an independent body within the partner states.

Clause 54 of the bill makes the bill superior to the partner states' legislations, which is well within the spirit of the EAC Treaty. However, the bill should take cognizance of the fact that the licensing, supervision and regulation of SACCOs as deposit taking institution is not covered in the bill, and thus domestic laws such as Sacco Societies Act, 2008 ought to take precedence when it comes to prudential regulations of SACCOs.

Membership to Cooperative Societies

In Kenya, Membership to cooperative societies including SACCOs is normally defined from the perspective of the Saccos' By-Laws and not statute as proposed by Clause 5(2). This definition in the By-Laws was done through the common bond principle, but which has since been abandoned by many SACCOs with the adoption of the open bond policies.

Clause 5(2) of the Bill is limiting, and does not agree with the current trend in Kenya where membership of SACCOs is open to a wide range of people and not just those who live or work within a given area.

Sale of Shares to Third Parties

Kenya's current legal framework governing cooperative societies does not envisage a situation in which cooperative society would sell its shares to other third parties as proposed in Clause 5(5) of the Bill. The law currently prohibits SACCOs from dealing with non-members and thus the issue of selling shares to other persons would not arise.

A person seeking to purchase the shares of a cooperative society must therefore join the membership thereof, which may be through the normal member recruitment or as a transfer from an existing member. Such sale of shares will also violate domestic Capital Markets Act.

Clause 5(5) should be redefined along the prevailing domestic laws in Kenya to limit sale or purchase of shares of a cooperative society to members only.

Recognition of Cooperative Societies registered in other Partner States

Whereas Clause 7 of the Bill provides that a cooperative society shall be registered by the appropriate authorities in the partner states, there is no provision to guide the reciprocal recognition of such a society in other partner states, other than where it has been registered. This will thus hamper the cross border operations of such a cooperative society in the state other than where it has been registered. This is very necessary for deposit taking SACCOs, where domestic legislation ought to guide with certainty their prudential regulation.

The Bill should provide for the procedure for the recognition of cooperative societies registered in one partner state, but seeking to operate within the jurisdiction of another partner state or whether such cooperative society will have to seek dual registration to operate in other partner state.

The Bill should also provide mechanisms for cross-border operations of cooperative societies, particularly when it comes to deposit taking SACCOs mobilizing deposits.

Settlement of Disputes

The Bill proposes that all disputes arising between cooperative societies, their members and employees in accordance with Clause 47 thereof ought to be settled through the Alternative Dispute Resolution mechanisms of conciliation, and in default arbitration, with appeals lying to the High Court. This provision is in direct conflict with the Cooperative Societies Act which provides that such disputes are to be handled by a cooperative tribunal and the appeals from the tribunal lies to High Court. Indeed even the Sacco Societies Act provides that disputes between the Authority and SACCOs are to be referred to the tribunal as the Court of first instance.

The cooperative tribunal as established is deemed to be a specialized court for purposes of cooperative disputes, as the court of first instance and thus should be retained – with appropriate reforms thereto. Since clause 54 of the Bill makes the bill superior to the domestic laws, it is likely

that the bill is likely to oust the powers of the tribunal as a court of first instance in respect of cooperative matter.

The Bill should equally provide for resolution of disputes arising out of cross border operations of cooperative societies, and the inter-relationship with the domestic tribunals in order to make the dispute resolution forum clear. There is therefore need for creation of an EAC tribunal to handle what the tribunals in the partner states cannot handle.

Share Capital of Cooperative Society

Clause 27 of the Bill provides inter alia that the shares of a member may be used to off-set a debt due to the society from such a member. This is erroneous and is likely to lead to de-capitalization of the society in case of defaults by members.

The current legislations in Kenya are clear that members shares are equities for the society and cannot be expended, unless on liquidation. The shares cannot therefore be collateral against credit advance to members, nor can such equity be used to off-set debts owed. They can only be transferred to other members.

The Bill needs to clearly distinguish between shares which are equity capital to the society and other deposits which may be used as collateral for credit advances, and also to off-set debts due. This is particularly important for deposit taking SACCOs which rely heavily on the members' shareholding as their main source of capital, in the absence of which the SACCOs existence would be threatened.

Audit and Inspection

The Bill proposes in Part VII that the auditing and inspection of cooperatives societies shall be undertaken by the appropriated national authorities. However, the Bill does not take into consideration the extent to which such inspection and /or audit may go with regard to operations of the society, outside the jurisdiction of the Registration State.

The Bill ought to recognize the fact that the cross-border operations of a society may have material negative impact on the performance and stability of the society, especially a deposit-taking SACCO. In this respect, the role of the Partner State and its equivalent appropriate authority need to be defined in the Bill.

Terminologies

The Bill introduces terminologies which are not necessarily aligned to the prevailing legal system in Kenya. These include General Assembly, Control Committees among others. These terms may bring confusion with regard to the operations of the cooperative societies in their current module, unless the proposals are aligned.

There is need to have general terminologies and not specific terminologies suit to a country where each country will interpret the general terminologies to suit their own local scenario.

3. EAST AFRICAN COMMUNITY INTEGRATION (EDUCATION) BILL, 2014

The Committee considered the Bill clause by clause and deduced the following:

That, the Bill is anchored on Article 7 of the Treaty which provides for people centered and market driven economy and that the object of the Bill is to provide a legal framework within which people of East Africa get necessary knowledge and information about the affairs and activities of the Community.

The title of the Bill is not consistent with contents therein. For instance, the title makes reference to education whilst the contents of the Bill show that it is meant for dissemination of community information among the partner states.

THE COMMITTEE'S PROPOSED AMENDMENTS

(a) EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2014

The Committee proposes the following amendments to the bill when it comes for the Committee Stage in the East African Legislative Assembly:

CLAUSE 2

THAT, the Bill be amended in the definition of "indiscipline" under (d) by inserting the words "on account of disciplinary proceedings" after the word "practice".

Justification

This definition fails to contemplate that it is possible for a lawyer to be restricted or limited to practice on account of reasons other than "disciplinary proceedings" e.g. a lawyer in good standing but who has not taken out a practicing certificate.

THAT, Clause 2 of the Bill be amended in the definition of the "disciplinary record" by inserting the following immediately after (e)

(f) any other orders to pay fine and or costs, compensation or reimbursement

Justification

To cover all orders possible for issuance upon conviction of professional misconduct.

THAT, Clause 2 of the Bill be amended in the definition of the "practicing certificate" by deleting the words "issued by Registrar to an advocate authorizing him or her to practice in any of the partner state" and substituting thereof with the words "by issued accordance with the Rules of the Partner State"

Justification

Each partner state shall be issuing practicing certificates according to its laws rather than an East African Practicing certificate.

THAT, Clause 2 of the Bill should be amended in the definition of "Register" by deleting all the words therein and substituting thereof with the following words-

"register means" a register of advocates admitted to the roll of advocates of each partner states;

Justification

At a regional level we only need a register of the admitted advocates. Each Partner State should keep a register of eligible advocates and reserve the right to authorize who to practice within their jurisdiction that will be guided by regulations to be provided for by the Law Council.

CLAUSE 4

THAT, Clause 4(2)(a) of the Bill be amended by inserting the words "or its equivalent national bar associations" immediately after the word "council".

Justification

It is important to recognize that some state partners the regulatory body is the Bar Association

THAT, Clause 4(2)(a) of the Bill be amended by inserting the words "after consultations among themselves to ensure gender parity" after the word "States"

Justification

To ensure gender equality in the membership of the Council

THAT, Clause 4(2)(b) of the Bill be amended by deleting the words ""who shall be the Secretary.

Justification

The Secretary to the Council should be recruited competitively.

THAT, Clause 4(2(c) of the Bill be amended by deleting the words "Court of Justice who shall preside over the law council" and substituting it with the words "Community Secretariat"

Justification

It is not proper for a member of EACJ to be a member of the EA Law Council considering that they may at one point preside over matters arising out of cross border legal practice. The Bar and the Bench should enjoy its independence. The Secretariat representative will be ideal in these circumstances.

Clause 4(2) should be amended by inserting the following new sub clause 4(2)(d)-

"a representative of Universities offering legal education from each Partner State"

Justification

Inclusion of the academia in the council is important in so far as regulation of legal training is concerned.

THAT, Clause 4(3) of the Bill be amended by inserting the following words after the word "once"-
"Upon assuming office, the Council shall elect the chairperson and competitively recruit the Secretary to the Council who shall serve on full term basis"

Justification

Provides for the mode of recruitment, appointment and term of office of the Secretary and the chair

THAT, Clause 4(2) be amended by including a proviso to specifically state that the appointing authority of the members of the council

Clause 7

THAT, Clause 7(2) of the Bill be amended by deleting all the words after the word "a" and replacing them with the words "as prescribed under Section 4(3)"

Justification

There secretary general should be competitively recruited as amended in 4(3) above

THAT, Clause 7(3) of the Bill be amended by deleting the words "fees payable by advocates upon issuance of East African Practising Certificate" with the words "East African Community Budget"

Justification

The practicing certificate will be issued by the national bar associations as amended in clause. Since this is a function of the community, it is only logical that funds to run it should be drawn from the Community budget as contributed by the partner states.

Clause 7 of the Bill be amended by inserting a new clause 7(4):

“The Law Council may also raise funds through any other means to support the performance of its functions under this Act”

Justification

The Law Council should have the power and flexibility to raise funds to meet its expenses over and above the provisions of section 7(3).

(b) EAST AFRICAN COMMUNITY COOPERATIVE SOCIETIES BILL, 2014

The Committee proposes the following amendments to the bill when it comes for the Committee Stage in the East African Legislative Assembly:-

CLAUSE 5

THAT, the Bill be amended in clause 5 (5) by inserting the replacing the word “persons” with the words “members of a society”

Justification

The Kenyan law currently prohibits SACCOs from dealing with non-members and thus the issue of selling shares to other persons would not arise.

CLAUSE 7

THAT, the Bill should make a provision for the procedure for the recognition of cooperative societies registered in one Partner State, but seeking to operate within the jurisdiction of another Partner State or whether such cooperative society will have to seek dual registration to operate in other partner state.

The Bill should also provide mechanisms for cross-border operations of cooperative societies, particularly when it comes to deposit taking SACCOs mobilizing deposits

THAT, the Bill be amended in clause 7 (6) by inserting the words “except where such an additional trade licence is considered necessary to secure the interest of specific members investing through the society under a special purpose investment vehicle” after the word “licence”

Justification

This is an important provision which will facilitate the ease of operations and reduce the cost of doing business by removing the need for additional licenses. However, this provision should take into account that certain licenses may be required where a society seeks to diversify services such as creating special purpose investment vehicles (e.g. housing schemes) which would require separate registration

THAT, the Bill should be amended in clause 7 (7) by inserting the words “but within the validity of the temporary certificate” after the word “time”

THAT, the Bill be amended in clause 7 (7) by inserting new clause 7(7a)

7 (7a): The appropriate Authority shall specify in writing the requirements that have not been met and seek compliance within a period of 1 year provided that this period may be extended where the appropriate authority deems that there is sufficient cause and reason to grant further extension

Justification

It would be necessary to indicate and specify the conditions that have not been met and which the society must comply with pending grant of full registration. It is also important to have flexibility over the 1 year limitation since compliance may require additional time beyond the 1 year prescribed period.

THAT, the Bill be amended in clause 7 (8) by inserting the words “provided that before exercising its power to suspend the society from operating, the authority shall notify the society on the areas of breach and shall provide a specific time period within which to remedy the breach and be in compliance or face suspension in default” after the word “Act”

Justification

It is important to ensure the rules of natural justice are observed before taking any measures to suspend a society. The right to a fair hearing is of the essence.

CLAUSE 8

THAT, Clause 8 be amended by deleting the words “shall have limited liability” and replace them with the words “its liability shall be limited in its constitutive instruments”

Justification

In view of the fact that a society holds funds and assets in trust for its members, its liability must be limited to its constitutive instruments rather than being determined through a statutory provision prescribing the nature of its liability.

CLAUSE 12

THAT, Clause 12 (1)(c) of the Bill be amended by inserting the words “if eligible” after the word “elected”. Clause 12(1)(d) be amended by inserting the words “owing to such member” after the word “benefits”.

Justification

In line with the standards expected of leadership, a society is entitled to prescribe conditions for eligibility to seek office. Election cannot be a matter of right but must be pegged to satisfying specific criteria. Ordinarily, payment of benefits owing to a member must be pegged to one's entitlement and this must be made explicit.

THAT, Clause 12(2)(e) of the Bill be deleted.

Justification

This provision appears misplaced and inconsistent with the generic duties expected of a member of a society.

CLAUSE 14

THAT, Clause 14(1) of the Bill be amended by adding letter "r" to the word "pa" and deleting the word "to" after the word "society"

Justification

to correct the typographical error and language to read " A cooperative society shall, after securing the decision of the General Assembly, sell shares that shall have equal number and par-value with a view to enable the society obtain capital necessary to operate".

THAT, Clause 14(6) of the Bill be amended by deleting the words "sell certain shares to a person who is not a member of the society without contradicting the principles of the society" after the word "may" and substitute therefor with the words "raise capital through any means voted by the members through a resolution passed at a General Assembly".

Justification

This provision creates potential for conflict. Since a society is a membership entity, its shares should not be sold outside of its membership. A society facing the circumstances spelt out under section 14(6) should raise capital through borrowing and other means as agreed by its members through a resolution during its General Assembly.

CLAUSE 16

Clause 16(2) of the Bill be amended by deleting the word "shall" and substituting it with the word "may" and inserting the words "or by proxy" after the words "meeting of the society" and further deleting the word "the" after the word "cast" and replacing it with the word "a".

Justification

This provision appears discriminatory because it draws distinction between different classes of societies. A vote reflects one's choice and members should have the right to vote by proxy.

CLAUSE 23

Clause 23(1) of the Bill be amended by inserting a new sub-section-

23(1)(a) The control committee shall play an independent oversight role over the board of directors in managing and running the affairs of the society.

Justification

It is necessary to be explicit over the oversight audit role played by the control committee.

CLAUSE 27

Clause 27) of the Bill be amended by deleting the words "The Shares" and substituting thereof with the words "Other deposits"

Justification

The Bill needs to clearly distinguish between shares which are equity capital to the society and other deposits which may be used as collateral for credit advances, and also to off-set debts due. This is particularly important for deposit taking SACCOs which rely heavily on the members' shareholding as their main source of capital, in the absence of which the SACCOs existence would be threatened.

CLAUSE 30

THAT, Clause 30(a) of the Bill be amended by deleting the following words "for societies whose annual income does not exceed US\$ 500,000, although individual members shall be liable to pay income tax"

THAT, Clause 30(b) be amended by deleting the following words "for societies whose annual income does not exceed US\$ 1,000,000".

Justification

These two Clauses impose obligations on taxation on societies. Societies should be exempt from these taxes as a means of motivating a culture of mobilizing savings and investment. The liability of individual members to pay should be seen as sufficient and additional taxation on the members diminishes the value of investment in a society.

CLAUSE 32

THAT, Clause 32(1) of the bill be amended by deleting the word "shall" after the word "society" and substitute it with the word "may" and deleting the words "at least twenty per cent " and substituting them with the words "a percentage". Further the clause be amended by inserting the words "subject to a resolution of the General Assembly" after the words "reserve fund".

Justification

The funds of a society are held in trust for the members. It should be upon the members to decide on the allocation to be held in a reserve fund upon consideration at the General Assembly.

THAT, Clause 32(4) of the Bill be amended by deleting the words "an additional share" and substituting them with the words "additional shares"

Justification

There is no rationale or justification behind the restriction on purchase or shares to only 1 share and it should be possible for a member to purchase more than 1 share.

CLAUSE 36

THAT, Clause 36 of the Bill be amended by inserting the following Clause 36(3)

Where an inspection report is made pursuant to a request for inspection under section 36(2)(a) or (b), such report shall be presented to the General Assembly".

Justification

It is important that where an audit report is being submitted pursuant to a request by members under section 36(2)(a) or (b), such report is tabled before the General Assembly. This safeguards accountability over the use of the society's resources taking into account that they are held in trust for the members.

CLAUSE 44

THAT, Clause 44(1) of the Bill be amended by deleting the word "reconciliation" and substituting it with the word "conciliation".

Justification

The reference herein should be to conciliation which means reconciling parties and is one of the means of alternative dispute resolution.

THAT, Clause 44(3) of the Bill be amended by deleting the word "elected" and substituting it with the word "appointed". Further amendment by inserting the words "who may also designate an appropriate professional body to appoint such arbitrator" after the word "authority".

Justification

The use of term "elected" implies a contested process yet by its very nature arbitration is a consensual process, based on concurrence and agreement, to arrive at an acceptable mechanism in resolving a dispute. It may be useful and necessary to let the appointment of an arbitrator be made by an appropriate professional body.

CLAUSE 45

THAT, Clause 45(3) of the Bill be amended by deleting the word "similar" and substituting it with the words "any other applicable"

Justification

It should be noted that countries within the EAC are enacting specific legislation on alternative dispute resolution. For instance, Kenya enacted the Arbitration Act, 2013. Therefore, arbitrators are not merely bound by the Civil Procedure Code.

CLAUSE 46

Clause 46(1) by deleting the words "by both parties" and replacing them with the words "jointly by the two arbitrators"

Clause 46(2) by deleting the word "when" and replacing it with the word "where" and by deleting the word "parties" and replacing it with the words "two arbitrators".

Justification

The appointment of the third arbitrator who acts as an umpire must be made by the two arbitrators representing each of the parties.

(C) EAST AFRICAN COMMUNITY INTEGRATION (EDUCATION) BILL, 2014

The Committee proposes the following amendments to the bill when it comes for the Committee Stage in the East African Legislative Assembly:

CLAUSE 2

THAT, the Bill be amended in the definition of "unit" by deleting all the words and substituting thereof with

"Unit" means the Civic Education Unit established under section 4 of this Act.

CLAUSE 5

THAT, clause 5(a) of the Bill be amended by deleting the word "*competent*" and substituting it with the word "*relevant*"

THAT, clause 5(d) of the Bill be deleted and replaced substituted with; "*develop curricular for civic education by relevant institutions in the Partner States*

TITLE

THAT, the Title of the Bill be amended to read as follows: "*the East African Community Civic Education Bill, 2014*"

**THE EAST AFRICAN
COMMUNITY
INTEGRATION
(EDUCATION) BILL,
2014**

THE EAST AFRICAN COMMUNITY
BILL SUPPLEMENT

No. 2

3rd January, 2014.

to the East African Community Gazette No. 1 of 3rd January, 2014.

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THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY INTEGRATION
(EDUCATION) BILL, 2014

MEMORANDUM

Article 7 of the Treaty for the establishment of the East African Community provides for a people centred and market driven economy. It has been observed that whereas the Partner States have dedicated tremendous efforts towards the market economy, the people centred aspect of our integration process has not received similar attention. As a result, the people of East Africa remain fundamentally ignorant of the Treaty, and the whole integration process.

The object of this Bill therefore is to provide a legal framework within which the people of East Africa at all levels can be equipped with the necessary knowledge and information about the affairs and activities of the Community.

For that purpose the Bill seeks to establish a Unit within the office of the Secretary General, mandated to coordinate integration education activities in the Partner States, develop relevant materials and set standards and quality control measures amongst other functions.

The respective national institutions currently responsible for conducting civic education in the Partner States are proposed to be national focal points for the purposes of this Bill.

HON. ABUBAKAR ZEIN ABUBAKAR,
Member, East African Legislative Assembly.

East African Community Integration (Education) Bill, 2014

THE EAST AFRICAN COMMUNITY INTEGRATION
(EDUCATION) BILL, 2014 .

ARRANGEMENT OF CLAUSES

Clause

1. Short title.
 2. Interpretation.
 3. Objectives
 4. Integration Education Unit
 5. Functions of the Unit
 6. Financial resources of the Unit
 7. National focal points
-
8. Regulations

**THE EAST AFRICAN COMMUNITY INTEGRATION
(EDUCATION) BILL, 2014**

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY INTEGRATION
(EDUCATION) ACT, 2014**

An Act to establish a legal framework for integration education in the Community, and to provide for other related matters.

ENACTED by the East African Community and assented to by the Heads of State.

1. This Act may be cited East African Community Integration (Education) Act, 2014. Short title.

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

“competent authority” means the relevant authority in the Partner States responsible for carrying out civic education;

East African Community Integration (Education) Bill, 2014

“Council” means the Council of Ministers established under Article 9 of the Treaty;

“integration education” means education about the Treaty and the integration process in the Community;

“Secretariat” means the Secretariat of the Community established under Article 9 of the Treaty;

“Secretary General” means the Secretary General of the Community provided for under Article 67 of the Treaty;

“Treaty” means the Treaty for the establishment of the East African Community’

“Unit” means the Integration Education Unit established under section 4;

Objectives

3. (1) The main objective of this Act is to facilitate acquisition of information, knowledge, skills, values and attitudes that are necessary for people East Africa to meaningfully participate in the integration process.

(2) Without prejudice to the generality of sub-section (1), the specific objectives of this Act are to—

- (a) facilitate increased participation of the people of East Africa in the integration process and activities;
- (b) provide for a facilitation mechanism for citizens’ engagement in East Africa;

East African Community Integration (Education) Bill, 2014

- (c) build a sense of belonging and common identity among the people of East Africa, including developing initiatives that are designed to create the East African identity; and
- (d) facilitate and provide education on the Treaty for the establishment of the East African Community.

4. (1) There is established a Unit within the Secretariat known as the Integration Education Unit.

Integration
Education
Unit.

(2) The Unit shall, in the performance of its functions be responsible to the Secretary General.

(3) The Unit shall constitute such offices as the Council may determine.

5. The functions of the Unit shall be to—

Functions of
the Unit.

- (a) coordinate integration education activities in the Partner States with the competent authorities;
- (b) develop relevant materials for dissemination in the Partner States;
- (c) set standards and quality control mechanisms in integration education;
- (d) develop curricular for integration education by the education institutions in the Partner States; and
- (e) perform any other functions as may be required to achieve the objectives of this Act.

East African Community Integration (Education) Bill, 2014

Financial resources of the Unit.

6. The Unit shall obtain funds from the budget of the Community and from such other sources as the Council may determine.

National focal points.

7. (1) The national focal points for purposes of education integration in the Community shall be the competent authorities in the Partner States.

(2) A Partner State may, notwithstanding sub-section (1), accredit an institution to conduct integration education in that Partner State.

Regulations.

8. The Council may make regulations generally for giving effect to the provisions of this Act.

**THE EAST AFRICAN
COMMUNITY
COOPERATIVE SOCIETY
BILL, 2014**

THE EAST AFRICAN COMMUNITY

BILL SUPPLEMENT

No. 3

3rd January, 2014.

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THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY COOPERATIVE
SOCIETIES BILL, 2014

MEMORANDUM

The object of this Bill is to provide a legal framework for the cooperative societies in the Community. The Bill takes cognisance of Article 128 of the Treaty for the establishment of the East African Community, in which the Partner States agreed to adopt programmes that would strengthen and promote the role of the private sector as an effective force for the development of their respective economies, and to that end undertook to encourage the efficient use of scarce resources and to promote the development of private sector organisations which are engaged in all types of economic activity, including *inter alia* agriculture, manufacturing, farming, trading and service providing.

Part I of the Bill deals with preliminary matters. However, clause 3 lays down the objectives of co-operative societies which among others include solving problems collectively, co-ordinating knowledge, skills, wealth, labour and promote self reliance amongst the members. Clause 4 of the Bill lays down the guiding principles of co-operative societies. According to the clause, co-operative societies are voluntary organisations open to all persons able to utilise their services and willing

to accept responsibilities of membership without gender, social, racial, political or religious discrimination. They are democratic organisations controlled by their members who actively participate in setting their policies and making decisions and every member has equal voting rights.

Part II of the Bill deals with the formation, name and registration of co-operative societies. Other matters included in this part deal with the legal personality, bye-laws and amalgamation and division of co-operative societies.

Part III of the Bill deals with the rights and duties of the members of co-operative societies. Dismissal from membership, payment of shares, voting and transfer of shares and benefits are captured in this Part.

Part IV of the Bill deals with organs of co-operative societies which include the General Assembly, Board of Directors, Control Committee and other subcommittees.

Part V deals with special privileges of co-operative societies.

Parts VI and VII deal with the assets and funds and audit and inspection respectively.

Part VIII deals with the winding up and dissolution of co-operative societies. In this Part, appointment and duties of the liquidator, calling on creditors and protection of creditors are *inter alia* provided for.

Part IX of the Bill deals with settlement of disputes. Conciliation, arbitration and appeals are provided for.

Part X deals with miscellaneous matters. The Council of Ministers is enjoined to make regulations for giving effect to the provisions of the Act. The Act once enacted is also supposed to take precedence over similar Acts in the Partner States, to allow the uniformisation of the law governing co-operative societies in the Partner States.

HON. MIKE KENNEDY SEBALU,
Member, East African Legislative Assembly.

East African Community Cooperative Societies Bill, 2014

THE EAST AFRICAN COMMUNITY COOPERATIVE
SOCIETIES BILL, 2014

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Short title.
2. Interpretation.
3. Objectives of a cooperative society.
4. Guiding principles of cooperative societies.

PART II—FORMATION AND REGISTRATION

5. Formation of a cooperative society.
6. Name of a cooperative society.
7. Registration of a cooperative society.
8. Juridical personality.
9. Bye-laws.

-
10. Amalgamation and division.

PART III—RIGHTS AND DUTIES OF MEMBERS

11. Requirements necessary for membership.
12. Rights and duties of members.
13. Dismissal from membership.
14. Payment of shares.
15. Register of members.
16. Voting.
17. Transfer of shares or benefits.

PART IV—ORGANS OF COOPERATIVE SOCIETIES

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19. Powers and duties of the General Assembly.
20. Calling of the General Assembly.
21. Board of Directors.
22. Powers and duties of Board of Directors.
23. Control Committee.
24. Powers and duties of Control Committee.
25. Other sub committees.

PART V—SPECIAL PRIVILEGES OF SOCIETIES

26. Priority of claims by society.
27. Set-off in respect of share or benefit.

East African Community Cooperative Societies Bill, 2014

Clause

28. Share or benefit not liable to attachment or sale.
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32. Allocation of net profit.
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**THE EAST AFRICAN COMMUNITY COOPERATIVE
SOCIETIES BILL, 2014**

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY COOPERATIVE
SOCIETIES ACT, 2014**

An Act to provide a legal framework for cooperative societies in the Community and to provide for other related matters

ENACTED by the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY

1. This Act may be cited as the East African Community Cooperative Societies Act, 2014. Short title.

2. In this Act unless the context otherwise requires— Inter-pretation.

“appropriate authority” means an organ established at any level in a Partner State, to organise and register cooperative societies and to give training, conduct research and provide other technical assistance to cooperative societies;

East African Community Cooperative Societies Bill, 2014

“Board of Directors” means a body elected and empowered by the General Assembly with the responsibility to govern the society;

“cooperative society” means a society established by individuals on a voluntary basis, to collectively solve their economic and social problems;

“General Assembly” means a meeting of members of a primary cooperative society or representatives of societies above primary level;

“Partner states” means to the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the United Republic of Tanzania, the Republic of Uganda and any other country granted membership to the Community under Article 3 of the Treaty;

“member” means a physical person, or a society established under this Act;

“person” means a natural or juridical person;

“society” means a cooperative society established and registered in accordance with this Act;

“special resolution” means a resolution passed by a two third majority of the members of a society to be binding on all members.

Objectives
of a
cooperative
society.

3. The objectives of a society established under this Act are to—

- (a) solve problems collectively which members cannot solve individually;

East African Community Cooperative Societies Bill, 2014

- (b) coordinate knowledge, skills, wealth and labour of the members for better results ;
 - (c) promote self reliance among members;
 - (d) collectively protect, withstand and solve economic problems;
 - (e) improve the living standards of members by reducing production and service costs by providing input or service at a minimum cost or by finding a better price for their products or services;
 - (f) expand the mechanism by which technical knowledge could be put to practice;
-
- (g) develop and promote saving and credit services;
 - (h) minimise and reduce the individual impact of risks and uncertainties;
 - (i) develop the social and economic culture of the members through education and training; and
 - (j) empower the members to have ownership along commodity value chains by facilitating business development for the members.

4. (1) All cooperative societies registered under this Act, shall abide by the guiding principles under this section which shall be written in their respective by-laws.

Guiding principles of cooperative societies.

(2) Cooperative societies are voluntary organisations open to all persons able to utilise their services and willing to accept the responsibilities of membership without gender, social, racial, political or religious discrimination.

East African Community Cooperative Societies Bill, 2014

(3) Cooperative societies are democratic organisations controlled by their members who actively participate in setting their policies and making decisions, and every member has equal voting rights.

(4) Members shall receive dividends from profit according to their shares and contribution after deducting and setting aside an amount necessary for reserve and social services.

(5) Co-operative societies are autonomous self help organisations controlled by their members, and if they enter into agreement with other organisations including governments or raise capital from external sources, shall do so on terms that ensure democratic control by their members and maintain their autonomy.

(6) Co-operative societies provide education and training for their members, elected representatives, managers and employees so as to enable them to contribute effectively to the development of their societies.

(7) Co-operative societies serve their members most effectively and strengthen the societies' movement by working together through local, national, regional and international structures.

(8) Co-operative societies work for the sustainable development of their communities through policies approved by their members.

(9) Cooperative societies and their businesses are owned by the members and the businesses are done for members and not with members, they do not trade or do business with members but rather for members, and do not buy from members but facilitate members to sell their goods without the societies taking ownership over the goods.

East African Community Cooperative Societies Bill, 2014

(10) The employees, management and staff of the cooperative societies play a facilitating role in the cooperative societies' businesses without taking ownership from the members.

PART II—FORMATION AND REGISTRATION

5. (1) A co-operative society may, according to its nature, be established at different levels as may be determined by the members.

Formation of a cooperative society.

(2) A primary society shall be established by persons who live or work within a given area.

(3) One national apex cooperative organisation may be established in each Partner State, and its key role shall include promoting cooperative societies, formulation and review of policy and legislation, and serving as a platform for cooperative societies at the national level.

(4) The number of members in a primary society shall not be less than ten.

(5) A society may sell some of its shares to persons outside its area when the society faces shortage of capital.

6. (1) Every society shall have its own name.

Name of a cooperative society.

(2) The words "Cooperative Society" and "Limited Liability" shall appear in the name of every society.

(3) A name or distinguishing mark registered by one society shall not be used by any other society.

(4) The name of every society shall be written boldly and put at every place where the society's activities are performed, and it shall in addition be written or sealed on all notices, letters and documents which are signed on behalf of the society.

East African Community Cooperative Societies Bill, 2014

Registration
of a
cooperative
society.

7. (1) A society shall be registered by the appropriate authority in the Partner State.

(2) A society shall, when established submit an application for registration to the appropriate authority together with the following particulars—

- (a) minutes of the founders' meeting;
- (b) the bye-laws of the society;
- (c) names, addresses and signatures of the members;
- (d) names, addresses and signatures of the members of the Board of Directors of the society;
- (e) a detailed description which proves that the registered members of the society have met the requirements for membership in accordance with this Act and the bye-laws of the society;
- (f) documents showing the amount of the capital of the society and that the capital has been collected and deposited in a bank account, and if there is no bank in the area, that it has been deposited in a place designated by the appropriate authority;
- (g) other particulars that may be specified in the regulations or directives issued for the implementation of this Act.

(3) The appropriate authority shall register a society and issue a certificate of registration within 15 days when the appropriate authority is satisfied that the application for registration submitted to it has fulfilled the requirements for registration.

(4) If the appropriate authority rejects the application for registration of a society, it shall give a written explanation to the representatives of the society within 15 days.

(5) The certificate of registration issued to a society under sub section (3) is evidence that a society is registered in accordance with this Act.

(6) A society registered under this section shall engage in any business as from the date of registration without the necessity of securing an additional trade licence.

(7) When the appropriate authority is satisfied that the requirements under sub section (2) have been met, it shall grant a temporary certificate to the society which may serve not more than a year and the appropriate authority shall cause the rest of the requirements to be observed within a specified period of time.

(8) Where a society is found operating out of the objectives for which it is established, it may be suspended by the appropriate authority from carrying out any activities permitted by this Act.

(9) Where a society is suspended, the society may submit its request to reverse the suspension and where the appropriate authority finds merit in the request, the appropriate authority may reverse the suspension.

(10) Where the appropriate authority does not reverse the suspension of a society, the appropriate authority shall give a written explanation to the General Assembly of the society.

(11) The General Assembly of the society may appeal to the High Court against any decision made by the appropriate authority under this section.

East African Community Cooperative Societies Bill, 2014

Juridical
personality.

8. A society registered under this Act shall have juridical personality from the date of its registration and shall have limited liability.

Bye-laws.

9. (1) Every society shall have its own bye-laws.

(2) The contents of the bye-laws of a society shall include—

- (a) the name and address of the society;
- (b) objectives and activities of the society;
- (c) work place or area of the society;
- (d) requirements necessary for membership of the society;
- (e) the rights and duties of the members of the society;
- (f) the powers, responsibilities and duties of management bodies;
- (g) conditions for withdrawal and dismissal from membership;
- (h) conditions for election, appointment, term of office and suspension or dismissal of the members of the Board of Directors or other management bodies;
- (i) conditions for calling of meetings and voting at meetings of the society;
- (j) allocation and distribution of profits;
- (k) auditing;
- (l) employment of workers;

East African Community Cooperative Societies Bill, 2014

(m) other particulars not contrary to this Act.

(3) The bye laws of a society may be amended by the special resolution of the General Assembly, and such amendment shall be effective on the date it submitted to and registered by the appropriate authority.

(4) Where a society agrees on an amendment to its bye laws, three copies of the amendment and the special resolution of the society made in accordance with this Act shall be submitted to the appropriate authority within 30 days from the date of the agreement.

(5) The appropriate authority shall register the amendment and give evidence of its registration to the society where it is satisfied that the amendment of the bye laws was made in accordance with this Act.

10. (1) Without prejudice to section 5, the General Assembly of a society may, through a special resolution form a new society by—

Amalgamation and division.

- (a) dividing itself into two or more societies;
- (b) registering a new society; or
- (c) amalgamating itself with one or more societies.

(2) The resolution on the amalgamation or division of the society shall be effective on the date of its registration by the appropriate authority upon verifying that—

- (a) the members and creditors that do not agree have been paid off or their payment is guaranteed;
- (b) the previous registration of the affected societies shall be cancelled as soon as the newly formed society by amalgamation or by division is registered;

East African Community Cooperative Societies Bill, 2014

- (c) the rights and duties of the affected societies shall be transferred to the newly formed society; and
- (d) the rights and duties of a society which has lost its identity by division shall be transferred to the newly formed societies.

PART III—THE RIGHTS AND DUTIES OF MEMBERS

Require-
ments
necessary
for
membership.

11. (1) Any individual may become a member of a society where such individual—

- (a) has attained the age of 18 if it is a primary society;
- (b) is able to pay the share capital and registration fee required by the society;
- (c) is willing to implement his or her obligation and observe the objectives and bye laws of the society;
- (d) fulfils other requirements which may be specified in the regulations and directives issued for the implementation of this Act.

(2) A society other than a primary society may become a member of another society under this section if such society wishing for membership is registered with the appropriate authority.

Rights and
duties of
members.

12. (1) A member of a society shall have the following rights—

- (a) to obtain services and benefits according to his or her participation in the society;

East African Community Cooperative Societies Bill, 2014

- (b) to participate in the meetings of the society and to vote;
- (c) to elect and to be elected;
- (d) to withdraw from the society on request with payment of benefits.

(2) A member of a society shall have the following duties—

- (a) to respect the bye laws, directives and decisions of the society;
- (b) to perform those activities which ought to be performed in accordance with the bye laws and directives of the society;
- (c) to pay for share of the capital and registration fee;
- (d) to protect the common property of the society;
- (e) to conserve the environment as a mitigation against climate change;
- (f) to promote gender equity in decision making; and
- (g) to support youth participation in cooperative societies to ensure continuity.

13. (1) A member of a society may leave the society on his or her own initiative.

Dismissal
from
membership.

(2) A member of a society may be dismissed from the society by a decision of the General Assembly for failure to observe this Act or byelaws of the society.

East African Community Cooperative Societies Bill, 2014

(3) The rights of a dismissed member shall be respected in accordance with the bye laws of the society.

(4) Without prejudice to the provisions of this section, any person dismissed may re-apply for membership.

(5) A member dismissed in accordance with subsection (2) may be re-admitted only if he or she is approved by the General Assembly.

Payment of shares.

14. (1) A cooperative society shall, after securing the decision of the General Assembly, sell shares that shall have equal number and par-value with the view to enable the society to obtain capital necessary to operate.

(2) A cooperative society shall collect, upon its formation from the members at least one-fifth of the amount of the shares that the General Assembly has agreed to be sold, and it shall sell the rest of the shares within four years from the time of its establishment.

(3) Where the need for additional capital arises upon completion of the sale of shares in accordance with the decision of the General Assembly, the General Assembly may decide to sell additional shares in accordance with sub section (1).

(4) The shares that the society sells may be sold in cash or in kind, and the shares sold in kind shall be determined by the bye laws of the society.

(5) Any member may not hold more than 10% of the shares out of those that the General Assembly decides to be sold.

(6) A society which faces shortage of capital may sell certain shares to a person who is not a member of the society without contradicting the principles of the society.

East African Community Cooperative Societies Bill, 2014

(7) Particulars as regards to the manner of sale of shares to a person who is not a member of the society shall be determined by the bye laws of the society.

15. Every society shall keep a register in which shall be entered— Register of members.

- (a) the name, address, occupation, age and sex of each member;
- (b) the date on which he or she became a member or ceased to be a member;
- (c) the amount of shares held and the registration fee paid by each member;
- (d) the name and address of the heir of the member; and
- (e) any other particulars that may be specified in the bye laws.

16. (1) Every member shall, regardless of the number of shares he or she has, have only one vote at the meeting of the society. Voting.

(2) Every member in a primary society shall personally be present at the meeting of the society to cast the vote.

(3) A member of a society above primary society level may cast a vote through a representative.

17. (1) No transfer by a member of his or her shares or benefit in a society shall be valid unless— Transfer of shares or benefits.

East African Community Cooperative Societies Bill, 2014

- (a) the member has held such share or benefit for at least one year before the transfer; or
- (b) the transfer is approved by the Board of Directors.

(2) Upon the death of a member of a primary society, his or her share or benefit shall be transferred to his or her heir designated as such in the register of the society or failing such designation, to his or her legal heir at law, where such heir is a member or is willing to be a member.

(3) Where an heir is not a member and does not wish to become or is not admitted as a member, he or she shall be paid the value of the shares or benefit of the deceased member.

(4) If the shares or benefit to be transferred to a member under sub section (2) are found to be beyond the limitation prescribed in sub section (3) the member shall be paid the difference in cash.

(5) The transfer of payment concluded under this section shall not be reserved due to the claims paused by third parties on the society.

PART IV—ORGANS OF THE SOCIETIES

General
Assembly.

18. The supreme organ of any society shall be the General Assembly.

Powers and
duties of the
General
Assembly.

19. The General Assembly shall—

- (a) pass decisions after evaluating the general activities of the society;
- (b) approve and amend the bye laws and internal regulations of the society;

East African Community Cooperative Societies Bill, 2014

- (c) elect and dismiss the members of the general committee, control committee and when necessary members of other sub-committees;
- (d) determine the amount of shares of the society;
- (e) decide on how the annual net profit of the society is distributed;
- (f) make decisions on the audit report;
- (g) receive work reports and give proper decision;
- (h) decide that a society either be amalgamated with another or be divided in pursuance of this Act;
- (i) approve the annual work plan and budget; and
- (j) decide any issue submitted by the Board of Directors and other committees.

20. (1) The General Assembly shall meet at least once in a year, and if the Board of Directors or one-third of the members of the General Assembly requires a meeting to be called, an emergency meeting may be held by giving 15 days prior notice.

Calling of
the General
Assembly.

(2) Where the Board of Directors fails to call an emergency assembly in accordance with sub-section (1), such meeting shall be called by the appropriate authority and shall in such case be deemed to have been called by the Board of Directors.

21. (1) Every society shall have a Board of Directors.

Board of
Directors.

East African Community Cooperative Societies Bill, 2014

(2) The Board of Directors shall be accountable to the General Assembly and the manner of election of the members of the Board of Directors shall be determined by the bye laws of the society.

(3) The term of office of the members of the Board of Directors shall be three years.

(4) Members of the Board of Directors shall not be elected for more than two consecutive terms, and they may be dismissed at any time by the general assembly:

(5) A member of the Board of Directors who vacates office for whatever reason, shall submit for inspection, the activities the member performed during his or her term of office.

Powers and
duties of
Board of
Directors.

22. The powers and duties of the Board of Directors shall be determined by the bye laws of the society, but shall in particular include—

- (a) maintaining the minutes of the meetings of the society;
- (b) maintaining the documents and books of accounts of the society;
- (c) preparing the annual work programme and budget of the society;
- (d) implementing the work programme upon approval;
- (e) calling the General Assembly in accordance with the bye laws of the society;
- (f) submitting reports to the General Assembly on the activities of the society; and
- (g) executing such other decisions made by the General Assembly.

East African Community Cooperative Societies Bill, 2014

23. (1) Every society shall have a Control Committee which shall be accountable to the General Assembly. Control Committee.

(2) The number of members of the Control Committee shall be specified by the bye laws of the society.

(3) The term of office of the members of the Control Committee shall be three years, and no member of the Committee shall be elected for more than two consecutive terms.

24. The Control Committee shall—

Powers and duties of Control Committee.

(a) ensure that the Board of Directors is carrying out its responsibilities properly;

(b) ensure that the funds and property of the society is properly utilised;

(c) ensure that the various activities of the society are carried out pursuant to the bye laws and the regulations of the society;

(d) perform other duties assigned by the General Assembly.

25. Other sub-committees may be established pursuant to the bye laws of the society.

Other sub-committees.

PART V—SPECIAL PRIVILEGES OF SOCIETIES

26. Notwithstanding any provision to the contrary in any law, debts owed to the society by a member shall take precedence over all other debts, other than a debt owed to the government.

Priority of claims by society.

East African Community Cooperative Societies Bill, 2014

- Set-off in respect of share or benefit. 27. The shares or benefits of a member may be set-off to settle a debt due to the society from such member.
- Share or benefit not liable to attachment or sale. 28. Except as provided in section 27, the share or benefit of a member in a society shall not be liable to attachment or sale.
- Access to land. 29. (1) Without prejudice to any incentives permitted under land laws or investment laws in the Partner States, societies which are organised and registered under this Act shall be entitled to access land from the government, as an incentive for business expansion in accordance with the national policies and laws of the Partner States.
-
- (2) The criteria for accessing land under sub section (1) shall include—
- (a) the society has been registered for at least five years;
 - (b) the society must have at least three years of accounts audited by an accredited audit company;
 - (c) the society must be engaged in an activity for which additional land will add value;
 - (d) the society must demonstrate that it has paid dividends to its members for the past three years.
- Tax exemption. 30. Without prejudice to incentives permitted under investment laws or tax laws in the Partner States, societies which are registered under this Act shall be entitled to the following—

East African Community Cooperative Societies Bill, 2014

- (a) exemption from corporate tax, for societies whose annual income does not exceed US\$ 500,000, although individual members shall be liable to pay income tax; and
- (b) exemption from value added tax, for societies whose annual income does not exceed US\$ 1,000,000.

PART VI—ASSETS AND FUNDS OF A SOCIETY

31. Except as otherwise prescribed under section 42, the assets and funds of a society shall not be divided for members or any other party.

Indivisibility
of assets and
funds of a
society.

32. (1) A society shall deduct at least twenty percent of the net profit and allocate it for the reserve fund.

Allocation
of net
profit.

(2) The amount allocated for the reserve fund under sub section (1) shall not exceed thirty percent of the capital of the society, and shall be deposited in the savings account of the society.

(3) The distribution of the remaining net profit shall be determined by the General Assembly.

(4) A member who has received net profit in accordance with sub section (3) may buy an additional share.

33. A society shall receive loans from its members or other organisations to such extent and on such conditions as may be specified in the bye laws of the society.

Restrictions
on
borrowings.

34. A society shall not extend loans other than to its members or a society established under this Act.

Restrictions
on loans.

PART VII—AUDIT AND INSPECTION

Audit. 35. (1) The appropriate authority shall, at least once a year audit or cause to be audited by a person assigned by it, the accounts of any society.

(2) The audit conducted pursuant to sub-section (1) shall include the examination and verification of overdue debts if any, cash, balance, securities and assets and liabilities.

(3) The audit report shall be submitted to the General Assembly.

Inspection. 36. (1) The appropriate authority may make or cause to be made by such a person to be assigned by it, an inspection to the organisation, work execution, documents and financial condition of a society.

(2) Without prejudice to sub-section (1), inspection may be made when a request for the inspection is made by—

(a) a majority of the members of the Board of Directors, the Control Committee or General Assembly; or

(b) not less than one-third of the total number of members of the society.

Action to be taken for loss of property or funds of a society. 37. (1) The auditor or inspector shall report to the Board of Directors or the General Assembly or the appropriate authority, as the case may be, where the person who is or was entrusted with the management of a society, or who is or was an officer or an employee of the society, and who in the course of the audit or inspection has been found to have—

(a) made any payment contrary to this Act, regulations made under this Act or bye laws of the society:

East African Community Cooperative Societies Bill, 2014

- (b) caused any damage to the assets of the society by breach of trust or willfully or negligently;
- (c) mis-appropriated the properties of the society.

(2) The appropriate authority who receives the report pursuant to sub-section (1) shall give the person concerned an opportunity to present his or her defence within fifteen days.

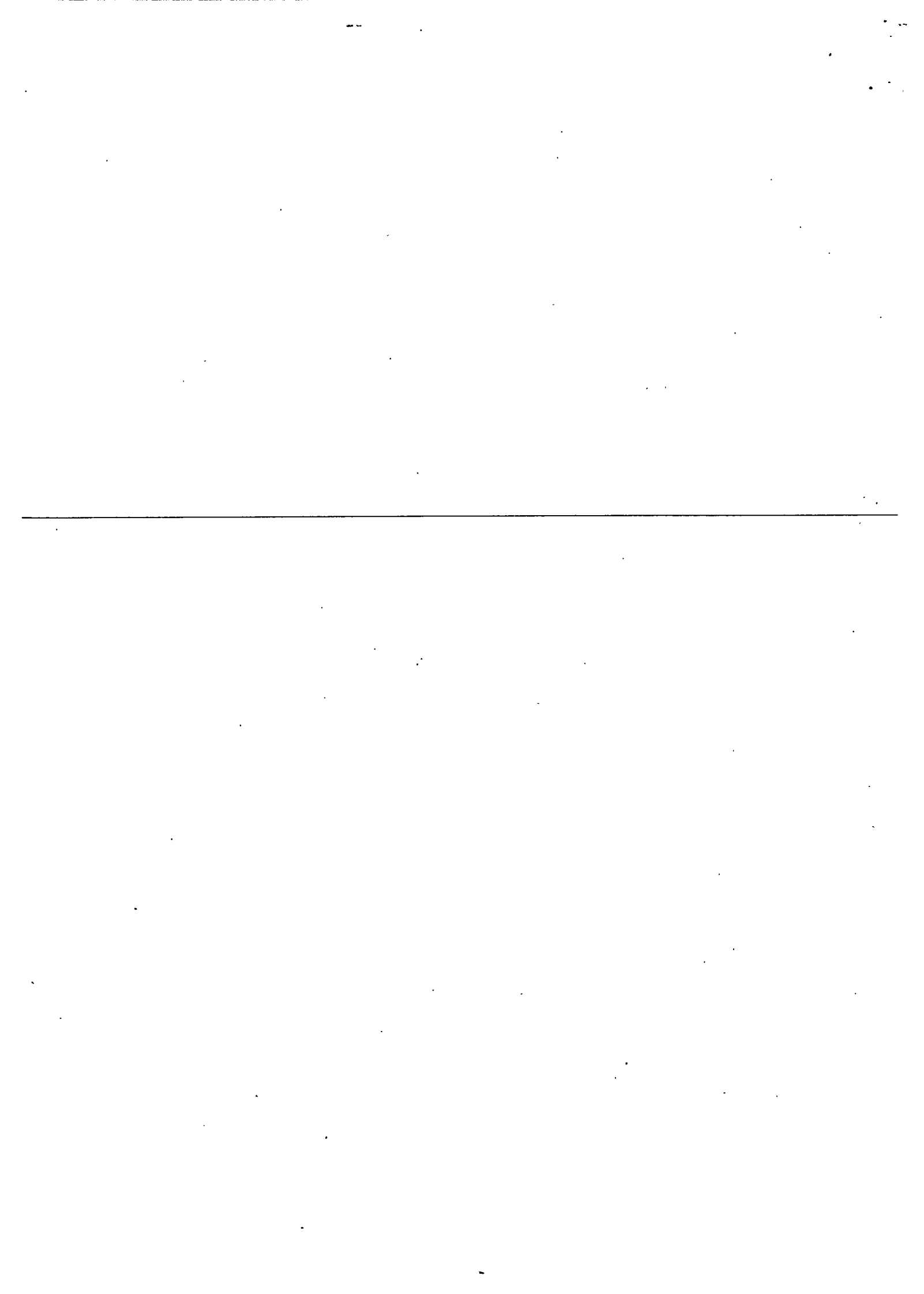
(3) The appropriate authority shall ask the person who has been found responsible for misappropriation of the funds or property of the society to return the property or re-pay the funds with interest including compensation and damages, and where the person concerned is not willing to do so, the authority shall take the appropriate legal measures.

PART VIII—DISSOLUTION AND WINDING UP OF SOCIETY

38. (1) A society shall be dissolved on the following grounds— Dissolution
of a society.

- (a) where a special resolution for its dissolution is passed by the members;
- (b) where the number of members of the primary society falls below ten;
- (c) where a court of competent jurisdiction orders for its dissolution; or
- (d) where an audit reveals that the society is bankrupt.

(2) Without prejudice to paragraphs (a) and (b) of sub-section (1), a society the dissolution of which is determined shall notify the appropriate authority within seven days from the date of the decision for its dissolution.



East African Community Cooperative Societies Bill, 2014

Liquidator.

39. (1) Where the dissolution of a society is decided upon, pursuant to section 38, the appropriate authority may assign a liquidator, and if necessary determine that his or her remuneration be paid out of the accounts of the society.

(2) The liquidator shall receive records, documents and properties of the society as soon as he or she is assigned, and shall take the necessary measures to protect the properties and rights, records and documents of the society from damage.

Powers and duties of a liquidator.

40. (1) The liquidator shall have all the necessary powers to complete the winding up proceedings and shall, in particular perform the following in order to carry out his or her duties properly—

- (a) investigate all claims against the society and decide on the priority of payment among them;
- (b) collect the assets of the society;
- (c) distribute the assets in accordance with the plan of liquidation approved by the General Assembly of the society;
- (d) carry on the work and activities of the society in so far as may be necessary for the proper liquidation of the affairs of the society;
- (e) represent the society in legal proceedings; and
- (f) call meetings of the members as may be necessary for the proper conduct of the liquidation.

(2) The liquidator shall issue notices in the newspapers before the distribution of the property of the society takes place in accordance with sub-section (1) (c) and shall proceed with the distribution where no claim is presented within two months from the date of such notice.

East African Community Cooperative Societies Bill, 2014

(3) No claimant shall have a right after the expiration of the limitation period under sub-section (2).

(4) Upon completion of the winding up of the proceedings the liquidator shall prepare and submit a report to the appropriate authority, and shall deposit the records and documents of the society in such places as the appropriate authority may direct.

41. (1) Creditors shall be paid on the basis of a balance sheet prepared by the liquidator upon the commencement of his or her assignment. Callings on creditors.

(2) Creditors shall be informed of the dissolution of the society and shall be required to file their claims with supporting documents.

(3) Creditors who are appearing in the society's records or who are otherwise known shall be notified directly by registered letter, and notice to other creditors shall be given by notice published in two successive monthly issues of a newspaper with wide circulation in the Partner State, or in the form laid down in the bye laws of the society.

42. (1) Until the creditors of the society have been paid or amounts required for payment are deposited, the liquidator may not distribute any part of the assets among the members. Protection of creditors.

(2) Where a creditor fails to present supporting documents to a claim, the amounts owing to that creditor shall be deposited in accordance with the decision of the court.

(3) Sums shall be set aside to meet the claims in respect of undertakings of the society which are not completed or are under liquidation, unless the liquidation is guaranteed or the distribution of the assets is postponed until such undertakings are completed.

(4) After the payment of claims has been completed or verified that sufficient deposit for payment has been made, the liquidator may distribute the assets of the society among the members based on the amount due to each member.

Cancellation
of society
from
register.

43. When the winding up proceedings are completed, the certificate of registration shall be returned to the appropriate authority who shall cancel the registration of the society, and the society shall from the date of such cancellation, cease to exist.

PART IX—SETTLEMENT OF DISPUTES

Conciliation.

44. (1) Disputes indicated under section 47 may be settled through reconciliation of parties before they are submitted to arbitration.

(2) Each party shall elect a reconciliation team, and the chairperson of the reconciliation team shall be elected in accordance with the agreement of the two parties.

(3) Where the two parties fail to reach agreement on election of a chairperson, the chairperson shall be elected by the appropriate authority.

Arbitration.

45. (1) When the disputes provided under section 47 are not settled by conciliation they shall be referred to arbitration.

(2) The arbitration shall consist of three persons of high reputation and impartiality.

(3) The arbitrators shall conduct their hearing and perform their duties in accordance with the Civil Procedure Code or similar law in the Partner State.

Appoint-
ment of
arbitrators.

46. (1) Each party to the dispute shall appoint one arbitrator, and the third arbitrator, who shall be the chairperson, shall be appointed by both parties.

East African Community Cooperative Societies Bill, 2014

(2) The appropriate authority shall appoint the chairperson when the parties fail to appoint one under subsection (1).

47. The arbitrators shall have the power to hear disputes not settled by conciliation regarding the organisation, management, or operations of the society which arise between—

Disputes to be referred to arbitrators.

- (a) members or former members and members;
- (b) members and representatives of former members or persons claiming in the name of the deceased members;
- (c) members, former members or representatives of former members or heirs of deceased members and any officer, representative of the Board of Directors or employee of the society;
- (d) the society or the Board of Directors and any former Board of Directors, any officer, agent, or employee or any former officer, agent or employee of the nominee heir, or representatives of deceased former members or employees; or
- (e) the society and any other society.

48. The arbitrators shall have the same power, with regard to the cases provided under section 47, as a civil court for the summoning of witnesses, production of evidence the issuing of orders or the taking of any legal measures.

Powers of arbitrators.

49. Appeals against the decisions of the arbitrators under section 48 may, as the case may be, be instituted in the High Court, or court with similar powers accountable to the local government in the Partner State where the society is situated.

Appeals.

East African Community Cooperative Societies Bill, 2014

PART X—MISCELLANEOUS PROVISIONS

Address of
a society.

50. (1) Every society shall have an address registered pursuant to section 7.

(2) All service of process, notices and other communications to the society shall be sent to that address.

(3) The society shall within thirty days inform the appropriate authority of any change in such address.

Supplying
information.

51. Every society shall transmit information to the appropriate authority about the activities it performs.

Establish-
ment of
semi-
autonomous
cooperative
agency.

52. (1) An agency responsible for organising, registering, promoting or supporting cooperative societies and for rendering training, conducting research and other technical support to societies shall be established by law.

(2) The establishment of the agency under subsection (1) shall be determined by the societies and documented by way of a resolution passed through the national apex co-operative organisation.

(3) At least half of the members constituting the board of this agency shall be selected from the co-operative societies.

Regulations.

53. The Council may make regulations generally for giving effect to the provisions of this Act.

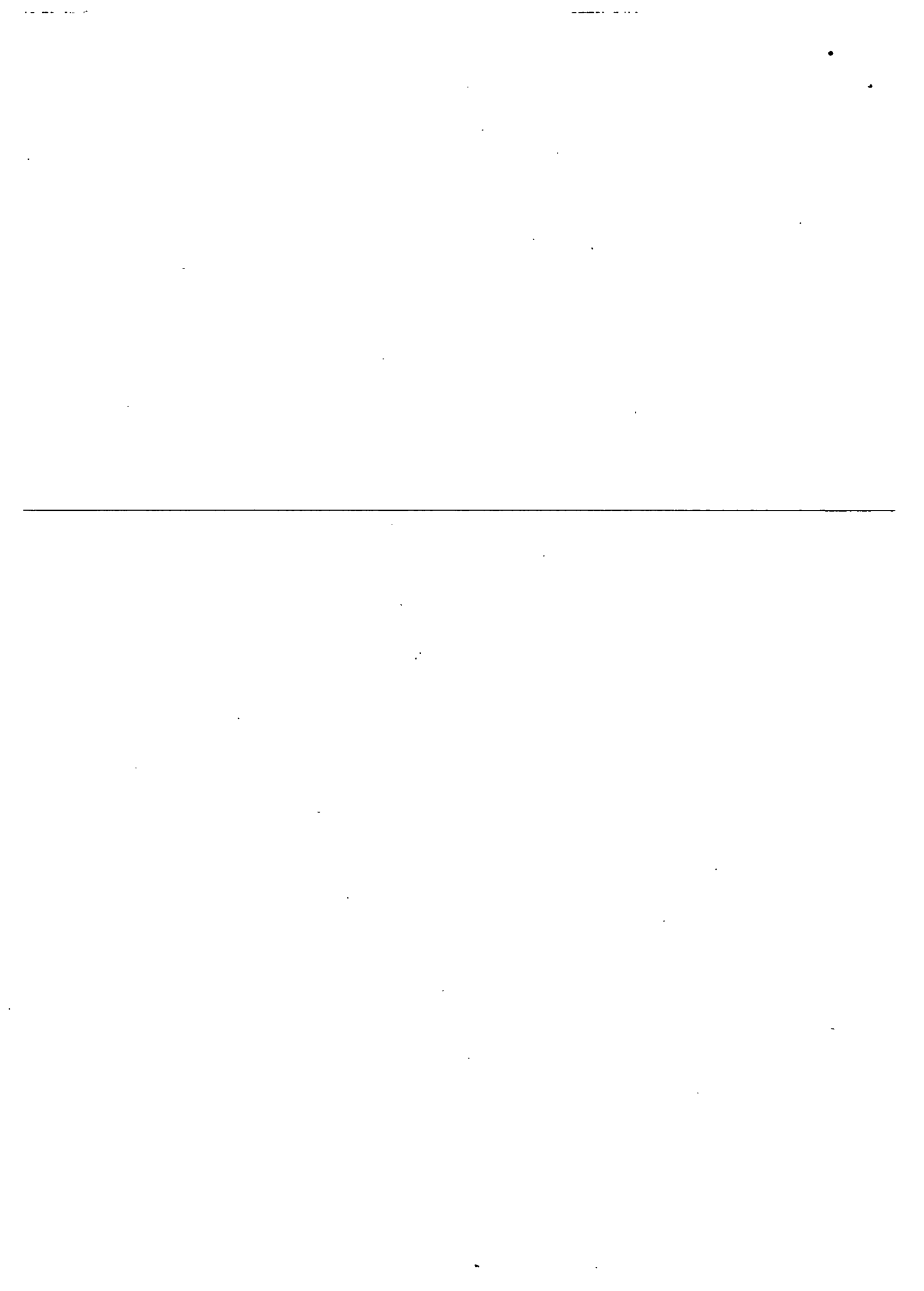
Act to take
precedence.

54. This Act shall take precedence over the Partner States' laws with respect to any matter to which its provisions relate.

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**THE EAST AFRICAN
COMMUNITY CROSS
BORDER LEGAL
PRACTICE BILL, 2014**



THE EAST AFRICAN COMMUNITY
BILL SUPPLEMENT

No. 1

3rd January, 2014.

to the East African Community Gazette No. 1 of 3rd January, 2014.

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THE EAST AFRICAN COMMUNITY

THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL
PRACTICE BILL, 2014

MEMORANDUM

The object of this Bill is to provide for the conduct and regulation of cross border legal practice in the East African Community and to make general provisions for purposes connected to the legal profession.

The Bill is premised on Article 126 of the Treaty for the Establishment of the East African Community which, *inter alia*, requires the Partner States to take steps to harmonise legal training and certification, and encourages standardisation of the judgments of courts within the Community.

The Bill also seeks to operationalise Article 76 of the Treaty which provides for free movement of labour, goods, services, capital, and the right of establishment. The Bill takes into account provisions of the Protocol on the Establishment of the East African Community Common Market, in particular Article 10 on Free Movement of Workers, and Article 11 on Harmonisation and Mutual Recognition of Academic and Professional Qualifications.

HON. DORA C. KANABAHITA BYAMUKAMA,
Member, East African Legislative Assembly.

THE EAST AFRICAN COMMUNITY CROSS BORDER
LEGAL PRACTICE BILL, 2014.

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

1. Short title.
2. Interpretation.
3. Objectives.

PART II—THE EAST AFRICAN COMMUNITY
LAW COUNCIL

4. Establishment of the East African Law Council.
5. Functions of the Law Council.
6. Proceedings of the Law Council.
7. Secretary to the Law Council.

PART III—CERTIFICATION OF ADVOCATES

8. Eligibility and register of advocates.
9. Reciprocal enforcement of suspensions and striking – off
in Partner States.
10. Notification to East Africa Law Society.
11. Complaints against advocates.
12. Review of decisions.
13. Report and action on complaint.
14. Appeal against order of the Law Council.
15. Effect of disciplinary action.

PART IV—ACCOUNTING FOR ADVOCATES

16. Remuneration and client funds.

PART V—MISCELLANEOUS PROVISIONS

17. Regulations.
18. Act to take precedence.

**THE EAST AFRICAN COMMUNITY CROSS
BORDER LEGAL PRACTICE BILL, 2014**

A Bill for an Act

ENTITLED

**THE EAST AFRICAN COMMUNITY CROSS
BORDER LEGAL PRACTICE ACT, 2014**

An Act to provide for the conduct and regulation of cross border legal practice in the Community and to make general provisions for purposes connected to the legal profession.

ENACTED by the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY

1. This Act may be cited as the East African Community Short title.
Cross Border Legal Practice Act, 2014.

2. In this Act unless the context requires— Inter-
pretation.

“advocate” means any person whose name is duly entered as an advocate on the Roll of Advocates in a Partner State;

East African Community Cross Border Legal Practice Bill, 2014

“client” includes any person who, as a principal or an agent on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ an advocate;

“cross border legal practice” means professional activities of an advocate enrolled in one Partner State that are rendered in another Partner State, whether or not the advocate is physically present in that other Partner State;

“Community” means the East African Community established by Article 2 of the Treaty for Establishment of the East African Community;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“Council” means the Council of Ministers established by Article 9 of the Treaty;

“disciplinary record” includes any of the following, unless reversed on appeal or review—

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (d) restrictions or limits on a lawyer’s entitlement to practice; and

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practice imposed, pending the outcome of a disciplinary hearing.

"entitled to practice law" means allowed, under all the legislations and regulations of a home Partner State, to engage in the practice of law in the home jurisdiction;

"host Partner State" means any other Partner State where the advocate conducts or carries on cross border activities other than the home Partner State;

"home Partner State" means the Partner State where the advocate acquired the right to bear his or her professional title;

"indiscipline" includes a finding by a governing body of any of the following—

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming of a lawyer;
- (d) lack of physical or mental capacity to engage in law practice; and
- (e) any other breach of a lawyer's professional responsibilities;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

East African Community Cross Border Legal Practice Bill, 2014

“Law Council” means the East African Community Law Council as established by section 4;

“Law Society” means the East Africa Law Society;

“Partner State” means a Partner State of the East African Community;

“practising certificate” means a certificate issued by the Registrar to an advocate, authorizing him or her to practice in any of the Partner States;

“roll” means the list of advocates kept in accordance with the Acts of the Partner States;

“register” means a register of eligible advocates for cross border legal practice;

“Registrar” means the Registrar of the High Court or similar court of the home Partner State;

“Sectoral Council” means the Sectoral Council provided for under Article 14 of the Treaty for Establishment of East African Community.

Objectives.

3. The objectives of this Act are to—

- (a) promote cross border legal practice within the Community;
- (b) promote harmonisation of legal training and certification;
- (c) provide common standards and rules to regulate cross border legal practice within the Community; and
- (d) facilitate free movement of legal professional services;

East African Community Cross Border Legal Practice Bill, 2014

PART II—THE EAST AFRICAN COMMUNITY LAW COUNCIL

4. (1) There is established an East African Community Law Council which shall act in collaboration with the national Bar Associations and Law Councils of the Partner States.

Establishment of the East African Law Council.

(2) The Law Council shall consist of—

- (a) a representative of the national Law Council from each of the Partner States;
- (b) a representative of the East African Law Society who shall be the Secretary; and
- (c) a representative of the East African Court of Justice who shall preside over the Law Council.

(3) Members of the Law Council shall hold office for a period of three years renewable once.

(4) The office of a member of the Law Council shall fall vacant upon his or her—

- (a) death;
- (b) resignation in writing addressed the Chairperson;
- (c) misconduct;
- (d) inability to perform his or her duties by reason of infirmity of body or mind; or
- (e) vacation of office by virtue of which the appointment was made.

5. The functions of the Law Council shall be to—

Functions of the Law Council.

- (a) regulate cross border legal practice;

East African Community Cross Border Legal Practice Bill, 2014

- (b) advise and make recommendations to the Sectoral Council on policy matters relating to cross border legal practice;
- (c) advise and make recommendations to the national bar associations and law councils on matters relating to cross border legal practice;
- (d) exercise disciplinary control over advocates engaged in cross border legal practice; and
- (e) exercise any power or perform any duty authorised or required by this Act.

Proceedings
of the Law
Council.

6. The Law Council shall in conducting its business determine its own procedure, and for such purpose make rules to guide it in the discharge of its functions.

Secretary to
the Law
Council.

7. (1) There shall be a Secretary to the Law Council.

(2) The Secretary to the Law Council shall be a representative of the East African Law Society.

(3) Any expenses incurred by the Law Council in the performance of its functions under this Act shall be drawn from fees payable by advocates upon issuance of an East African Practising Certificate.

PART III—CERTIFICATION OF ADVOCATES

Eligibility
and register
of
advocates.

8. (1) Every national Law Council shall on an annual basis, submit a list of eligible advocates for cross border legal practice to the Secretary to the Law Council;

(2) The Secretary to the Law Council shall upon receipt of the list of advocates submitted under subsection (1) compile a register of eligible advocates for that current year.

East African Community Cross Border Legal Practice Bill, 2014

(3) The Secretary to the Law Council shall have custody of the register of eligible advocates submitted under subsection (1).

(4) An advocate eligible to practice in one Partner State shall be eligible to practice in all the other Partner States.

9. (1) If any advocate is suspended from practice in a Partner State or struck off the roll of advocates by order of a competent court or other competent authority in the Partner State, that advocate shall be deemed ineligible to practice in any of the Partner States.

Reciprocal enforcement of suspensions and striking off in Partner States.

(2) The Secretary to the Law Council shall cause a notice of the suspension or strike off of an advocate to be entered against the name of the advocate in the register of eligible advocates.

(3) Where an advocate is reinstated on the roll of advocates in the Partner State, that advocate shall be eligible for reinstatement on the register of eligible advocates under this Act.

10. (1) The Secretary to the Law Council shall notify the Secretary of the East Africa Law Society of any entry in respect of any advocate in the register under this Act.

Notification to East Africa Law Society.

(2) The East Africa Law Society shall maintain a register of eligible advocates.

11. (1) A complaint against an advocate for professional misconduct may be made to the Law Council by the national bar association or by any aggrieved person.

Complaints against advocates.

(2) The Law Council shall give the advocate against whom the complaint is made an opportunity to appear before it, and shall furnish him or her with a copy of the complaint,

East African Community Cross Border Legal Practice Bill, 2014

and of any affidavit made in support of the complaint, and shall give him or her an opportunity of inspecting any other relevant document not less than 14 days before the date fixed for the hearing.

(3) Where in the opinion of the Law Council the complaint does not disclose any prima facie case of professional misconduct, the Law Council may, at any stage of the proceedings, dismiss the complaint without requiring the advocate to whom the complaint relates, to answer any allegations made against him or her and without hearing the complainant.

(4) For avoidance of doubt, the hearing of the complaint shall observe the rules of natural justice.

(5) After hearing the complainant and the advocate to whom the complaint relates, if he or she wishes to be heard, and considering the evidence adduced, the Law Council may order that the complaint be dismissed or if of the opinion that a case of professional misconduct on the part of the advocate has been made out, the Law Council may order that—

- (a) the advocate be admonished;
- (b) the advocate be suspended from practice for a specified period not exceeding two years; or
- (c) the name of the advocate be struck off the roll.

(6) The Law Council may make any such order as to payment by any party of any costs or witness expenses and of the expenses of the Law Council in connection with the hearing of any complaint as it may think fit.

(7) The Law Council may issue a warrant which may be enforced by the national law council for the levy of the amount of any sum ordered to be paid by virtue of this section

on the immovable and movable property of the advocate by distress and sale under warrant, and the warrant shall be issued by the High Court or similar court in the Partner State.

(8) The Law Council may order any advocate against whom a case of professional misconduct has been made out to restore any property in his or her possession or under his or her control to the person appearing to the Law Council to be entitled to the property.

(9) Any order made by the Law Council under this section relating to the payment of compensation, costs or expenses, or to the restoration of property, shall be drawn up by the Law Council and shall thereupon be executable by the national law council as a decree of the High Court or similar court in the Partner State.

(10) At the time of awarding damages in any subsequent civil proceedings relating to the same matter, the court determining the civil suit shall take into account any sum recovered in pursuance of an order made under sub section(6).

(11) Decisions of the Law Council shall be deemed to have the same effects as decisions of the national law council for enforcement purposes.

12. Upon receipt of apparent facts, not withstanding any provisions of this Act, the Law Council may review its decisions. Review of decisions.

13. (1) The Secretary to the Law Council shall furnish the complainant with a record of the proceedings and ruling upon determination of the hearing. Report and action on complaint.

(2) The record of proceedings furnished under subsection (1) may be used by any aggrieved party to institute an appeal.

East African Community Cross Border Legal Practice Bill, 2014

Appeal
against
order of the
Law
Council.

14. (1) Any party aggrieved by any order of the Law Council made under this Act may, within fourteen days appeal against the order to the High Court or similar court in the home Partner State by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out his or her grounds of appeal within thirty days after the giving by him or her the notice of appeal.

(2) The High Court or similar court in the Partner State shall set down for hearing any appeal filed under sub section (1) and shall give the Law Council and the advocate not less than fourteen days' notice of the date of hearing.

(3) Pending an appeal under sub section (1), if the Law Council has ordered the appellant advocate's name to be struck off from the roll or has suspended his or her right to practice, the advocate shall not be entitled to practice except in the case where his or her right to practice has been suspended and the period of suspension has lapsed before the hearing of the appeal, in which event he or she shall be entitled to practice after the period of suspension has lapsed.

Effect of
disciplinary
action.

15. Where under any provision of this Act the name of an advocate is struck off the roll or an advocate is suspended from practice, that advocate's practicing certificate shall be deemed to have been cancelled on in case of suspension, cancelled for the duration of the suspension.

PART IV—ACCOUNTING FOR ADVOCATES

Remuner-
ation and
client funds.

16. An advocate carrying out cross border legal practice shall comply with the laws of the host Partner State regarding remuneration, accounting and handling of client's funds, management of trust funds, liability insurance and defalcation of compensation funds.

PART V—MISCELLANEOUS PROVISIONS

17. The Council may, upon recommendation of the Law Council make regulations for the effective carrying out of the provisions and purposes of this Act. Regulations.

18. This Act shall take precedence over the Partner States' laws with respect to any matter to which its provisions relate. Act to take precedence.



MINUTES

MINUTES OF THE 5TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 13TH FEBRUARY, 2014 IN THE MEDIA CENTRE, PARLIAMENT BUILDINGS, AT 10.00 A.M

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
3. Hon. Wanjiku Muhia, MP
4. Hon. Murungi Kathuri, MP
5. Hon. Sarah Korere, MP
6. Hon. Ali Wario, MP
7. Hon. Eric Keter, MP
8. Hon. Ann Nyokabi, MP
9. Hon. Emmanuel Wangwe, MP
10. Hon. Peter Shehe, MP

11. Hon. David Ouma Ochieng, MP
12. Hon. Dan Kazungu, MP
13. Hon. Cyprian Kubai Iringo, MP
14. Hon. Andrew Anyanga Toboso, MP
15. Hon. Timothy Bosire, MP
16. Hon. Florence Mwikali Mutua, MP
17. Hon. David Kariithi, MP

Absent with Apology

1. Hon. Alois Lentiomanga, MP
2. Hon. Joseph Kahangara, MP
3. Hon. Mark Lomunokol, MP
4. Hon. Gideon Konchella, MP
5. Hon. Dido Ali Rasso, MP
6. Hon. Alex Mwiru, MP
7. Hon. Bady Twalib Bady, MP
8. Hon. Robert Mbui, MP
9. Hon. Ogendo Rose Nyamunga, MP
10. Hon. Charles Mutisya Nyamai, MP
11. Hon. Anthony Kimaru, MP
12. Hon. Mary Seneta, MP

In Attendance

1. Mr. Evans Oanda - First Clerk Assistant
2. Ms. Esther Nginyo - Third Clerk Assistant
3. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO. 20/2014 PRELIMINARIES

The Chairperson called the meeting to order at 10.30 am, followed by a word of prayer from Hon. Christopher Nakuleu, MP.

MIN.CRI/NO. 21/2014 CONFIRMATION OF MINUTES

The confirmation of minutes was postponed to a later date.

MIN.CRI/NO. 22/2014 MATTERS ARISING

~~There were no matters arising having deferred the confirmation of minutes.~~

MIN.CRI/NO. 23/2014 EAST AFRICAN COMMUNITY BILLS

The Chairperson informed the Committee that three Bills namely; The East African Community Cross Border Legal Practice Bill, 2014, the East African Community Integration (Education) Bill, 2014 and the East African Community Co-operative Societies Bill, 2014, had been tabled in the House and Committed to the Committee for input. In his forwarding letter, the Clerk of EALA requested the Committee to present its comments 25th March, 2014.

After deliberations, the Committee resolved to invite the sponsors of the Bills to take it through clause by clause of the contents the bills. It further resolved to invite the comments of the relevant stakeholders to enrich the Bills. The following stakeholders would be contacted for comments:

1. The EAC Cross Boarder Legal Practice Bill, 2014
 - Council of Legal Education
 - Law Students Organizations
 - Universities offering legal training
 - Kenya School of Law
 - Attorney General
 - Kenya Law Reform Commission.
 - Law Society of Kenya
2. The EAC Integration (Education) Bill, 2014

- Commission of Higher Education
- Ministry of Education
- Ministry of East African Affairs, Commerce and Tourism
- Attorney General
- Directorate of Education
- KNUT
- KUPPET
- KEPSA

3. The EAC Co-operative Societies Bill, 2014

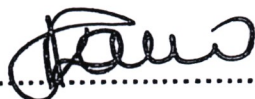
- KEPSA
- Ministry of Agriculture
- KUSSCO
- SASRA
- Chairperson, Committee on Agriculture


MIN. CRI/NO. 24/2014 ANY OTHER BUSINESS

There was no business under this agenda

MIN. CRI/NO.25 /2014: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 11.31.a.m. The next meeting will be held on Tuesday 18th February, 2014 at 10.00 a.m.

Signed..........Chairperson

Date..........

MINUTES OF THE 6TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 18TH FEBRUARY, 2014 IN BOARD ROOM, SECOND FLOOR PROTECTION HOUSE.

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
3. Hon. Wanjiku Muhia, MP
4. Hon. Murungi Kathuri, MP
5. Hon. Sarah Korere, MP
6. Hon. Eric Keter, MP
7. Hon. Joseph Kahangara, MP
8. Hon. Mary Seneta, MP
9. Hon. Dido Ali Rasso, MP
10. Hon. Florence Mwikali Mutua, MP
11. Hon. David Kariithi, MP

12. Hon. Ann Nyokabi, MP
13. Hon. David Ouma Ochieng, MP
14. Hon. Andrew Anyanga Toboso, MP
15. Hon. Peter Shehe, MP
16. Hon. Emmanuel Wangwe, MP

Absent

1. Hon. Alois Lentoimanga, MP
2. Hon. Ali Wario, MP
3. Hon. Gideon Konchella, MP
4. Hon. Alex Mwiru, MP
5. Hon. Cyprian Kubai Iringo, MP
6. Hon. Bady Twalib Bady, MP
7. Hon. Robert Mbui, MP
8. Hon. Charles Mutisya Nyamai, MP
9. Hon. Anthony Kimaru, MP
10. Hon. Timothy Bosire, MP
11. Hon. Mark Lomunokol, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Dan Kazungu, MP

IN ATTENDANCE

EAST AFRICAN LEGISLATIVE ASSEMBLY MEMBERS

1. Hon. Abubakar Zein Abubakar, MP
2. Hon. Peter Mathuki, MP

KENYA NATIONAL ASSEMBLY

1. Ms. Esther Ngingyo - Third Clerk Assistant
2. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO.26/2014 PRELIMINARIES

The Chairperson called the meeting to order at 10.25 am and a word of prayer was said. She welcomed and introduced the two Members of East African Legislative Assembly to the meeting. She stated the agenda of the meeting being; consideration of the EALA Bills.

MIN.CRI/NO.27/2014 : PRESENTATION ON THE EAST AFRICAN COMMUNITY INTERGRATION (EDUCATION) BILL, 2014

The two Members of EALA presented the following to the Committee:

~~That, the proposed Bill was informed by lack of knowledge and information about integration among Partner States of EAC, the need for the Community to be people centered and to be market driven and the need for policy framework for People's participation in the integration processes.~~

That, the Bill is anchored on Article 7 of the Treaty which provides for people centered and market driven economy and that the object of the Bill is to provide a legal framework within which people of East Africa get necessary knowledge and information about the affairs and activities of the Community.

That, the Community citizens' views were collected before the drafting of the Bill and that Kenya as a Partner State was represented by around 30 Stakeholders.

It was agreed as follows:

Title

That, the Title of the Bill was ambiguous; to be amended to read as follows: "*the East African Community Civic Education Bill, 2014*"

Clause 2

That, the last paragraph of Clause 2 should be deleted and replaced therefor with "*Unit means the Civic Education Unit established under section 4 of this Act.*"

That, paragraph (a) in Clause 5 should be amended by replacing the word "*competent*" appearing before "authorities" with the word "*relevant*"

That paragraph (d) in clause 5 should be deleted and replaced therefor with; *“develop curricular for civic education by relevant institutions in the Partner States*

General Comments.

That, a particular duty be assigned to the Partner States to undertake dissemination of the integration information. A provision should be made in the Bill to push Partner States to actualize the Bill.

That there is need to set timelines on the bill to induce some agencies on fast-tracking civic education on integration matters.

That the language of dissemination of the information and knowledge on integration be diversified to include among others; English, Kiswahili, French and some Vernacular languages which are widely spoken in some Partner States.

That County Governments be involved in the EAC matters

That political federation protocol should be stopped until such a time when intensive public awareness on integration matters is done.

MIN.CRI/NO.28/2014: PRESENTATION ON THE EAST AFRICAN COMMUNITY CROSS BORDER LEGAL PRACTICE BILL, 2014

The Committee was informed as follows:

1. The Bill is premised on Article 126 of the Treaty which requires Partner States to harmonize legal training, certification and encourages standardization of the judgments of courts within the Community.
2. The Bill seeks to operationalize Article 76 of the Treaty which provides for free movement of labour, goods, services, capital and the right of establishment.

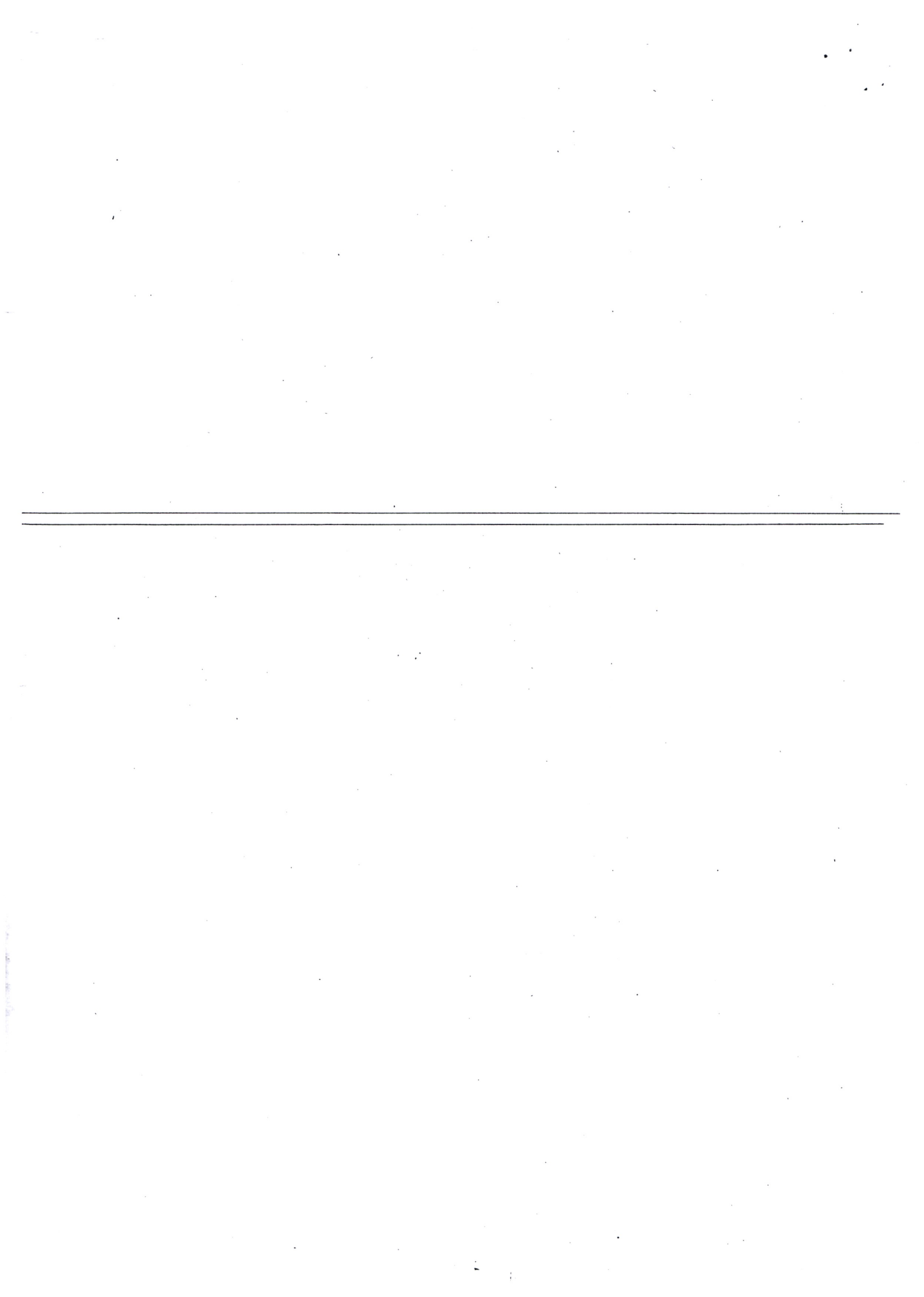
MIN.CRI/NO.29/2014 ADJOURNMENT AND DATE OF NEXT MEETING

There being no other Business, the Chairperson adjourned the meeting at 12.23 pm. The next meeting would be held on 20th February, 2014, Media Center, Main Parliament Building at 10.00 am.

Signed..........

Chairperson

Date.....25/3/2014.....



MINUTES OF THE 7TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 20TH FEBRUARY, 2014 IN MEDIA CENTER, MAIN PARLIAMENT BUILDING AT 10.00 AM.

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
3. Hon. Wanjiku Muhia, MP
4. Hon. Murungi Kathuri, MP
5. Hon. Sarah Korere, MP
6. Hon. Dido Ali Rasso, MP
7. Hon. Florence Mwikali Mutua, MP
8. Hon. David Ouma Ochieng, MP
9. Hon. Andrew Anyanga Toboso, MP
10. Hon. Peter Shehe, MP
11. Hon. Emmanuel Wangwe, MP

12. Hon. Mark Lomunokol, MP
13. Hon. Ali Wario, MP

Absent with Apologies

1. Hon. Alois Lentoimanga, MP
2. Hon. Gideon Konchella, MP
3. Hon. Alex Mwiru, MP
4. Hon. Cyprian Kubai Iringo, MP
5. Hon. Bady Twalib Bady, MP
6. Hon. Robert Mbui, MP
7. Hon. Charles Mutisya Nyamai, MP
8. Hon. Anthony Kimaru, MP
9. Hon. Timothy Bosire, MP
10. Hon. Ogendo Rose Nyamunga, MP
11. Hon. Dan Kazungu, MP
12. Hon. Ann Nyokabi, MP
13. Hon. Joseph Kahangara, MP
14. Hon. David Kariithi, MP
15. Hon. Mary Seneta, MP
16. Hon. Eric Keter, MP

KENYA NATIONAL ASSEMBLY

Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO. 30/2014: PRELIMINARIES

The Chairperson called the meeting to order at 10.35 am and a word of prayer was said.

MIN.CRI/NO. 31/2014: CONSIDERATION OF THE EAST AFRICAN COMMUNITY
COOPERATIVE SOCIETIES BILL, 2014

The Chairperson informed members that, the bill is premised on Article 128 of the Treaty and that the object of the bill is to provide for legal framework for the cooperative societies in the Community.

It was agreed that Hon. Christopher Nakuleu, MP (Vice-Chairperson) and Hon. Emmanuel Wangwe, MP collectively analyses the bill and make a presentation on the Bill on Tuesday 25th February, 2014.

MIN.CRI/CRI/NO. 32/2014: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other Business, the Chairperson adjourned the meeting at 11.03 am. The next meeting would be held on Tuesday 25th February, 2014, Media Center, Main Parliament Building at 10.00 am.

Signed.....

Chairperson

Date.....
25/3/2014

MINUTES OF THE 8TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 25TH FEBRUARY, 2014 IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS, AT 12.00 PM.

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
3. Hon. Murungi Kathuri, MP
4. Hon. Sarah Korere, MP
5. Hon. Mark Lomunokol, MP
6. Hon. Emmanuel Wangwe, MP
7. Hon. Peter Shehe, MP
8. Hon. Dan Kazungu, MP
9. Hon. Robert Mbui, MP
10. Hon. David Kariithi, MP

Absent With Apology

1. Hon. Alois Lentoimanga, MP
2. Hon. Wanjiku Muhia, MP
3. Hon. Ali Wario, MP
4. Hon. Eric Keter, MP
5. Hon. Joseph Kahangara, MP
6. Hon. Mary Seneta, MP
7. Hon. Gideon Konchella, MP
8. Hon. Dido Ali Rasso, MP
9. Hon. Ann Nyokabi, MP
10. Hon. Alex Mwiru, MP
11. Hon. David Ouma Ochieng, MP
12. Hon. Cyprian Iringo Kubai, MP
13. Hon. Andrew Anyanga Toboso, MP
14. Hon. Bady Twalib Bady, MP
15. Hon. Timothy Bosire, MP
16. Hon. Florence Mwikali Mutua, MP
17. Hon. Ogendo Rose Nyamunga, MP
18. Hon. Charles Mutisya Nyamai, MP
19. Hon. Anthony Kimaru, MP

In Attendance

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO. 33/2014: PRELIMINARIES

The Chairperson called the meeting to order at 12.30 pm and word of prayer was said.

MIN.CRI/NO. 34/2014: CONSIDERATION OF EAC COOPERATIVE SOCIETIES BILL, 2014

The Vice Chairperson, the Hon. Christopher Nakuleu, MP presented the following to the Committee on the Bill:-

- i. The EAC Cooperative Societies Bill, 2014 has little reflection of the EAC Treaty.
- ii. The title of the Bill and the contents are in conflict as the title indicates a regional cooperative society whereas the contents describe the ordinary co-operative society in the partner states.
- iii. The affiliation to EAC co-operative society ideally should be corporate membership.
- iv. The bill does not clarify whether individuals in the partner state should register in the EAC Cooperative Society.
- v. The bill does not provide a link between the cooperative societies in the member state and at the regional level.
- vi. Mode of formation of the cooperative is not clear as the integration component has not been addressed by the bill.
- vii. The EAC Treaty will override the cooperative societies by laws.

MIN.CRI/NO. 35/2014: COMMITTEE'S OBSERVATION

The Committee observed that the bill does not clearly provide how the membership to the EAC Cooperative Society will be and therefore indicated that there is need to have a common way of doing things for integration purposes.

MIN.CRI/NO. 36/2014: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1.20 pm. The next meeting would be held on Thursday 27th February, 2014, 4th Floor Continental at 11.30 am.

Signed.....
Chairperson

Date..... 25/3/2014

MINUTES OF THE 9TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 27TH FEBRUARY 2014 IN 4TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 12.00 PM.

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
3. Hon. Murungi Kathuri, MP
4. Hon. Alois Lentoimanga, MP
5. Hon. Wanjiku Muhia, MP
6. Hon. Sarah Korere, MP
7. Hon. Mark Lomunokol, MP
8. Hon. Emmanuel Wangwe, MP
9. Hon. Peter Shehe, MP
10. Hon. Dan Kazungu, MP
11. Hon. Cyprian Kubai Iringo, MP

12. Hon. Andrew Anyanga Toboso, MP
13. Hon. Robert Mbui, MP
14. Hon. Ogendo Rose Nyamunga, MP
15. Hon. David Kariithi, MP

Absent with Apology

1. Hon. Ali Wario, MP
2. Hon. Eric Keter, MP
3. Hon. Joseph Kahangara, MP
4. Hon. Mary Seneta, MP
5. Hon. Gideon Konchella, MP
6. Hon. Dido Ali Rasso, MP
7. Hon. Ann Nyokabi, MP
8. Hon. Alex Mwiru, MP
9. Hon. David Ouma Ochieng, MP
10. Hon. Bady Twalib Bady, MP
11. Hon. Timothy Bosire, MP
12. Hon. Florence Mwikali Mutua, MP
13. Hon. Charles Nyamai, MP
14. Hon. Anthony Kimaru, MP

In Attendance

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO. 37/2014 PRELIMINARIES

The Chairperson called the meeting to order at 12.26 pm and a word of prayer was said. She informed the Members that stakeholders had been requested to submit their views to the Committee on the 3 EAC Bills under the Committee consideration. However, only the Sacco Societies Regulatory Authority had submitted their views. She further noted that the Ministry of Education had sent back the copy of EAC Integration (Education) Bill, 2014 with typographical correction.

MIN.CRI/NO. 38/2014 SUBMISSION BY THE SACCO SOCIETIES REGULATORY AUTHORITY

1. Proposed Bill and the Constitution

SASRA noted that the principal legislation/statute governing the registration of Co-operative Societies is the Cooperative Societies Act (CSA) Cap 490 under the ~~administration of the Commissioner of Cooperative Development.~~ However, it noted that the 4th schedule to the Constitution classifies Cooperative societies as a devolved function of the County Governments meaning that registration of Cooperative Societies shall be devolved to the County Governments giving power to County governments to enact their own county legislations to govern registration and regulation of the Cooperative Societies with the counties jurisdictions.

Comments

The bill ought to recognize the fact that there may be more than one “appropriate authority” in Kenya as defined in Clause 7 as read with Clause 2 thereof.

With the exception of internationally best practices in cooperatives, there is a possibility that the various Cooperative Societies legislations which may crop up from the County governments to govern registration may markedly differ. This may only be addressed through a national policy and legislation prescribing the minimum contents of such county legislation.

Committee's Observation

The Committee observed that there is need to have a national framework governing registration to provide guidelines to the counties to avoid having different laws in different counties for cooperative societies registration. Such registration policies should be in line with the guidelines and policies as provided by the national government.

The Committee observed that there is need for the Senate to formulate guidelines for cooperative societies in the county governments.

2. The Proposed Bill, the Co-operative Societies and Sacco Societies.

SASRA noted that the Cooperative Societies Act governs the registration and other administration of all types of Cooperative Societies. However with the emergence of SACCOs which have their principal object as mobilization of savings from their members and advancement of credit facilities to their members, there ought to be a different regulation from that one of Cooperative Societies as this business model has unique risks especially with members deposits.

The enactment of SACCO Societies Act, 2008 as principal legislation providing for the licensing , supervision and regulation of deposit-taking (FOSA) SACCOs provided that the Act supersede the Cooperative Societies Act in cases of conflict, while the Cooperative Societies Act continued to apply to SACCOs in case in which the Sacco Societies Act , 2008 is silent.

Comments

The proposed bill should clearly recognize this special type of cooperative societies, namely SACCOs especially those engaged in the quasi-banking businesses (FOSA) and the need to have them prudentially regulated by an independent body within the partner states.

Clause 54 of the bill makes the bill superior to the partner states' legislations, which is well within the spirit of the EAC Treaty. However, the bill should take cognizance of the fact that the licensing, supervision and regulation of SACCOs as deposit taking institution is not covered in the bill, and thus domestic laws such as SSA, 2008 ought to take precedence when it comes to prudential regulations of SACCOs.

Committee's Observations.

The Committee agreed with the proposal by SASRA.

3. The Proposed Bill and Membership to Cooperative Societies

In Kenya, Membership to cooperative societies including SACCOs is normally defined from the perspective of the Saccos By-Laws and not statute as proposed by Clause 5(2). This definition in the By-Laws was done through the common bond principle, but which has since been abandoned by many SACCOs with the adoption of the open bond policies.

Comments

Clause 5(2) of the bill is limiting, and does not agree with the current trend in Kenya where membership of SACCOs is open to a wide range of people and not just those who live or work within a given area.

Committee's Observations

The Committee agreed with the proposal by SASRA

4. The Proposed bill and Sale of Shares to Third Parties

The current legal framework governing cooperative societies in Kenya does not envisage a situation in which cooperative society would sell its shares to other third parties as proposed in Clause 5(5) of the bill. The law currently prohibits SACCOs from dealing with non-members and thus the issue of selling shares to other persons would not arise.

~~A person seeking to purchase the shares of a cooperative society must therefore join the membership thereof, which may through the normal member recruitment or as a transfer from an existing member. Such sale of shares will also violate domestic Capital Markets Act.~~

Comments

Clause 5(5) should be redefined along the prevailing domestic laws in Kenya to limit sale or purchase of shares of a cooperative society to members only.

Committee's Observations

The Committee agreed with the proposal by SASRA.

5. Recognition of Cooperative Societies registered in other partner states

Whereas Clause 7 of the Bill provides that a cooperative society shall be registered by the appropriate authorities in the partner states, there is no provision to guide the reciprocal recognition of such a society in other partner states, other than where it has been registered.

This will thus hamper the cross border operations of such a cooperative society in the state other than where it has been registered. Indeed this is very necessary for deposit taking SACCOs, where domestic legislation ought to guide with certainty their prudential regulation.

Comments

The Bill should make a provision for the procedure for the recognition of cooperative societies registered in one partner state, but seeking to operate within the jurisdiction of another partner state or whether such cooperative society will have to seek dual registration to operate in other partner state.

The Bill should also provide mechanisms for cross-border operations of cooperative societies, particularly when it comes to deposit taking SACCOs mobilizing deposits.

Committee's Observations

The Committee agreed with the proposal by SASRA.

6. The Proposed Bill and Settlement of Disputes

The Bill proposes that all disputes arising between cooperative societies, their members and employees in accordance with Clause 47 thereof ought to be settled through the Alternative Dispute Resolution mechanisms of conciliation, and in default arbitration, with appeals lying to the high court.

This provision is in direct conflict with the CSA which provides that such disputes are to be handled by a cooperative tribunal and the appeals from the tribunal lies to high court. Indeed even the SSA provides that disputes between the Authority and SACCOs are to be referred to the tribunal as the court of first instance.

Comments

The cooperative tribunal as established is deemed to be a specialized court for purposes of cooperative disputes, as the court of first instance and thus should be retained – with appropriate reforms thereto.

Since clause 54 of the Bill makes the bill superior to the domestic laws, it is likely that the bill is likely to oust the powers of the tribunal as a court of first instance in respect of cooperative matter.

The Bill should equally provide for resolution of disputes arising out of cross border operations of cooperative societies, and the inter-relationship with the domestic tribunals in order to make the dispute resolution forum clear.

Committee's observations

The Committee observed that there is need for conflict resolution mechanism and therefore the tribunal should be recognized at the high level. Further the Committee observed that there should be an EAC tribunal to handle what the tribunals in the partner states cannot handle.

7. The Proposed Bill and Share Capital of Cooperative Society

Clause 27 of the Bill provides inter alia that the shares of a member may be used to off-set a debt due to the society from such a member. This is erroneous and is likely to lead to de-capitalization of the society in case of defaults by members.

The current legislations in Kenya are clear that members shares are equities for the society and cannot be expended, unless on liquidation. The shares cannot therefore be collateral against credit advance to members, nor can such equity be used to off-set debts owed. They can only be transferred to other members.

Comments

The Bill needs to clearly distinguish between shares which are equity capital to the society and other deposits which may be used as collateral for credit advances, and also to off-set debts due.

This is particularly important for deposit taking SACCOs which rely heavily on the members' shareholding as their main source of capital, in the absence of which the SACCOs existence would be threatened.

Committee's Observations

The Committee agreed with the proposal by SASRA.

8. The Proposed Bill and Audit and Inspection.

The Bill proposes in Part VII thereof that the auditing and inspection of cooperatives societies shall be undertaken by the appropriated national authorities. However, the Bill does not take into consideration the extent to which such inspection and /or audit may go with regard to operations of the society, outside the jurisdiction of the registration state.

The Bill ought to recognize the fact that the cross-border operations of a society outside the jurisdiction of the registration state may have material negative impact on the performance and stability of the society, especially a deposit-taking SACCO. In this

respect, the role of the partner state and its equivalent appropriate authority need to be defined in the Bill.

Comments

The Bill should address the role of the appropriate registration authorities with regard to cross-border operations of a society with particular regard to inspections and auditing including but not limited to auditing and inspection of such activities – by the appropriate registration authority of the host partner state.

Committee's Observations

The Committee agreed with the proposal by SASRA.

9. The Proposed Bill and Terminologies

The proposed Bill introduces terminologies which are not necessarily aligned to the prevailing legal system in Kenya. These include General Assembly, Control Committees among others. These terms may bring confusion with regard to the operations of the cooperative societies in their current module, unless the proposals are aligned.

Comments

It is proposed that the Bill be amended to align terminologies therein with the general country specific terminologies, in order to avoid creating confusion in the implementation of the Bill, against the implementation of country specific legislations.

Committee's Observations.

The Committee observed that there is need to have general terminologies and not specific terminologies suit to a country where each country will interpret the general terminologies to suit their own local scenario.

Conclusion

In conclusion, SASRA noted that the Bill suited the Cooperative Societies more than the deposit taking SACCOs that have very peculiar in terms of supervision and regulations that is akin to supervision and regulation of banking institutions. However, if the Bill is made applicable to the deposit taking SACCOs, then the prudential standards, regulations and supervision of such SACCOs in each partner state ought to be examined and standardized in the bill. In particular, the prudential standards under the SACCO Societies Act need to be taken into account in the Bill.

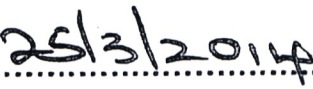
MIN.CRI/NO. 39/2014 ANY OTHER BUSINESS

There was no business under this agenda.

MIN.CRI/NO. 40/2014 ADJOURNMENT

There being no other Business, the Chairperson adjourned the meeting at 1.28 pm.

Signed..........
Chairperson

Date..........

MINUTES OF THE 10TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 4TH MARCH, 2014 IN THE BOARD ROOM, SECOND FLOOR, PROTECTION HOUSE, AT 10.00 AM.

Present

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Ali Wario, MP
3. Hon. Eric Keter, MP
4. Hon. Dido Ali Rasso, MP
5. Hon. Murungi Kathuri, MP
6. Hon. Alois Lentoimanga, MP
7. Hon. David Ouma Ochieng, MP
8. Hon. Wanjiku Muhia, MP
9. Hon. Mark Lomunokol, MP
10. Hon. Emmanuel Wangwe, MP
11. Hon. Charles Nyamai, MP

12. Hon. Peter Shehe, MP
13. Hon. Timothy Bosire, MP
14. Hon. Andrew Anyanga Toboso, MP
15. Hon. Robert Mbui, MP
16. Hon. Ogendo Rose Nyamunga, MP
17. Hon. David Kariithi, MP

Absent with Apology

1. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
2. Hon. Joseph Kahangara, MP
3. Hon. Sarah Korere, MP
4. Hon. Mary Seneta, MP
5. Hon. Gideon Konchella, MP
6. Hon. Ann Nyokabi, MP
7. Hon. Alex Mwiru, MP
8. Hon. Bady Twalib Bady, MP
9. Hon. Florence Mwikali Mutua, MP
10. Hon. Dan Kazungu, MP
11. Hon. Cyprian Kubai Iringo, MP
12. Hon. Anthony Kimaru, MP

In Attendance

1. Mr. Evans Oanda - Clerk Assistant
2. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO.41/2014 PRELIMINARIES

The Chairperson called the meeting to order at 10.24 am and a word of prayer was said. She introduced the days's agenda as that of considering the EAC Bills and urged members to contribute objectively.

MIN.CRI/NO.42/2014: CORRESPONDENCES

The Committee was informed that the following organizations had forwarded their comments on EAC Bills:

1. The Ministry of East African Affairs, Commerce and Tourism
2. The Kenya Private Sector Alliance (KEPSA)
3. The Law Society of Kenya (LSK)

It was noted with concern that no comments had been received from the Attorney General's office despite numerous attempts by the Secretariat to have the same.

MIN.CRI/NO.43/2014: CONSIDERATION OF THE EAC BILLS.

(1) The East African Community Cross Border Legal Practice Bill, 2014

The Committee considered the memorandum from the Law Society of Kenya on East African Community Cross Border Legal Practice Bill, 2014 and adopted the following amendments for inclusion in its report:

Clause 2:

Clause 2 of the Bill should be amended in the definition of the "disciplinary record" by inserting the following immediately after (e)

- (f) any other orders to pay fine and or costs, compensation or reimbursement

Justification

To cover all orders possible for issuance upon conviction of professional misconduct.

Clause 2 of the Bill should be amended in the definition of the "practicing certificate" by deleting the words "issued by Registrar to an advocate authorizing him or her to practice in

any of the partner state” and replacing them with “by issued accordance with the Rules of the Partner State”

Justification

Each partner state shall be issuing practicing certificates according to its laws rather than an East African Practicing certificate.

Clause 2 of the Bill should be amended in the definition of “Register” by deleting all the words and replacing them with the following words-

“register means” a register of advocates admitted to the roll of advocates of each partner states;

Justification

At a regional level we only need a register of the admitted advocates. Each partner state should keep a register of eligible advocates and reserve the right to authorize who to practice within their jurisdiction that will be guided by regulations to be provided for by the Law Council.

Clause 4

Clause 4(2)(a) of the Bill Should be amended by inserting the words “or its equivalent national bar associations” immediately after the word “council”.

Justification

It is important to recognize that some state partners the regulatory body is the Bar Association

Clause 4(2)(a) of the Bill should be amended by inserting the words “after consultations among themselves to ensure gender parity” after the word “States”

Justification

To ensure gender equality in the membership of the Council

Clause 4(2)(b) of the Bill should be amended by deleting the words “”who shall be the Secretary.

Justification

The Secretary to the Council should be recruited competitively.

Clause 4(2(c) of the Bill should be amended by deleting the words “Court of Justice who shall preside over the law council” and replace it with the words “Community Secretariat”

Justification

It is not proper for a member of EACJ to be a member of the EA Law Council considering that they may at one point preside over matters arising out of cross border legal practice. The Bar and the Bench should enjoy its independence. The Secretariat representative will be ideal in these circumstances.

Clause 4(2) should be amended by inserting the following new sub clause 4(2)(d)-

“a representative of Universities offering legal education from each Partner State”

Justification

Inclusion of the academia in the council is important in so far as regulation of legal training is concerned.

Clause 4(3) of the Bill should be amended by inserting the following words After the word “once”-

“Upon assuming office, the Council shall elect the chairperson and competitively recruit the Secretary to the Council who shall serve on full term basis”

Justification

Provides for the mode of recruitment, appointment and term of office of the Secretary and the chair

Clause 7

Clause 7(3) of the Bill should be amended deleting the words “fees payable by advocates upon issuance of East African Practising Certificate” with the words “East African Community Budget”

Justification

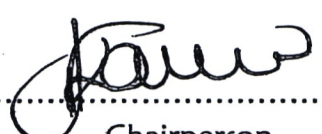
The practicing certificate will be issued by the national bar associations as amended in clause. Since this is a function of the community, it is only logical that funds to run it should be drawn from the Community budget as contributed by the partner states.

MIN.CRI/NO.44/2014

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 12.02 pm. The next meeting will be held on Thursday 6th March, 2014 at a time and venue to be confirmed and communicated by the Secretariat.

Signed.....



Chairperson

Date.....

25/3/2014

MINUTES OF THE 11TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 13TH MARCH, 2014 IN THE BOARD ROOM, 9TH FLOOR, HARAMBEE PLAZA, AT 12.00 PM.

Present

1. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
2. Hon. Ali Wario, MP
3. Hon. Dido Ali Rasso, MP
4. Hon. Murungi Kathuri, MP
5. Hon. Alois Lentoimanga, MP
6. Hon. Wanjiku Muhia, MP
7. Hon. Mark Lomunokol, MP
8. Hon. Emmanuel Wangwe, MP
9. Hon. Andrew Anyanga Toboso, MP
10. Hon. Robert Mbui, MP
11. Hon. Ogendo Rose Nyamunga, MP
12. Hon. Mary Seneta, MP
13. Hon. Cyprian Kubai Iringo, MP
14. Hon. Anthony Kimaru, MP
15. Hon. David Kariithi, MP

Absent with Apology

1. Hon. Florence Kajuju, MP - (Chairperson)
2. Hon. Charles Nyamai, MP
3. Hon. Peter Shehe, MP
4. Hon. Timothy Bosire, MP
5. Hon. Eric Keter, MP
6. Hon. David Ouma Ochieng, MP
7. Hon. Joseph Kahangara, MP
8. Hon. Sarah Korere, MP
9. Hon. Gideon Konchella, MP
10. Hon. Ann Nyokabi, MP
11. Hon. Alex Mwiru, MP
12. Hon. Bady Twalib Bady, MP
13. Hon. Florence Mwikali Mutua, MP
14. Hon. Dan Kazungu, MP

In Attendance

1. Mr. Evans Oanda - Clerk Assistant
2. Ms. Esther Nginyo - Clerk Assistant

MIN.CRI/NO.45/2014 PRELIMINARIES

The Vice Chairperson called the meeting to order at 12.04 pm and a word of prayer was said.

MIN.CRI/NO.46/2014: CORRESPONDENCES

The Following correspondences were brought to the attention of the Committee:

1. A letter from the Ministry of East African Affairs, Commerce and Tourism requesting the Committee to accord prof. Oucho a hearing if when he requests to meet the Committee. He is a lead consultant for the Ministry in developing the Immigration policy within the EAC region.
 2. Comments by the Commission on Legal Education on EAC Cross Border Legal Practice Bill, 2014.
-

MIN.CRI/NO.47/2014: CONSIDERATION OF THE EAC BILLS.

(1) The East African Community Cross Border Legal Practice Bill, 2014

The Committee considered the memorandum from the Law Society of Kenya on East African Community Cross Border Legal Practice Bill, 2014 and adopted the following amendments for inclusion in its report:

Clause 8:

Clause 8(1) of the Bill should be amended by deleting the word “eligible” and replace it with “admitted advocate” therefor.

Justification

The council should keep a register of all advocates admitted to practice law in every state partner and not only the eligible ones for every particular year. Eligibility to practice law should be determined by Bar Associations or National

Clause 8(4) of the Bill should be amended by inserting the words “subject to clearance and or approval by the local Bar Association and payment of such requisite fees as may be stipulated” after the word “States”.

Justification

It is important for the Local Bar Associations to be able to exercise checks and balances to

Protect the consumers from unqualified persons engaging illegal practice.

The Bill should be amended in clause 8(4) to provide for a mechanism of application for a right to practice cross border, with an appeal process.

Justification

This is in order to avoid delays in processing such application and EA Law Council should be able to hear and determine cases of complaint against a state bar association on applications for authority to practice cross border.

The Bill should be amended by inserting new clause 8(5)-

8(5)The Local Bar Association in considering an application by an advocate to practice cross border shall be guided by regulations to be set by the EA Law Council

Justification

~~It is important to have regulations put in place to guide the requirement as well as~~
any fee to be imposed on the advocate to avoid non tariff barriers put by state partners.

Clause 11, 12, 13:

The Bill should be amended deleting clauses 11, 12, and 13 and replace them with a clause to the effect:-

- (a) That any complaint of professional misconduct against an advocate shall be filed and heard in accordance with the rules of the country where the misconduct has taken place
- (b) Orders issued against the said advocate shall binding and be enforced by the home partner state

Justification

It is practically impossible to have complaints of professional misconduct handle by the Law Council. The work of receiving, hearing and determining complaints of professional misconduct of an advocate should be left with the National Disciplinary Processes in place.

The new proviso is important to ensure that discipline is enforced among advocates practicing across border.

Clause 16

The Bill should be amended in clause 16 by inserting the words "professional conduct" after words "defecation of compensation funds"

Justification

This emphasis is important to make sure that advocates are bound to adhere to professional conduct and regulation of the host partner state while engaging in cross border practice.

Clause 17

Clause 17 of the Bill should be amended by replacing the word “council” with the words “Law Council”

Justification

The EAC Law Council should be able to make its rules upon recommendation by the EALS Council.

(2) The East African Community Cooperative Societies Bill, 2014

The Committee considered the memorandum from the Kenya Private Sector Alliance (KEPSA) on the East African Community Cooperative Societies Bill, 2014 and adopted the following amendments for inclusion in its report:

Clause 7

- (i.) The Bill should be amended in clause 7 (6) by inserting the words “except where such an additional trade licence is considered necessary to secure the interest of specific members investing through the society under a special purpose investment vehicle” after the word “licence”

Justification

This is an important provision which will facilitate the ease of operations and reduce the cost of doing business by removing the need for additional licenses. However, this provision should take into account that certain licenses may be required where a society seeks to diversify services such as creating special purpose investment vehicles (e.g. housing schemes) which would require separate registration

- (ii.) The Bill should be amended in clause 7 (7) by inserting the words “but within the validity of the temporary certificate”

- (iii.) The Bill should be amended in clause 7 (7) by inserting new clause 7(7a)

7 (7a): The appropriate Authority shall specify in writing the requirements that have not been met and seek compliance within a period of 1 year provided that this period may be extended where the appropriate authority deems that there is sufficient cause and reason to grant further extension

Justification

It would be necessary to indicate and specify the conditions that have not been met and which the society must comply with pending grant of full registration. It is also important to have flexibility over the 1 year limitation since compliance may require additional time beyond the 1 year prescribed period.

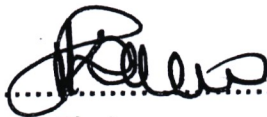
MIN.CRI/NO.48/2014 ANY OTHER BUSINESS

Considering that the Committee was urgently required to complete processing of EAC Bills and table its report for consideration by the House, it was resolved that Members take with them the memoranda submitted by stakeholders for acquaintance during their private time. This will expedite the processing of the Bills when the Committee next sits.

MIN.CRI/NO.44/2014 ADJOURNMENT AND DATE OF NEXT MEETING

The Vice Chairperson adjourned the meeting at 13.46 hours. The next meeting will be held on Tuesday 18th March, 2014 at 8:30 am.

Signed.....



Chairperson

Date.....

25/3/2014

MINUTES OF THE 12TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON TUESDAY 18TH MARCH, 2014 IN THE NEW MEMBERS' LOUNGE, AT 8.30 AM.

Present

1. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
2. Hon. Wanjiku Muhia, MP
3. Hon. Murungi Kathuri, MP
4. Hon. Sarah Korere, MP
5. Hon. Ali Wario, MP
6. Hon. Mark Lomunokol, MP
7. Hon. Mary Seneta, MP
8. Hon. Dido Ali Rasso, MP
9. Hon. Ann Nyokabi, MP
10. Hon. Emmanuel Wangwe, MP
11. Hon. Robert Mbui, MP
12. Hon. Florence Mwikali Mutua, MP
13. Hon. Ogendo Rose Nyamunga, MP
14. Hon. David Kariithi

Absent With Apologies

1. Hon. Florence Kajuju, MP
2. Hon. Alois Lentoimanga, MP
3. Hon. Eric Keter, MP
4. Hon. Joseph Kahangara, MP
5. Hon. Gideon Konchella, MP
6. Hon. Peter Shehe, MP
7. Hon. Alex Mwiru, MP
8. Hon. David Ouma Ochieng, MP
9. Hon. Dan Kazungu, MP
10. Hon. Cyprian Kubai Iringo, MP
11. Hon. Andrew Anyanga Toboso, MP
12. Hon. Bady Twalib Bady, MP
13. Hon. Timothy Bosire, MP
14. Hon. Charles Mutisya Nyamai, MP
15. Hon. Anthony Kimaru, MP

In-Attendance

Ms. Esther Nginyo - Third Clerk Assistant

MIN.CRI/NO.50/2014 PRELIMINARIES

The Vice Chairperson called the meeting to order at 9.00 am and a word of prayer was said.

MIN.CRI/NO.51/2014 CONSIDERATION OF EAST AFRICAN COMMUNITY BILLS

(1) The East African Community Cooperative Societies Bill, 2014

The Committee considered the memorandum from the Kenya Private Sector Alliance (KEPSA) on the East African Community Cooperative Societies Bill, 2014 and adopted the following amendments for inclusion in its report:

Clause 7

THAT, the Bill be amended in clause 7 (8) by including a proviso that "Provided that before exercising its power to suspend the society from operating, the authority shall notify the society on the areas of breach and shall provide a specific time period within which to remedy the breach and be in compliance or face suspension in default" after the words "this Act"

Justification

it is important to ensure the rules of natural justice are observed before taking any measures to suspend a society. The right to a fair hearing is of the essence.

Clause 8

THAT, Clause 8 be amended by deleting the words "shall have limited liability" and replace them with the words "its liability shall be as limited in its constitutive instruments"

Justification

In view of the fact that a society holds funds and assets in trust for its members, its liability must be limited to its constitutive instruments rather than being determined through a statutory provision prescribing the nature of its liability.

Clause 12

THAT, Clause 12 (1)(c) of the Bill be amended by inserting the words "if eligible" after the word "elected".

THAT, Clause 12(1)(d) be amended by inserting the words "owing to such member" after the word "benefits".

Justification

In line with the standards expected of leadership a society is entitled to prescribe conditions for eligibility to seek office. Election cannot be a matter of right but must be

pegged to satisfying specific criteria. Ordinarily, payment of benefits owing to a member must be pegged to one's entitlement and this must be made explicit.

THAT, Clause 12(2)(e) of the Bill be deleted.

Justification

This provision appears misplaced and inconsistent with the generic duties expected of a member of a society.

Clause 14

THAT, Clause 14(1) of the Bill be amended by adding letter "r" to the word "pa" and deleting the word "to" after the word "society"

Justification

to correct the typographical error and language to read " A cooperative society shall, after securing the decision of the General Assembly, sell shares that shall have equal number and par value with a view to enable the society obtain capital necessary to operate".

THAT, Clause 14(6) of the Bill be amended by deleting the words "sell certain shares to a person who is not a member of the society without contradicting the principles of the society" and replace them with "raise capital through any means voted by the members through a resolution passed at a General Assembly".

Justification

This provision creates potential for conflict. Since a society is a membership entity, its shares should not be sold outside of its membership. A society facing the circumstances spelt out under section 14(6) should raise capital through borrowing and other means as agreed by its members through a resolution during its General Assembly.

Clause 16

THAT, Clause 16(2) of the Bill be amended by deleting the word "shall" after the word "society" and replacing it with the word "may" and inserting the words "or by proxy" after the words "meeting of the society" and further deleting the word "the" after the word "cast" replacing it with the word "a".

Justification

This provision appears discriminatory because it draws distinction between different classes of societies. A vote reflects one's choice and members should have the right to vote by proxy.

Clause 23

THAT, Clause 23(1) of the Bill be amended by inserting a new sub-section 23(1)(a):

“The control committee shall play an independent oversight role over the board of directors in managing and running the affairs of the society”.

Justification

It is necessary to be explicit over the oversight audit role played by the control committee.

Clause 30

~~THAT, Clause 30(a) of the Bill be amended by deleting the following words “for societies whose annual income does not exceed US\$ 500,000, although individual members shall be liable to pay income tax”~~

THAT, Clause 30(b) be amended by deleting the following words “for societies whose annual income does not exceed US\$ 1,000,000”.

Justification

These two sections impose obligations on taxation on societies. Societies should be exempt from these taxes as a means of motivating a culture of mobilizing savings and investment. The liability of individual members to pay should be seen as sufficient and additional taxation on the members diminishes the value of investment in a society.

Clause 32

THAT, Clause 32(1) of the bill be amended by deleting the word “shall” after the word “society” and replace it with the word “may” and delete the words “at least twenty per cent “ after the word “deduct” and replace them with the words “a percentage”. Further the clause be amended by inserting the words “subject to a resolution of the General Assembly” after the words “reserve fund”.

Justification

The funds of a society are held in trust for the members. It should be upon the members to decide on the allocation to be held in a reserve fund upon consideration at the General Assembly.

THAT, Clause 32(4) of the Bill be amended by deleting the word “an” after the words “may buy” and delete the word “share” after the word additional and replace it with the word “shares”.

Justification

There is no rationale or justification behind the restriction on purchase or shares to only 1 share and it should be possible for a member to purchase more than 1 share.

Clause 36

THAT, Clause 36 be amended by inserting Sub-clause 36(3) "Where an inspection report is made pursuant to a request for inspection under section 36(2)(a) or (b), such report shall be presented to the General Assembly".

Justification

It is important that where an audit report is being submitted pursuant to a request by members under section 36(2)(a) or (b), such report is tabled before the General Assembly. This safeguards accountability over the use of the society's resources taking into account that they are held in trust for the members.

Clause 44

THAT, Clause 44(1) of the Bill be amended by deleting the word "reconciliation" after the words "settled through" and replace it with "the word "conciliation".

Justification

The reference herein should be to conciliation which is means of reconciling parties and is one of the means of alternative dispute resolution.

THAT, Clause 44(3) of the Bill be amended by deleting the word "elected" after the words "shall be" and replace it with the word "appointed" and further be amended by inserting the words "who may also designate an appropriate professional body to appoint such arbitrator" after the word "authority".

Justification

The use of the term "elected" implies a contested process yet by its very nature arbitration is a consensual process, based on concurrence and agreement, to arrive at an acceptable mechanism in resolving a dispute. It may be useful and necessary to let the appointment of an arbitrator be made by an appropriate professional body.

Clause 45

THAT, Clause 45(3) of the Bill be amended by deleting the word "similar" and replacing it with the words "any other applicable"

Justification

It should be noted that countries within the EAC are enacting specific legislation on alternative dispute resolution. For instance, Kenya enacted the Arbitration Act, 2013. Therefore, arbitrators are not merely bound by the Civil Procedure Code.

Clause 46

THAT Clause 46(1) be amended by deleting the words “by both parties” and replacing them with the words “jointly by the two arbitrators”

THAT, Clause 46(2) be amended by deleting the word “when” and replacing it with the word “where” and by deleting the word “parties” and replacing it with the words “two arbitrators”.

Justification

The appointment of the third arbitrator who acts as an umpire must be made by the two arbitrators representing each of the parties.

2. East African Cross Border Legal Practice Bill, 2014

The Committee considered the memorandum from the Kenya Private Sector Alliance (KEPSA) on the East African Cross Border Legal Practice Bill, 2014 and adopted the following amendments for inclusion in its report:

Clause 2

THAT, Clause 2 of the Bill be amended in the definition of “indiscipline” under (d) by inserting the words “on account of disciplinary proceedings” after the word “practice”.

Justification

This definition fails to contemplate that it is possible for a lawyer to be restricted or limited to practice on account of reasons other than “disciplinary proceedings” e.g. a lawyer in good standing but who has not taken out a practicing certificate.

Clause 4

Clause 4(2)(c) of the Bill be amended by removing representation of the East African Court of Justice on the council or alternatively make an explicit provision that the representative of the East African Court of Justice shall have no voting rights.

Justification

There would be need to draw a distinction between the bar and the bench in terms of the regulatory role and function of the Law Council. The East African Court of Justice should

not be an member of the Council since it is likely that disputes arising from its decisions will be presented to the court for determination which would undermine the principles of natural justice. If a representative of the East African Court of Justice is to sit, the representative should have no voting right and hence only plays an advisory role.

Clause 7

THAT, Clause 7(2) of the Bill be amended by inserting the words "as prescribed under section 4(2)(b)" after the word "society".

THAT, Clause 7 of the Bill be amended by adding a new Section 7(4): "The Law Council may also raise funds through any other means to support the performance of its functions under this Act"

Justification

~~The Law Council should have the power and flexibility to raise funds to meet its expenses over and above the provisions of section 7(3).~~

3. East African Community Integration (Education) Bill, 2014

The Committee further considered the memorandum from the Kenya Private Sector Alliance (KEPSA) on the East African Community Integration (Education), 2014 and adopted the following amendments for inclusion in its report:

Clause 3

THAT Clause 3 be amended by inserting sub-clause 3(e):

"Create understanding on various regional protocols, agreements and other legislative instruments of the EAC".

THAT Clause 3 be amended by inserting 3(f):

"Build understanding on the duties and responsibilities assigned to the people of East Africa and the obligations of the East African Community to the people of East Africa".

Justification

The objectives of the Act should be expanded to capture the full essence of the activities to be carried out in supporting participation in the integration process.

Comments on the East African Community Bills from the Ministry of East African Affairs, Commerce and Tourism

The following were the major highlights of the three EAC Bills:-

a) EAC Cross Border Legal Practice Bill, 2014

- i. The Bill identifies harmonization of legal training and certification as one of its objectives. It may be challenging to achieve this objective within the framework of the Bill since harmonization of legal training will involve other stakeholders in legal training who are not represented in the proposed EAC Law Council. In the alternative, directors of post-graduate law schools of the partner states may be included as members of the Council.

- ii. ~~The rationale of providing for the representative of the East African Court of Justice to preside over the Law Council is unclear. It is proposed that the Chair of the Council rotates among the representatives of the national law councils.~~
- iii. Under Clause 5, it is anticipated that an East African Practicing Certificate will be issued to eligible advocates; this function needs to be included as one of the Law Council's duties. The Bill should also specify the validity of the Certificate.
- iv. Under Clause 8, there is need for the Bill to set out minimum qualifications necessary for an advocate to engage in cross border practice. This would ensure that the caliber of advocates undertaking cross border legal practice is maintained.
- v. Clause 8(4) be amended by redrafting to read: "An advocate eligible to practice in one partner state shall be eligible to engage in cross border legal practice in all the other partner states".
- vi. Clause 11(1) be amended by redrafting it to read "A complaint against an advocate for professional misconduct arising out of engaging in cross border legal practice may be made to the Law Council". This will exclude other complaints that are not of a cross border nature which are dealt with by national disciplinary mechanisms.
- vii. It is proposed that the appeal against the order of the Law Council be preferred to the East African Court of Justice instead of the partner states high Courts. This will accord the EACJ with jurisdiction to handle disputes arising out of the implementation of regional instruments and laws.

b) The EAC Integration (Education) Bill, 2014

- i. There is need for Finance and Administration Committee of the EAC to consider and advice the Council on the financial implications of the Bill.

ii. There is need for the EALA to consult with the Council to avoid duplication of functions at the secretariat and allow for policy guidance that may guide in the operationalization of the Bill once it is enacted.

c) The EAC Co-operative Societies Bill, 2014

- i. The general drafting of the Bill need to be improved to accord it the format of an EALA Bill. The Bill in its present form may be mistaken as model law to be adopted by partner states as their national co-operative laws.
- ii. The Bill should fundamentally provide for the establishment of a regional council/authority as an apex body to guide co-operation of co-operative societies in the region.
- iii. There is need for clarity on whether the law seeks to supersede or complement the existing national laws on co-operatives.

MIN.CRI/NO.52/2014 ANY OTHER BUSINESS

There was no business under this Agenda item.

MIN.CRI/NO.53/2014 ADJOURNMENT AND DATE OF NEXT MEETING

The Vice Chairperson adjourned the meeting at 10.35 a.m. The next meeting will be held on Thursday 20th March, 2014 at 8:30 am.

Signed.....
Chairperson

Date.....25/3/2014

MINUTES OF THE 13TH SITTING OF THE SELECT COMMITTEE ON REGIONAL INTEGRATION HELD ON THURSDAY 20TH MARCH, 2014 IN THE BOARD ROOM, 2ND FLOOR, PROTECTION HOUSE, AT 10.00 AM.

Present

1. Hon. Christopher Nakuleu, MP - (Vice Chairperson)
2. Hon. Murungi Kathuri, MP
3. Hon. Sarah Korere, MP
4. Hon. Ali Wario, MP
5. Hon. Mark Lomunokol, MP
6. Hon. Mary Seneta, MP
7. Hon. Dido Ali Rasso, MP
8. Hon. Emmanuel Wangwe, MP
9. Hon. Robert Mbui, MP
10. Hon. Florence Mwikali Mutua, MP
11. Hon. Ogendo Rose Nyamunga, MP

12. Hon. David Kariithi
13. Hon. Wanjiku Muhia, MP
14. Hon. David Ouma Ochieng, MP
15. Hon. Dan Kazungu, MP
16. Hon. Cyprian Kubai Iringo, MP
17. Hon. Timothy Bosire, MP
18. Hon. Peter Shehe, MP

Absent With Apologies

1. Hon. Florence Kajuju, MP
2. Hon. Alois Lentoimanga, MP
3. Hon. Eric Keter, MP
4. Hon. Joseph Kahangara, MP
5. Hon. Gideon Konchella, MP
6. Hon. Alex Mwiru, MP
7. Hon. Andrew Anyanga Toboso, MP
8. Hon. Bady Twalib Bady, MP
9. Hon. Charles Mutisya Nyamai, MP
10. Hon. Anthony Kimaru, MP
11. Hon. Ann Nyokabi, MP

In-Attendance

1. Ms. Esther Nginyo - Third Clerk Assistant
2. Mr. Tobias Opana - Junior Legislative Fellow

MIN.CRI/NO.54/2014 PRELIMINARIES

The Vice Chairperson called the meeting to order at 10.30 am and a word of prayer was said.

MIN.CRI/NO.55/2014 CORRESPONDENCES

The following correspondences were brought to the attention of the Committee:

1. A letter from the Ministry of East African Affairs, Commerce and Tourism inviting the Committee for a breakfast meeting on Thursday, 27th March, 2014 at 7.00 am at the Intercontinental Hotel. The committee resolved to honour the invitation.
2. Notice from the Clerk of EALA for the 3rd Assembly's 5th Meeting of the 2nd Session in Arusha Tanzania starting from 23rd March, 2014 to 4th April, 2014.

MIN.CRI/NO.56/2014 CONSIDERATION OF THE REPORT ON EAC BILLS

The Committee considered the draft report on the East African Community Bills and unanimously adopted it after being proposed by the Hon. Sarah Korere, MP and Seconded by the Hon. Dan Kazungu, MP.

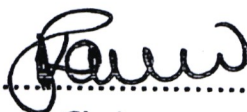
The Committee made the following observations regarding the three Bills:-

1. There is need to have a single national legislation to govern operations of co-operatives in the country. It is from this legislation that counties will come up with their own to regulate those cooperatives operating under their jurisdiction considering that cooperatives have been devolved the Kenyan Constitution.
2. There is need for recognition of the deposit taking Saccos in the EAC Co-operative Societies Bill, 2014
3. The objects of the Bills should be included in the report.

MIN.CRI/NO.57/2014 ADJOURNMENT

The Vice Chairperson adjourned the meeting at 12.07 p.m. The next meeting will be held on Tuesday 25th March, 2014 at 10:00 am.

Signed..... Date.....



Chairperson

25/3/2014