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Clerk of the Senate/secretary, PSC
Date: 16/05/24
[Signature]

THIRTEENTH PARLIAMENT- THIRD SESSION
REPORT OF THE STANDING COMMITTEE ON TRADE,
INDUSTRIALIZATION AND TOURISM
ON
THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2023
(SENATE BILLS NO. 53 OF 2023)

APPROVED
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Mr. Hon. Speaker
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the proposed
amendment to the
constitution of the
United States
relating to
the election of
the President and
Vice-President
by direct vote of
the people.

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ACRONYMS AND ABBREVIATIONS

CECM	County Executive Committee Member
COG	Council of Governors
FDC	Federal Department for Co-operatives (Nigeria)
ILO	International Labor Organization
MSME	Micro, Small and Medium Enterprise

PRELIMINARIES

Establishment and Mandate of the Committee

Article 124 (1) of the Constitution of Kenya provides for the establishment of Committees where each house of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.

The Senate Standing Committee on Trade, Industrialization and Tourism is established pursuant to Standing Order 218(3) of the Senate Standing Orders. As set out in the 187, the Committee is mandated to consider all matters related to trade, industrialization, tourism, cooperatives, investment and divestiture policies.

In undertaking its mandate, the Committee oversees the Ministry of Investment, Trade and Industry, Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development and the Ministry of Tourism and Wildlife. Specifically, the Committee oversees, among others, the following State Departments —

- a) State Department for Investment Promotion;
- b) State Department for Trade;
- c) State Department for Industry;
- d) State Department for Cooperatives;
- e) State Department for Micro, Small and Medium Enterprise (MSME) Development; and
- f) The State Department for Tourism.

Committee Membership

- | | | |
|----|--|--------------------|
| 1. | Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. | Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson |
| 3. | Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 4. | Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 5. | Sen. Paul Karungo Thangwa, MP | - Member |
| 6. | Sen. Crystal Kegehi Asige, MP | - Member |
| 7. | Sen. Andrew Omtatah Okoiti, MP | - Member |
| 8. | Sen. Betty Batuli Montet, MP | - Member |
| 9. | Sen. Hezena M. Lemaletian, MP | - Member |

CHAIRPERSON'S FOREWORD

Mr. Speaker Sir,

The Co-operative Societies (Amendment) Bill, 2023 is a Bill for an Act of Parliament that seeks to provide a framework to align the Act with the provisions of Part Two of the Fourth Schedule of the Constitution, providing that cooperative development is a devolved function.

The Bill was read a First Time on 29th February, 2023 and thereafter committed to the Standing Committee on Trade, Industrialization and Tourism. The Bill was sponsored by Sen. MP. Mariam Omar, M.P.

The objects of the Bill include among others, to provide a framework for the devolving of critical functions currently being retained at the national level by the Commissioner of Cooperative Development.

Mr. Speaker, Sir,

Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit their written memoranda through advertisements in the major dailies on 2nd March 2024. By close of the public participation period on Friday 15th March, 2024, the Committee had not received any memorandum. Consequently, the Committee resolved to invite targeted stakeholder submissions from the Ministry of Cooperatives and MSMEs and the Council of Governors. The Committee vide letters dated 8th April 2024 and 15th April 2024 received communication from the Council of Governors and Ministry of Cooperatives and MSMEs Development respectively. Both stakeholders submitted that the Committee considers withdrawing the Co-operative Societies (Amendment) Bill, 2023 (Senate Bills No. 53 of 2023) in favour of the Cooperatives Bill, 2024 at the National Assembly.

Following the submissions and the views of stakeholders the Committee held deliberative consultations with the sponsor Bill Sen. Mariam Omar Sheikh, M.P. and

agreed to process the bill as it adequately addresses the gaps in the current Act with respect to devolution.

Committee Observations

Mr. Speaker, Sir,

The Committee having considered the bill and reviewed the submissions received makes the following key observations on the bill —

- a) Cooperative societies are established by members with the objective of benefiting from economies of scale of pooling their savings together. By joining cooperative societies, members aim to optimize their economic and social welfare.
- b) There is evidence that cooperative societies play a significant role in fostering economic growth and development of its members and the country at large. They enhance financial inclusion by offering credit facilities at affordable rates to their members thus alleviating poverty and enhancing equity. It is therefore important to have a legal framework that governs the sector so as to ensure that members of cooperative societies are protected from mismanagement. Other benefits of cooperative societies include employment, agricultural value chains, housing development among others.
- c) Article 186 and Schedule Four of the Constitution outline the functions of National Government and County Governments. Therefore, pursuant to Schedule Four Part 2, trade development and regulation including cooperative societies is a function of county government. It is therefore necessary to align the Cooperative Societies Act, 2004 with the Constitution of Kenya 2010 as well as clearly stipulate the respective roles of each level of government.
- d) Establishment of tribunals are a function of the Judiciary pursuant to Article 169 of the Constitution. There is therefore need to align the Cooperatives Act to the Constitution by conferring the mandate of establishing and appointing members of the Co-operatives Tribunal to Judicial Service Commission.
- e) Streamlining and strengthening the management of cooperative societies is fundamental for good governance and to protect the members of a society. The bill proposes for instance that an officer can be held liable for contravening

provisions of the Act. Further, the conditions upon which the Commissioner of Cooperatives can cancel or suspend the registration of a cooperative society have been outlined and include failure to comply with registration requirements, failure to file returns or serious violations of the act among others. Other safeguard measures include granting the Commissioner or County Director of cooperatives in the case of counties the mandate to undertake an inquiry on their own motion or upon request by members, into the by-laws, working or financial conditions of a cooperative society.

- f) The grounds upon which a cooperative society may be dissolved should be clearly outlined so as to enhance the management of cooperatives as well as protect the interests of members. In the past there have been instances of Cooperative Societies undergoing liquidation process ordered by the Commissioner of Cooperatives under circumstances that are not clear to members. This has led to loss of properties of the Cooperative Society and members.

Committee Recommendations

Mr. Speaker, Sir,

The Committee recommends that the Cooperatives Societies (Amendment) Bill, 2023 be adopted with the following amendments —

THAT-

- a) Clause 2 be amended to incorporate all the principles proposed by International Labour Organization Recommendation 193 on the Promotion of Cooperatives. They include voluntary and open membership; democratic member control; economic participation of members; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community;
- b) Cooperatives federation be incorporated in the structures of cooperatives in Kenya so as to enhance their governance. The objectives of Cooperatives

Federation include aggregation, marketing and value addition; providing mechanisms for self-regulation, corporate governance, code of conduct of cooperatives and sub-sector standards;

- c) The County Director of Cooperatives to be competitively recruited by County Public Service Board to ensure professionalism and accountability in the administration of the act as envisage under Article 232 of the Constitution;
- d) The roles of the County Executive Committee Member (CECM) for Cooperatives Development and those of the County Director of Cooperatives should be clarified in the bill. Specifically, the CECM will be responsible for implementation of policies, strategies and legislation whereas operational aspects of the Department such as registration, issuing of notices and other day to day activities to be done by the County Director of Cooperatives;
- e) The roles of amalgamation of cooperative societies; issuance of demand notice and agency notice and enforcement be conferred on the Commissioner for Cooperatives.

Acknowledgement

Mr. Speaker Sir,

I wish to express my gratitude to my colleagues, Members of the Committee for their thoughtful insights and contributions to the Bill. The Committee also acknowledges the sponsor of the Bill, Sen. Mariam Omar, MP, for sponsoring such an ingenious bill in an effort to align the cooperatives sector with Constitution of Kenya 2010.


Further, the Committee is indebted to the Offices of the Speaker and the Clerk of the Senate for facilitating the Committee to undertake during the consideration of this Bill.

Mr. Speaker, Sir

It is now my pleasant duty, pursuant to standing order 148 (1) of the Senate Standing Orders, to present the Report of the Standing Committee on Trade, Industrialization and Tourism on the Co-operative Society (Amendment) Bill, 2023 (Senate Bills No.53 of 2023).

I thank you

Signed.....



Date.....

15/5/2024

SEN. LENKU OLE KANAR SEKI, MP,
CHAIRPERSON,
SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND
TOURISM

CHAPTER 1: INTRODUCTION

1.1 Background

1. The Co-operative Societies (Amendment) Bill, 2023 (Senate Bills No. 53 of 2023) was read for the First time on 29th February 2024 and subsequently committed to the Committee on Trade, Industrialization and Tourism pursuant to standing order 145 (1) of the Senate Standing Orders. The Committee was expected, pursuant to standing orders 145(5) and 148 to facilitate public participation and table its report within thirty calendar days of the committal of the Bill to the Committee.
2. The Bill is for an Act of Parliament to amend various sections of the Co-operative Societies Act, in order to align the Act with the provisions of Part 2 of the Fourth Schedule of the Constitution that provides that cooperatives development is a devolved function.

1.2 Status of the Cooperative Societies in Kenya

3. The Cooperative Sector in counties has further greatly assisted in trade development and economic growth. However, under the current legal framework which is the Cooperatives Societies Act, 2004, cooperative development is a function primarily maintained by the National government, giving limited participation by the County government. This is in contravention of Article 186 and Schedule Four Part 2 (7)(e) of the Constitution. The Commissioner for Co-operative Development as per the Co-operatives Societies Act CAP 490 is tasked with the responsibility of the growth and development of co-operatives societies in the County. Generally, the role of counties in the promotion and facilitation of cooperative development has been overshadowed by the National government.
4. The Co-operatives Societies (Amendment) Bill, 2023 therefore seeks to provide a framework for counties to undertake the devolved functions as per the Constitution. The overarching objective of the bill is to devolve critical functions currently retained at national level by the Commissioner of Cooperative Development to counties. This will enable counties to actively participate in regulation and management of Cooperative Societies.

1.3 Salient provisions of the bill

5. The Bill therefore proposes the following —

Guiding Principles of Bill

6. **Clause 2** amends the Principal Act through the addition of a new section, labelled as section 2A. This section outlines guiding principles for cooperative societies, mandating that individuals performing functions under the Act adhere to the following principles:

- a) Non-discrimination of members in a cooperative society
- b) Voluntary and open membership, democratic member control
- c) Autonomy and independence
- d) Public participation, continuous training, and awareness creation
- e) Cooperation among cooperative societies
- f) Concern for the community in general
- g) Self-responsibility and commitment in the conduct of a cooperative society's affairs
- h) Equity in the distribution of income derived from a cooperative society.

Role of County and National Governments

7. **Clause 4** amends the principal act by inserting a new Part 1A. Clause 4 introduces a new section 2C that provides for the functions of the National Government as follows—

- a) Formulating a national policy framework and standards for the development and growth of cooperative societies.
- b) Maintaining a register of approved audit firms in the cooperative sector.
- c) Formulating management standards for cooperative societies.
- d) Developing and coordinating the implementation of an intergovernmental relations mechanism in the cooperative sector.
- e) Registering cooperative unions and the apex society.
- f) Promoting good governance and ethics in the cooperative sector.
- g) Formulating and regulating cooperative education and training standards.

- h) Conducting capacity building for county governments on cooperative matters.
 - i) Promoting public-private partnerships and facilitating regional and international relations on cooperative issues.
 - j) Establishing and maintaining a research and information center for cooperative societies.
 - k) Performing any other necessary functions for the fulfilment of the National Government's mandate under this Act and for the improvement of the cooperative sector.
8. **Clause 4** also sets out the functions of County Governments through a new Section 2D that sets out the respective county executive committee member shall:
- a) Formulate and implement strategies, guidelines, and measures in line with the national policy framework and standards for a sustainable cooperative sector in the county.
 - b) Promote, facilitate, and register primary cooperative societies.
 - c) Promote and facilitate value addition, adoption of appropriate technology, and facilitate market information sharing in the cooperative sector.
 - d) Collate, analyze, and disseminate data on the activities of cooperative societies in the county.
 - e) Establish and maintain a county cooperative society research and information center.
 - f) Facilitate collaboration and linkage between cooperative societies, the National Government, and relevant stakeholders.
 - g) Promote good governance in the management of cooperative societies in the county.
 - h) Monitor and evaluate the implementation of policies and standards outlined in this Act by cooperative societies, aiming to enhance efficiency in the cooperative sector.
 - i) Perform any other functions deemed necessary for the fulfillment of the mandate of the county government under this Act and for the improvement of the cooperative sector.

9. **Clause 5** introduces a new section 4A on the office of the County Director of Cooperatives which will be within the County Public Service. The Office shall consist of:
 - a) A director, designated by the respective county executive committee member from public officers within the county public service.
 - b) Other county public officers designated by the county executive committee member as necessary for the effective functioning of the Office.
10. In designating a public officer under (2)(a), the county executive committee member must ensure that the individual possesses knowledge and experience in the administration and management of cooperatives.
11. **Clause 6** amends section 4 by providing that a Cooperative union or an apex society shall only be registered as an entity with limited liability.

Registration of a Primary Society

12. Clause 7 introduces a new section, 7A, to the principal Act, focusing on the registration of a primary society. Key provisions include

Application Process

13. An application to register a primary society must be submitted to the Director in the prescribed form and signed by at least ten qualified individuals under section 14

Submission Requirements

14. The application for registration should be accompanied by the prescribed fee, minutes of the meeting of members, four copies of the proposed by-laws of the cooperative society, information on the names, addresses, and signatures of the society members, proof that the members meet the requirements for membership under the Act including any other information requested by the director.

Pre-Registration Procedures

15. Within twenty-one days of receiving the application, the Director is obligated to carry out pre-registration procedures, including sensitizing applicants on legal requirements for registration, facilitating applicants in filling out any required forms, verifying that the registration documents conform to conditions set by the Act or the Commissioner.

Submission to the Director

16. The Director is responsible for submitting the application to the Commissioner along with a recommendation either for the registration of the society or for the rejection of the registration application.

Notification of Rejection Recommendation

17. If the Director intends to recommend against registration, they must inform the applicant in writing about this recommendation.

Objection by the Applicant

18. The applicant, upon receiving the recommendation against registration, has the right to lodge an objection with the Commissioner within seven days of being notified.

Commissioner's Consideration

19. The Commissioner is obligated to consider the information received within fourteen days. If satisfied that the society meets the requirements for registration under the Act, the Commissioner will proceed to register the society.

Registration of a Cooperative Union or Apex Society

20. Clause 8 provides for the Registration of a Cooperative Union or Apex Society of which the application will be made out to the Commissioner of Cooperatives and registration shall be effected within thirty days from receipt of the Application, following which the cooperative can operate in any location in the country.

Provisional Registration of Cooperative Societies

21. Clause 10 provides for the deletion of section 7 and the insertion of a new clause that provides for provisional registration of a cooperative society. Where the Commissioner or the County Director is not satisfied that a society has complied with the provisions of the Act and believes that the steps may be taken to comply, the Commissioner may provisionally register the society or union for a period not exceeding one year on such terms and conditions as may be specified by the Commissioner.
22. A provisional registration, subject to conditions imposed by the Commissioner or director, allows an apex society, co-operative union, or primary society to operate as a co-operative society under the relevant act.

23. The Clause sets out the authority of the Commissioner or director to cancel the provisional registration for good cause, and specifies that such cancellation operates as a refusal to register the society. In case a co-operative society is not registered within the specified period, it ceases to be a registered co-operative society.
24. If a co-operative society ceases to be registered, the Commissioner or director may appoint a competent person as the liquidator, and the validity of transactions entered into during the provisional registration period remains unaffected.
25. The new section empowers the Commissioner or Director, during the provisional registration period, to register the co-operative society if it has complied with the Act and rules. The co-operative society is deemed to be registered on the date of provisional registration, and the relevant section ceases to apply.
26. If a provisionally registered co-operative society contravenes the provisional terms, both the society and any person acting as an officer may be liable to fines upon conviction, with a higher fine for continuing offenses.

Suspension or Cancellation

27. The proposed amendment in Clause 11 introduces a new section, 7A, to the principal Act. Section 7A grants the Commissioner the authority to suspend or cancel the registration of a co-operative society under certain conditions. These conditions include the society's failure to comply with registration requirements, not filing returns for three consecutive years, failure to achieve its objectives, or serious violations of the Act, other laws, or its by-laws.
28. Additionally, subsection (1A) allows a director to recommend the suspension or cancellation of registration for a primary society meeting the specified conditions. Before taking such action, the Commissioner must issue a fourteen days' written notice to the co-operative society, specifying the reasons for the intended suspension or cancellation and requiring a response within fourteen days.
29. If the Commissioner decides to suspend or cancel the registration, the order must specify the reasons and, in the case of suspension, outline the actions required for compliance, along with a stipulated timeframe for remedial measures.
30. If a co-operative society fails to comply with the Commissioner's directives, the Commissioner or a county executive committee member may issue an order for the

cancellation of registration and the dissolution of the co-operative society. Following the cancellation of registration, the co-operative society ceases to exist as a body corporate.

Amendment of By-laws

31. Section 8 of the principal Act is proposed to be amended with the following changes:

- (a) Subsection (2) is to be replaced with a new version, stating that a co-operative society intending to amend its by-laws must submit an application for the amendment in the prescribed form. The submission should be made to the Commissioner for an apex society or co-operative union, and to the director for a primary society.
- (b) In subsection (3), the words "or director as the case may be" are to be added immediately after the words "If the Commissioner."
- (c) A new sub-clause (A3) is to be inserted after sub-clause (3). If the director is satisfied that the amendment to the by-laws of a primary society is not contrary to the Act, the director shall register the amendment and submit relevant information in the prescribed form to the Commissioner for updating the register.
- (d) In subsection (3A), the words "or director" are to be inserted immediately after the words "The Commissioner."
- (e) In subsection (5), the words "or director" are to be inserted immediately after the words "the Commissioner."

Appeal against refusal to register a cooperative society

32. Section 9 of the principal Act is proposed to be replaced with a new section related to the appeal process against the refusal to register a co-operative society. The amendment introduces provisions for both co-operative unions/apex societies and primary societies. These entities may appeal to the Tribunal within thirty days of receiving a decision or notice under sections 6, 7A, or 8, contesting decisions regarding registration, by-laws, amendments, suspension, or cancellation. Subsection (3) allows parties aggrieved by the Tribunal's decision to appeal to the High Court within thirty days.

Certificate of Registration, membership and audits

33. Section 11 is amended by deleting subsection (1) and introducing a new subsection stating that a certificate of registration or provisional registration signed by the Commissioner or director is conclusive evidence that the society is duly registered, provisionally registered, or pre-registered. Subsequent subsections are adjusted to include the words "or director" after "by the Commissioner."
34. Section 14 is amended by renumbering the existing provision and introducing new paragraphs specifying conditions for membership in a co-operative society. A new subsection allows a primary society to become a member of another co-operative society under certain conditions.
35. Section 25 is amended to include consultation of county directors in the appointment of approved auditors and mandatory receipt audited accounts by the county directors prior to tabling in annual general meeting. Subsections (8), (10), and (11) are adjusted to include the words "or director" as needed.

Amalgamation, fines and legal proceedings

36. Section 29 provides for an elaborate procedure for registration of amalgamating societies with the amalgamation of primary societies being overseen by the County Director.
37. Section 32 has been amended to enhance the minimum fine in by-laws from twenty thousand to fifty thousand shillings.
38. Section 35 has been amended to enable the county director to institute legal proceedings for the recovery of unremitted member contributions. The County director may also appoint agents by way of notice for the purposes of collection and recovery of debt owed to the society.

Charges

39. Section 51 is amended by deleting the existing section and providing for the following —
 - a) A co-operative union or the apex society shall register with the Commissioner every charge created by it and the particulars of the charge within thirty days from the date the charge is created.

- b) A primary society shall register with the director every charge created by it and the particulars of the charge within thirty days from the date the charge is created.
- a) If a co-operative society fails to register within thirty days a charge created by it, and unless the registration has been effected by some other person within that period, every officer of the co-operative society commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for every day during which the default continues.

Receivership and Notices of Appointment

40. Section 54 of the Principal Act is proposed to be deleted and substituted with a new Section 54 as follows —

- (1) Where a person appointed as a receiver or manager of the property of a co-operative society under any powers contained in any instrument, that person shall, within seven days from the date of the order of the appointment, give written notice of the appointment to the Commissioner or the director, as the case may be.
- (2) Where a person appointed as a receiver or manager of the property of a co-operative society under the powers contained in any instrument ceases to act as such receiver or manager, that person shall, within seven days of so ceasing, give written notice to the Commissioner or the director.
- (3) The Commissioner or the director shall, within seven days of receipt of the notice of appointment or the notice of cessation of appointment as receiver or manager under subsection (1) or (2), enter the notice in the register of charges.
- (4) A person who contravenes the provisions of subsection (1) or (2) commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for every day during which the default continues.

Inquiries and Inspection

41. Section 58 is amended by deleting subsection (1) and substituted with the following new subsection:

- (1) The Commissioner or the Director may, on its own motion, on request by members, or where required by the Cabinet Secretary, undertake an inquiry into the

by-laws, working, or financial conditions of a co-operative society he or she has registered.

42. Insert the following new subsections after subsection (1A):

(1A) At least one-third of the total members of a co-operative union or the apex society present and voting at a meeting of the co-operative society, which has been duly convened in accordance with this Act, may by a resolution request the Commissioner to undertake an inquiry into the by-laws, working, or financial conditions of any co-operative society.

(1B) At least one-third of the total members of a primary society present and voting at a meeting of the co-operative society, which has been duly convened in accordance with this Act, may by a resolution request the director to undertake an inquiry into the by-laws, working, or financial conditions of any co-operative society.

(4) The Commissioner or the director may, where it is found, upon the inquiry, that a co-operative society is not being managed in accordance with this Act or its by-laws:

Section 59 has been amended to enable the county director to inspect the books of a primary society and further apportion expenses of the inquiry and inspection

Section 60A has been amended to enable the county director to undertake routine inspections of the affairs of a cooperative society.

Dissolution of Societies

43. **Section 61** is amended by deleting subsection (1) and substituting with the following new subsection:

(1) The Commissioner or the director may make an order for dissolution of a co-operative society where:

(a) a special resolution for its dissolution is passed by the members.

(b) in the case of a primary society, the number of members falls below ten.

(c) the co-operative society's registration has been cancelled.

(d) a court of competent jurisdiction makes an order for its dissolution.

(e) an inquiry or an inspection reveals that the co-operative society is not being managed in accordance with this Act or the by-laws.

(f) the co-operative society is adjudged bankrupt.

45. The bill repeals sections 62 and 63 on cancellation of registration and effect of registration.

Insolvency and Liquidation

47. Section 64 is amended by deleting the existing section and substituting it with the following new sections:

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

48. Section 65 is amended by deleting section 65 and substituting with the following new section:

Where an order for the dissolution of a co-operative society has been made under section 61, the Commissioner or the director may appoint one or more persons to be liquidator or liquidators of that co-operative society, and the property of the co-operative society shall vest in the liquidator from the date upon which the order of cancellation takes effect.

49. Section 66:

(1) The liquidator shall have all the powers necessary to wind up a co-operative society. The County Director can approve a Scheme of Distribution and receive an application of discharge of duties by the liquidator after completion of liquidation proceedings.

50. Section 67 is amended by deleting the existing section and substituting it with the following new section:

(1) The Commissioner shall open and administer a co-operative societies liquidation account for co-operative unions and the apex society with such bank as the Commissioner may determine.

(2) The director shall open and administer a co-operative societies liquidation account for primary societies with such bank as the director may determine.

(3) The Commissioner or the director, as the case may be, shall pay into the co-operative societies liquidation account opened under subsection (1) or (2)–

(a) all moneys realized in the liquidation where a bank account does not exist at the commencement of the liquidation.

(b) any unpaid claims on closure of a liquidation of a co-operative society.

(c) any surplus balance on closure of a liquidation of a co-operative society.

(3A) The Commissioner or the director, as the case may be, may utilize the funds in the co-operative societies liquidation account to pay distribution or unpaid claims which have been certified.

(4) The Cabinet Secretary shall make regulations for the administration of the liquidation accounts established under subsection (1) and (2).

51. Section 68 is amended by deleting the existing section and substituting it with the following new subsections:

(1) The liquidator shall exercise his powers subject to the guidance and control of the Commissioner or the director, as the case may be, and to any limitations imposed by the Commissioner or the Director.

(1A) The Commissioner or the Director may —

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

b) remove the liquidator from office and appoint a new liquidator in his place.

c) call for all books, documents, and assets of the co-operative society.

d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66.

e) at his discretion, require accounts to be rendered to the Commissioner or the Director by the liquidator.

f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the co-operative society.

g) make an order for the remuneration of the liquidator.

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

- i) require any member or past member of the co-operative society and any trustee, banker, receiver, agent, or officer of the co-operative society to pay, deliver, convey, surrender, or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books, or documents in his control to which the co-operative society appears to be entitled.
- j) appoint a special manager for the management of the business of the co-operative society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties.
- k) with the third party's written consent, refer any dispute between a liquidator and that third party to the Tribunal.
- l) require the indemnification of the liquidator.

52. Section 71 is further amended by deleting the existing section and substitute it with the following new section:

(1) If a liquidator of a society whose registration has been cancelled alleges that any of the offenses specified under sections 498, 499, 500, 501, 502, 503, 504, 505, 506, 508, or 510 of the Insolvency Act have been committed, he shall report the facts to the Commissioner or the director, as the case may be.

(2) On receipt of a report of a liquidator under subsection (1), the Commissioner or the director may institute such proceedings as may be necessary.

Cooperative Tribunal

53. Section 77 is amended by deleting the existing section and substituting it with the following new section:

(1) There is hereby established a tribunal to be known as the Co-operative Tribunal which shall consist of the following members appointed by the Judicial Service Commission by a notice in the Gazette —

- a) a chairperson and deputy chairperson, who shall be of the opposite gender, competitively recruited by the Judicial Service Commission.

- b) two persons, who shall be of the opposite gender, nominated by the Law Society of Kenya.
 - c) three persons, at least one of whom shall be of the opposite gender, appointed by the Cabinet Secretary in consultation with the apex society.
- (2) A person is qualified for appointment under subsection (1) if such a person—
- a) holds a degree from a university recognised in Kenya.
 - b) meets the requirements of Chapter Six of the Constitution.
 - c) in the case of a person appointed under –
- (i) subsection (1) (a), is an advocate of the High Court of Kenya and has at least ten years' experience as a practitioner.
 - (ii) subsection (1) (b), is an advocate of the High Court of Kenya and has at least five years' experience as a practitioner.
 - (iii) subsection (1)(c), has at least ten years' experience in the field of co-operative management and practice.
- (3) A member of the Tribunal shall serve for a term of three years which may be renewed for one further term.

CHAPTER 2: COMPARATIVE ANALYSIS

54. Cooperatives are a global structure. This is because they have been known to be drivers of economic and social transformation. According to the International Cooperative Alliance, there are 3 million cooperatives on earth which contribute to sustainable economic growth and stable, quality employment. Further, the cooperative movement accounts for at least 12% of humanity.¹

ILO Resolution 193, 2002 on promotion of Cooperatives

55. The International Labor Organization (ILO) defines a Cooperative as an "autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (ILO Resolution 193, 2002).

56. Cooperative societies play a crucial role in economic and social development of its members and are a critical enable for the implementation of Sustainable Development Goals. For this reason, ILO recommends promotion and strengthening of the identity of cooperatives should be encouraged on the basis of:

- a) cooperative values of self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others; and
- b) cooperative principles which include voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community.

57. ILO recommends that governments develop a supportive policy and legal framework for cooperatives consistent with the nature and function of cooperatives and guided by the cooperative values and principles which would:

- a) establish an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible;

¹ <https://ica.coop/en>

- b) promote policies aimed at allowing the creation of appropriate reserves, part of which at least could be indivisible, and solidarity funds within cooperatives;
 - c) provide for the adoption of measures for the oversight of cooperatives, on terms appropriate to their nature and functions, which respect their autonomy, and are in accordance with national law and practice, and which are no less favourable than those applicable to other forms of enterprise and social organization;
 - d) facilitate the membership of cooperatives in cooperative structures responding to the needs of cooperative members; and
 - e) encourage the development of cooperatives as autonomous and self-managed enterprises, particularly in areas where cooperatives have an important role to play or provide services that are not otherwise provided.
58. ILO thus recommends that governments should adopt specific legislation and regulations on cooperatives which are guided by the cooperative values and principles set out in Resolution 193.

2.1 BRAZIL

59. The Federal Constitution of Brazil provides for creation of associations and in the form of law, of cooperatives in their operation. The Cooperatives Act, Federal Law no 5,764/71 provides the regulatory framework for operation of cooperatives in the country. The Act defines National Policy of Cooperatives and establishes the legal regime of cooperatives and other provisions. It establishes the requirements to be satisfied in order to obtain financial incentives, granted by the Central Power, for cooperative development in the sector of agriculture, sylvo-pastoralism and fishery. This Act establishes requirements, conditions, competence and all information concerning different types of cooperatives and authorized activities under the control of competent services.
60. There are state and municipal laws on cooperative society, however, such laws do not conflict with national legislation, so they are limited to fostering and supporting cooperativism or related to tax regulation of their competencies.

61. The Brazilian Cooperatives Act aims to distinguish cooperatives from other legal types of business organizations, such as the for-profit corporation, among others, as well as to establish essential elements of the notion of “cooperative”. In so doing, it had adopted the principles defined by the International Cooperative Alliance (ICA) as the basis of the identity and definition and characteristics of the cooperative society explicitly in the law.

2.2 NIGERIA

62. In Nigeria before the modern cooperatives were put in place, there existed cooperative societies that were indigenous to the local people. These include the labour clubs, the contribution clubs, and the indigenous and traditional farmers’ societies which functioned at nearly all villages and community levels.²

63. The first Cooperative Ordinance in Nigeria was passed in 1935 which was in operation until the three (3) regional governments of the East, North and West started adopting their own Cooperative Societies Laws. Each of the regions had her own cooperative department under different registrars.

64. Cooperative societies in Nigeria are governed by the Nigerian Co-operative Societies Act which empowers the Governor of each state to establish a Directorate for Co-operatives which is charged of registering and regulating co-operatives pursuant to section 1(2) of the Act. Hence, the *Lagos state Co-operative Societies Law 2014 regulates co-operative societies in Lagos State* only.

65. Under the Nigeria Co-operatives Societies Act, there are four (4) types of co-operative societies:

- (i) **Industrial society:** this is a registered society whose principle objective is manufacturing, making or assembling of industrial goods and whose members are manufacturers, craftsmen, artisans and industrial workers.
- (ii) **Primary society:** this is a society that consists of individuals as members.
- (iii) **School co-operative society:** its members are pupils or students attending school or any institution of learning.

² Obasse, E. Okorn., 2012. “*The Impact of Agricultural Cooperative Society in National Development. A Case Study of Obubra Local Government Area*”. An unpublished B. A. Research Project submitted in the Department of History and International Studies, University of Calabar.

- (iv) **Secondary society:** a registered society established to facilitate the operations of registered societies in accordance with co-operative principles and includes a central financing society
66. The **Federal Department of Co-operatives (FDC)** is referred to as the ‘mother of all co-operatives.’ It regulates the sector as well as integrates it with the national policy program. It also ensures manpower development in the sector by sponsoring training sessions run by co-operative colleges. The FDC does not provide direct funding to co-operatives, but as part of the co-operative development policy for Nigeria has suggested that a National Co-operative Development Fund be created.
67. The impact of cooperative societies is felt from the rural to the urban areas. The cooperative societies in Nigeria have aided the accumulation of natural resources and the promotion of agricultural export crop thereby helping to increase the volume of foreign exchange which is needed for economic development and transformation.

CHAPTER 3: PUBLIC PARTICIPATION OF THE BILL

68. Pursuant to the provisions of Article 118 of the Constitution and Standing Order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit their written memoranda through a call for memoranda made in the local dailies of 2nd March 2024. By close of the period (Friday 15th March, 2024), the Committee had not received any memorandum. The Committee decided to invite the Ministry of Cooperatives and the Council of Governors to submit their views on the bill.
69. The Committee vide letters dated 8th April 2024 and 15th April 2024 received communication from the Council of Governors and Ministry of Cooperatives and MSMEs Development respectively informing the Committee of their position that the Bill be withdrawn to allow enactment of the Cooperatives Bill, 2024 which will overhaul the Cooperative Societies Act, 2004. Specifically, they stated as follows;

3.1 Submission by the Council of Governors

70. The Council of Governors noted that there were two distinct cooperative societies bills under consideration in Parliament, one tabled in the National Assembly referenced as the “Cooperative Bill, 2024 (National Assembly Bills No. 7)” and the other tabled at the Senate referenced as the “Cooperative Societies (Amendment) Bill, 2023 (Senate Bills No. 53 of 2023)”.
71. They observed that noting the importance of effective consultation and collaboration between the National Government and County Governments in the execution of the cooperatives function, the COG and the Ministry of Cooperatives and MSMEs had engaged in a series of discussion aimed at proposing amendments to the Bill tabled at the National Assembly. A meeting between the COG and the Cabinet Secretary for Cooperatives held on 7th February 2024 resolved that it would be prudent for the two levels of government to share an agreed version of the Bill with both houses for deliberation. The bill was assigned to the Constitution of Kenya, 2010 and respects the functions of the two levels of government as envisioned by the Fourth Schedule.

72. Thus in light of the collaborative efforts and mutual agreement on the proposed amendments, the council urged the Senate to deliberate on the bill tabled in the National Assembly (i.e. the Cooperative Bill, 2024 (National Assembly Bills No. 7) along with the amendments to the aforementioned bill proposed jointly by the COG and Ministry of Cooperatives. The COG averred that this approach would contribute to the enhancement of the cooperative societies' legislation in alignment with the interest and needs of all stakeholders involved.

3.2 Submission by the Ministry of Cooperatives and MSMEs Development

73. The Ministry of Cooperatives and MSMEs Development appreciated the Senate's proactive role in supporting the cooperative societies, particularly through sponsoring the Cooperatives Societies (Amendment) Bill, 2023.

74. The Ministry informed the Committee that it had since developed a draft Cooperatives Bill, 2024. The Draft bill underwent intensive public participation and received unanimous endorsement from stakeholders during a National Cooperatives leaders' conference. The Cabinet approved the bill and it was later tabled for first reading in the National Assembly on 9th April, 2024.

75. Further, the Ministry submitted as follows:

a) The cooperatives sector had undergone significant changes since the last major amendment of the Cooperatives Act, in 2004. These changes including the devolved system of governance, changes in management, governance and operation of cooperatives, as well as advancements in technology, necessitated a comprehensive overhaul of the Cooperative Societies Act, rather than piecemeal amendments.

b) The proposed amendments in the Cooperatives Societies (Amendment) Bill, 2023 were insufficient to address the challenges facing the Cooperative sector. These challenges included weak governance structures, limited access to affordable credit and markets, limited participation in value addition, and underutilization of technology. The Cooperatives Bill 2024 offered progressive interventions designed to tackle these challenges.

c) The Cooperatives Societies (Amendment) Bill, 2023 proposes substantial government control over cooperatives, contrary to International Guidelines of the International Co-operative Alliance (ICA) and ILO Recommendation 193. The Cooperatives Bill, 2024 introduces a four-tier cooperative structure for self-regulation, aligning with international standards.

d) Certain provisions of the Cooperative Societies (Amendment) Bill 2023 were inconsistent and contradictory with sessional paper. While acknowledging the need for the devolved nature of cooperatives, the Cooperatives Societies (Amendment) Bill, 2023 proposes 48 cooperatives registers (one in each country and one at the national level), without a central one whereas the sessional paper advocates for a National Cooperative Register to achieve standardization as agreed upon by the Ministry and Council of Governors.

76. Based on the foregoing, the Ministry proposed that the Cooperatives Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023) be withdrawn in favour of the Cooperatives Bill, 2024(National Assembly Bills No.7 of 2024).

CHAPTER 4: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

77. The Committee having considered the bill and reviewed the submissions received makes the following observation —

- a) Cooperative societies are established by members with the objective of benefiting from economies of scale of pooling their savings together. By joining cooperative societies, members aim to optimize their economic and social welfare.
- b) There is evidence that cooperative societies play a significant role in fostering economic growth and development of its members and the country at large. They enhance financial inclusion by offering credit facilities at affordable rates to their members thus alleviating poverty and enhancing equity. It is therefore important to have a legal framework that governs the sector so as to ensure that members of cooperative societies are protected from mismanagement. Other benefits of cooperative societies include employment, agricultural value chains, housing development among others.
- c) The ILO's Recommendation 193 on the Promotion of Cooperatives, adopted in 2002 articulates the guiding principles of cooperative societies which should be embedded in national policies and legislative framework for cooperatives. They include voluntary and open membership; democratic member control; economic participation of members; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community in general. These amendment aims to enshrine these principles into law.
- d) Article 186 and Schedule Four of the Constitution outline the functions of National Government and County Governments. Therefore, pursuant to Schedule Four Part 2, trade development and regulation including cooperative societies is a function of county government. It is therefore necessary to align the Cooperative Societies Act, 2004 with the Constitution of Kenya 2010 as well as clearly stipulate the respective roles of each level of government.
- e) Establishment of tribunals are a function of the Judiciary pursuant to Article 169 of the Constitution. There is therefore need to align the Cooperatives Act to the

Constitution by conferring the mandate of establishing and appointing members of the Co-operatives Tribunal to Judicial Service Commission.

- f) Streamlining and strengthening the management of cooperative societies is fundamental for good governance and to protect the members of a society. The bill proposes for instance that an officer can be held liable for contravening provisions of the Act. Further, the conditions upon which the Commissioner of Cooperatives can cancel or suspend the registration of a cooperative society have been outlined and include failure to comply with registration requirements, failure to file returns or serious violations of the act among others. Other safeguard measures include granting the Commissioner or County Director of cooperatives in the case of counties the mandate to undertake an inquiry on their own motion or upon request by members, into the by-laws, working or financial conditions of a cooperative society.
- g) The grounds upon which a cooperative society may be dissolved should be clearly outlined so as to enhance the management of cooperatives as well as protect the interests of members. In the past there have been instances of Cooperative Societies undergoing liquidation process ordered by the Commissioner of Cooperatives under circumstances that are not clear to members. This has led to loss of properties of the Cooperative Society and members. This was for instance the case during Liquidation of Drumvale Farmers' Cooperative Society.
- h) The Ministry of Cooperatives and MSMEs Development had submitted a Cooperatives Bill, 2024 to the National Assembly. The Ministry and the Council of Governors subsequently recommended for the withdrawal of the Cooperative Societies (Amendment) Bill, 2023, with respective justifications of which the committee deliberated on. The Committee having considered the submissions by the Ministry resolved to proceed with the processing of the Cooperative Societies (Amendment) Bill, 2023, subject to various amendments as proposed in the recommendations set out below.

4.2 Committee Recommendations

78. The Committee recommends that the Cooperatives Societies (Amendment) Bill, 2023 be **adopted** with the following amendments —

THAT

- a) Clause 2 be amended to incorporate all the principles proposed by International Labour Organization Recommendation 193 on the Promotion of Cooperatives. They include voluntary and open membership; democratic member control; economic participation of members; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community;
- b) Cooperatives federation be incorporated in the structures of cooperatives in Kenya so as to enhance their governance. The objectives of Cooperatives Federation include aggregation, marketing and value addition; providing mechanisms for self-regulation, corporate governance, code of conduct of cooperatives and sub-sector standards;
- c) The County Director of Cooperatives to be competitively recruited by County Public Service Board to ensure professionalism and accountability in the administration of the act as envisage under Article 232 of the Constitution;
- d) The roles of the County Executive Committee Member (CECM) for Cooperatives Development and those of the County Director of Cooperatives should be clarified in the bill. Specifically, the CECM will be responsible for implementation of policies, strategies and legislation whereas operational aspects of the Department such as registration, issuing of notices and other day to day activities to be done by the County Director of Cooperatives;
- e) The roles of amalgamation of cooperative societies; issuance of demand notice and agency notice and enforcement be conferred on the Commissioner for Cooperatives.

LIST OF ANNEXURES

Annex 1	Minutes of the Standing Committee on Trade, Industrialization and Tourism
Annex 2	The Cooperative Societies (Amendment) Bill, 2023 (Senate Bills No. 53 of 2023)
Annex 3	Advertisement published in the <i>Daily Nation</i> and <i>Standard</i> newspapers on 2 nd March 2024
Annex 4	Matrix of the submissions received by the Committee on the Bill from the Ministry of Co-operatives of and MSME Development
Annex 5	Copies of stakeholder submissions on the Bill i. The Council of Governors(CoG); and ii. The Ministry of Co-operatives and MSMEs Development
Annex 6	Committee Stage Amendments



MINUTES OF THE 93RD HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON TUESDAY, 7TH MAY 2024 IN COMMITTEE ROOM 5, BUNGE TOWER AT 8:00 A.M

PRESENT

- | | |
|---|--------------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson (Virtually) |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member (Virtually) |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member (Virtually) |
| 5. Sen. Paul Karungo Thangwa, MP | - Member |
| 6. Sen. Crystal Kegehi Asige, MP | - Member (Virtually) |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member (Virtually) |
| 8. Sen. Betty Batuli Montet, MP | - Member (Virtually) |

APOLOGIES

- | | |
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| Sen. Hezena M. Lemaletian, MP | - Member |
|-------------------------------|----------|

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Sharon Rotino | -Research officer 1 |
| 4. Ms. Annete Kwamboka | - Legal Counsel |
| 5. Mr. James Ngusya | - Searjent-At-Arm |
| 6. Mr. Stanley Gekore | - Media Relations Officer |
| 7. Ms. Celestine Jepkosgei | - Protocol Officer |
| 8. Mr. Joseph Otieno | -Audio Officer |

MIN/SEN/SCTIT/507/2024

PRELIMINARIES

The Chairperson called the meeting to order at 8.29 am. This was followed by a word of prayer and around of introduction for the Members and the Secretariat.

MIN/SEN/SCTIT/508/2024

ADPOTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Crystal Kegehi Asige, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP, as listed below-

1. Preliminaries;
 - i. *Prayer*
 - ii. *Introduction*
2. Adoption of the Agenda;
3. Confirmation of-
 - i. Minutes of the 86th Sitting held on Tuesday, 23rd March, 2024; and
 - ii. Minutes of the 87th Sitting held on Tuesday 30th April, 2024;
4. Matters arising from previous Minutes;
5. Consideration of and Adoption of Draft Committee Report on the Cooperative Societies (Amendment) Bill, 2023 (Senate Bills No. 53 of 2023);
6. Consideration of and Adoption of Draft Committee Report on the Petition by Sen. Wakili Hillary Sigei, MP, on the alleged fraudulent shareholding activities and illegal acquisition of East Africa Breweries Ltd (EABL) and UDV(K).
7. Any Other Business; and
8. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/509/2024

CONFIRMATION OF THE MINUTES OF PREVIOUS MEETINGS

- 1) Minutes of the 86th Sitting held on Tuesday, 23rd March, 2024 were confirmed as true copy of the deliberations after they were confirmed by Sen. Betty Batuli Montet, MP and seconded by Sen. Crystal Kegehi Asige, MP.
- 2) Minutes of the 87th Sitting held on Tuesday 30th April, 2024 were confirmed as true copy of the deliberations after they were confirmed by Sen. Crystal Kegehi Asige, MP and seconded by Sen. Betty Batuli Montet, MP.

MIN/SEN/SCTIT/510/2024:

CONSIDERATION AND ADOPTION OF COMMITTEE REPORT ON THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL (SENATE BILLS NO. 53 OF 2023)

The Chairperson invited the secretariat to present the final report on the Cooperative Societies (Amendment) Bill, Senate Bills No. 53 of 2023. Following the presentation, the Committee observed that the draft report on Bill had been thoroughly considered during the report writing retreat that was held on 3rd May, 2024.

The Committee adopted the report on the Cooperative Societies (Amendment) Bill, Senate Bills No. 53 of 2023 was unanimously adopted after having been proposed by Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP And Seconded by Sen. Betty Batuli Montet, MP.

It was resolved that the secretariat fast tracks the processing of the report on the Bill for Tabling in the senate.

MIN/SEN/SCTIT/511/2024:

**CONSIDERATION OF AND ADOPTION OF
DRAFT COMMITTEE REPORT ON THE
PETITION BY SEN. WAKILI HILLARY SIGEL,
MP, ON THE ALLEGED FRAUDULENT
SHAREHOLDING ACTIVITIES AND ILLEGAL
ACQUISITION OF EAST AFRICA BREWERIES
LTD (EABL) AND UDV(K).**

The Committee observed that during the consideration of the draft report at the report writing retreat on Friday, 2nd May, 2024 some issues had been flagged out for further follow-up before finalization of the report. They included among others- a request for a meeting with the Kenya Revenue Authority Staff who were stationed at EABL, a report on the Diageo PLC global trends on the offloading of shareholding in Africa, the amount of assets that have been offloaded by Diageo in Kenya, clarification on EABL pending taxes, and initiatives to amend the Capital markets Authority Act.

From the foregoing, it was resolved that the agenda be deferred to the subsequent meeting.

MIN/SEN/SCTIT/512/2024

**ADJOURNMENT AND THE DATE OF THE
NEXT MEETING.**

The meeting adjourned at 9.41 am and the next meeting was scheduled for Thursday, 9th May, 2024 at 8.00 am.

SIGNATURE.......... DATE..... 9th May, 2024

(CHAIRPERSON)



MINUTES OF THE 91ST HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON SATURDAY, 4TH MAY, 2024 IN PARVILION MEETING ROOM, HILTON GARDEN INN HOTEL, MACHAKOS COUNTY FROM 9:00 A.M

PRESENT.

- | | |
|---|--------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member |
| 5. Sen. Paul Karungo Thangwa, MP | - Member |
| 6. Sen. Crystal Kegehi Asige, MP | - Member |
| 7. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 8. Sen. Betty Batuli Montet, MP | - Member |

ABSENT WITH APOLOGY.

- | | |
|----------------------------------|----------|
| 1. Sen. Hezena M. Lemaletian, MP | - Member |
|----------------------------------|----------|

SECRETARIAT.

- | | |
|-------------------------|-------------------------------|
| 1. Ms. Veronicah Kibati | - Deputy Director-HoD |
| 2. Mr. Peter Mulesi | - Clerk Assistant I |
| 3. Mr. David Ngamate | - Clerk Assistant III |
| 4. Ms. Sharon Rotino | -Research officer 1 |
| 5. Ms. Annete Kwamboka | - Legal Counsel |
| 6. Mr. Stanley Gikore | - Media Relations Officer III |
| 7. Mr. James Ngusya | - Searjant-At-Arm |
| 8. Mr. Joseph Otieno | -Audio Officer |

MIN/SEN/SCTIT/500/2024

PRELIMINARIES

The Chairperson called the meeting to order at 9.00 am.with a word of prayer.

MIN/SEN/SCTIT/491/2024

ADPOTION OF THE AGENDA

The agenda was adopted after being proposed by Sen. Esther Anyieni Okenyuri, MP, and seconded by Sen. Andrew Omtatah Okoiti, MP, as listed below-

1. Preliminaries;
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Consideration Committee Paper No.86 on the Co-operative Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023);
4. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/501/2024: CONSIDERATION OF COMMITTEE PAPER NO. 86.

The Secretariat apprised the Committee as follows.

1. The current Cooperative Societies Act maintains all aspects of cooperative development at national level.;
2. A cursory assessment of the Bill reveals extensive amendments that seek to achieve thorough and complete devolution of cooperative functions;
3. The Bill has delineated primary cooperatives under the regulatory ambit of the office of the County Director of Cooperatives. Critical functions such as registration, investigation, inquiries, issuance of agency notices, appointments of auditors, cancellation of registration and appointment of liquidators and supervision of liquidation processes have been devolved; and
4. The implementation of this Bill will extensively achieve the objective of devolving cooperative development as envisioned in part two of the Fourth schedule of the constitution.

Committee Recommendations on the Bill

From the deliberations that ensued, the the Committee recommend that the Cooperatives Societies (Amendment) Bill, 2023 be adopted with the following amendments

THAT-

- a) Clause 2 be amended to incorporate all the principles proposed by International Labour Organization Recommendation 193 on the Promotion of Cooperatives. They include voluntary and open membership; democratic member control; economic participation of members; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for the community;
- b) Cooperatives federation be incorporated in the structures of cooperatives in Kenya so as to enhance their governance. The objectives of Cooperatives Federation include aggregation, marketing and value addition; providing mechanisms for self-regulation, corporate governance, code of conduct of cooperatives and sub-sector standards;

- c) The County Director of Cooperatives to be competitively recruited by County Public Service Board to ensure professionalism and accountability in the administration of the act as envisage under Article 232 of the Constitution;
- d) The roles of the County Executive Committee Member (CECM) for Cooperatives Development and those of the County Director of Cooperatives should be clarified in the bill. Specifically, the CECM will be responsible for implementation of policies, strategies and legislation whereas operational aspects of the Department such as registration, issuing of notices and other day to day activities to be done by the County Director of Cooperatives;
- e) The roles of amalgamation of cooperative societies; issuance of demand notice and agency notice and enforcement be conferred on the Commissioner for Cooperatives.

MIN/SEN/SCTIT/502/2024

ADJOURNMENT AND THE DATE OF THE NEXT MEETING.

The meeting adjourned at 12.30 pm and the next meeting to be at 2.00 p.m.

SIGNATURE.......... DATE..... 7-5-2024

(CHAIRPERSON)



MINUTES OF THE 86TH HYBRID MEETING OF THE SENATE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM HELD ON TUESDAY, 23RD APRIL, 2024 IN IMPALA COMMITTEE ROOM, KICC AT 8:00 A.M

PRESENT

- | | |
|---|--------------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson (Virtually) |
| 2. Sen. Esther Anyieni Okenyuri, MP | - Vice-Chairperson (Virtually) |
| 3. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member (Virtually) |
| 4. Sen. Crystal Kegehi Asige, MP | - Member (Virtually) |
| 5. Sen. Andrew Omtatah Okoiti, MP | - Member (Virtually) |
| 6. Sen. Betty Batuli Montet, MP | - Member (Virtually) |

APOLOGIES

- | | |
|---|----------|
| 1. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member |
| 2. Sen. Paul Karungo Thangwa, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |

IN ATTENDANCE

Sen. Mariam Omar Sheikh, MP

SECRETARIAT

- | | |
|----------------------------|---------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Sharon Rotino | -Research officer 1 |
| 4. Ms. Annete Kwamboka | - Legal Counsel |
| 5. Mr. James Ngusya | - Searjant-At-Arm |
| 6. Mr. William Wambiru | - Fiscal Analyst |
| 7. Mr. Stanley Gekore | - Media Relations Officer |
| 8. Ms. Celestine Jepkosgei | - Protocol Officer |
| 9. Mr. Joseph Otieno | -Audio Officer |

MIN/SEN/SCTIT/477/2024

PRELIMINARIES

The Chairperson called the meeting to order at 8.24 am. This was followed by a word of prayer and around of introduction for the Members and the Secretariat.

MIN/SEN/SCTIT/477/2024 **ADPOTION OF THE AGENDA**

The agenda was adopted after being proposed by Sen. Andrew Omtatah Okoiti, MP, and seconded by Sen. Betty Montet, MP, as listed below-

1. Preliminaries;
 - i. Prayer*
 - ii. Introduction*
2. Adoption of the Agenda;
3. Meeting with Senator Mariam Omar, MP to consider the Cooperative Societies (Amendment) Bill, 2023 (Senate Bills no. 53 of 2023) Committee Paper No. 82
4. Any Other Business; and
5. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/478/2024: **MEETING WITH SENATOR MARIAM OMAR, MP TO CONSIDER THE COOPERATIVE SOCIETIES (AMENDMENT) BILL, 2023 (SENATE BILLS NO. 53 OF 2023) COMMITTEE PAPER 82**

The Chairperson welcomed Sen. Mariam Omar Sheikh, MP to the meeting. Thereafter the secretariat took members through the Committee paper No. 82 that apprised as follows;

1. That the Cooperative Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023) was read a First Time in the Senate on Thursday, 29th February, 2024 and subsequently referred to the Standing Committee on Trade, Industrialization and Tourism for consideration. The Bill is an ordinary Bill that is sponsored by Sen. Omar Mariam Sheikh, MP;
2. The purpose of this Bill is to amend various sections of the Co-operative Societies Act, in order to align the Act with the provisions of Part two of the Fourth Schedule of the Constitution that provides that cooperative development is a devolved function;
3. The current Cooperative Societies Act maintains all aspects of cooperative development at national level. A cursory assessment of the Bill reveals extensive amendments that seek to achieve thorough and complete devolution of cooperative functions;
4. The Bill has delineated primary cooperatives under the regulatory ambit of the office of the County Director of Cooperatives. Critical functions such as registration, investigation, inquiries, issuance of agency notices, appointments of auditors,

cancellation of registration and appointment of liquidators and supervision of liquidation processes have been devolved;

5. The implementation of the Bill would extensively achieve the objective of devolving cooperative development as envisioned in part two of the Fourth schedule of the constitution;
6. Pursuant to the provisions of Article 118 (1)b of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committee invited interested members of the public to submit any representations that they may have on the Bill by way of written memoranda in the major dailies of 2nd March, 2024 and submit the memoranda or hand-deliver to the Office of the Clerk of the Senate on or before Friday, 15th March, 2024 at 5.00 p.m.;
7. That at the expiry of the public participation period, the Committee observed that no stakeholders any representations on the Bill;
8. Consequently, the Committee invited memoranda from targeted key stakeholders (the Ministry of Co-operatives and MSMEs and the Council of Governors);.
9. The Council of Governors in their submission noted that there were two Bills on the Cooperative Societies-The Cooperative Bill (National Assembly Bills No.7 of 2024) and the Cooperative Societies (Amendment) Bill (Senate Bills No.53 Of 2023). They observed that the Ministry of Cooperatives and MSMES and the Council of Governors had in their meeting held on 7th February, 2024 agreed upon the version of the Bill which had been tabled in the National Assembly;
10. The Ministry of Cooperatives and MSMEs in their letter dated 15th April, 2024 appreciated the Senate's proactive role in supporting the cooperative sector through the Cooperative Societies (Amendment) Bill, 2023. However, it was observed that the Cooperatives Bill, 2024 in the National Assembly had undergone extensive public participation and received unanimous endorsement by stakeholders. Further, the consultative workshop that was held in Mombasa on 16th February, 2024 had resolved that the Ministry and the CoG submit a joint memorandum on emerging issues in the Bill so as to be included in the National Assembly Bill;
11. The Ministry Prayed that the Senate withdraws the Cooperative Societies (Amendment) Bill, 2023 in favor of the National Assembly Bill, 2024. and
12. That its Sitting held on Thursday, 18th April, 2024, the Committee considered the above responses and resolved to invite the sponsor of the Bill, Sen. Mariam Omar, MP for deliberations on the way forward on Tuesday, 23rd April, 2024.

Sen. Mariam Omar, MP thanked the Committee for the input thus far. She noted that the current bill was enacted way back in 1998 and was not aligned to devolution. She informed the Committee that the proposed Cooperative Societies (Amendment) Bill, 2023 (Senate Bills no. 53 of 2023) was designed to align the cooperatives with the 2010 Constitution.

Resolution of the Committee

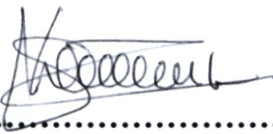
The Committee to hold a report writing retreat for the Cooperative Societies (Amendment) Bill, 2023 (Senate Bills no. 53 of 2023) on **2nd May 2024** to **5th May, 2024**.

MIN/SEN/SCTIT/479/2024 **ANY OTHER BUSINESS**

The Committee to meet the Board and Management of Metropolitan National Sacco on Thursday 25th April, 2024 to deliberate on the Statement requested by Sen. David Wakoli, MP on the status of Metropolitan National Sacco in Bungoma County.

MIN/SEN/SCTIT/480/2024 **ADJOURNMENT AND THE DATE OF THE NEXT MEETING.**

The meeting adjourned at 9.28 am and the next meeting to be held on Thursday 25th April, 2024 at 8.00 am in Committee Room 5, Main Parliament Building.

SIGNATURE.......... DATE..... 30-4-2024.....

(CHAIRPERSON)



MINUTES OF THE SEVENTY FIFTH (75TH) HYBRID MEETING OF THE STANDING COMMITTEE ON TRADE, INDUSTRIALIZATION AND TOURISM, HELD ON TUESDAY, 12TH MARCH, 2024 AT 8.00 AM IMPALA HALL, KICC

PRESENT

- | | |
|---|---------------------------------|
| 1. Sen. Lenku Ole Kanar Seki, MP | - Chairperson |
| 2. Sen. Esther Okenyuri, MP | - Vice –Chairperson (Virtually) |
| 3. Sen. (Dr.) Lelegwe Ltumbesi, CBS, MP | - Member (Virtually) |
| 4. Sen. Jackson Kiplagat Mandago, EGH, MP | - Member (Virtually) |
| 5. Sen. Betty Batuli Montet, MP | - Member (Virtually) |
| 6. Sen. Andrew Omtatah Okoiti | - Member (Virtually) |
| 7. Sen. Crystal Kegehi Asige, MP | - Member |

APOLOGIES

- | | |
|----------------------------------|----------|
| 1. Sen. Paul Karungo Thangwa, MP | - Member |
| 2. Sen. Hezena M. Lemaletian, MP | - Member |

SECRETARIAT

- | | |
|-------------------------|-------------------------------|
| 1. Mr. Peter Mulesi | - Clerk Assistant I |
| 2. Mr. David Ngamate | - Clerk Assistant III |
| 3. Ms. Sharon Rotino | - Research Officer I |
| 4. Ms. Annette Kwamboka | - Legal Counsel II |
| 5. Mr. Rhyan Injendi | - Research Officer III |
| 6. Mr. Stanley Gikore | - Media Relations Officer III |
| 7. Mr. Joseph Otieno | - Audio Officer |
| 8. Mr. James Ngusya | - Serjeant - at-Arms |

MIN/SEN/SCTIT/419/2024

PRELIMINARIES

The Chairperson called the meeting to order at 8:14 am followed by a word of prayer.

MIN/SEN/SCTIT/420/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Betty Batuli Montet, MP and seconded by Sen. Crystal Asige, MP as follows –

1. Preliminaries
 - i. Prayer
 - ii. Introduction
2. Adoption of the Agenda;
3. Confirmation of the Minutes of the 73rd Meeting held on 5th March 2024;
4. Matters arising from the Minutes of the previous meeting;
5. Consideration of Committee Paper No.74 on a Bill Digest on the Co-operative Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023);

6. Any Other Business; and
7. Adjournment/ Date of the Next Meeting.

MIN/SEN/SCTIT/421/2024

CONFIRMATION OF THE MINUTES OF PREVIOUS SITTINGS

Minutes of the 73rd Meeting held 5th March, 2024 were confirmed as a true record of deliberations after being proposed by Sen. Crystal Asige, MP, and seconded by Sen. Betty Batuli Montet, MP.

MIN/SEN/SCTIT/422/2024

MATTER ARISING FROM THE MINUTES OF PREVIOUS SITTINGS

There were no matters arising from the minutes.

MIN/SEN/SCTIT/423/2024

CONSIDERATION OF COMMITTEE PAPER NO.74 ON A BILL DIGEST ON THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2023 (SENATE BILLS NO.53 OF 2023);

The Chairperson invited the Secretariat to present the Committee Paper No. 74. The paper introduced the Co-operative Societies Amendment Bill, 2023 to the Committee.

The Committee proceeded to consider the bill digest that submitted that-

- 1) The purpose of the Bill was to amend various sections of the Co-operative Societies Act, in order to align the Act with the provisions of Part two of the Fourth Schedule of the Constitution that provides that cooperative development is a devolved function;
- 2) That Cooperative Development is a devolved function under part two of the fourth schedule of the constitution, thus the Bill was drafted with the purpose of devolving critical functions currently retained at national level by the Commissioner of Cooperative Development;
- 3) That the Cooperative Sector in counties greatly assisted in trade development and economic growth, noting that the sector had great unexplored potential from a devolution perspective;
- 4) That the Bill sought to provide opportunities for counties to benefit from cooperative development;
- 5) Highlighted the amendments to the guiding principles of Bill and provision for the roles of both County and National Government;
- 6) The Bill provided an elaborate procedure for receivership, liquidation and dissolution of co-operative societies
- 7) That the Bill proposes the establishment of a Cooperative Tribunal which shall consist of the following members appointed by the Judicial Service Commission; and
- 8) The consequences of the Bill were that the extensive amendments sought to achieve thorough and complete devolution of cooperative functions namely the critical functions such as registration, investigation, inquiries, issuance of agency notices, appointments of auditors, cancellation of registration and appointment of liquidators and supervision of liquidation processes have been devolved.

Observations

- 1) That a similar Bill sponsored by the government was concurrently being considered at the National Assembly;

- 2) The Bill addressed and provided a solution to issues that were identified in processing the Statement by Sen. Agnes Kavindu, MP on the Liquidation of Drumvale Farmers' Cooperative Society Ltd; and
- 3) The Bill sought to entrench the devolved function in counties.

Resolutions

After deliberations, the committee resolved that:-

- 1) The Committee shall proceed with processing of the Bill;
- 2) The Committee to invite the sponsor of the Bill; and
- 3) To retreat for report writing on Thursday 21st March, 2024.

MIN/SEN/SCTIT/424/2024

ANY OTHER BUSINESS

- 1) The Committee to review pending legislative business in the next meeting;
- 2) The Committee declined an invitation to attend the Agriculture Sector Network invitation to be held on 22nd and 23rd March, 2024; and
- 3) The Committee to hold a retreat on 21st to 24th March, 2024 for report writing for the Street Vendors (Protection of Livelihoods) Bill, 2023, the Co-operative Societies (amendment) Bill and the pre-publication scrutiny on Creative Economy Support Bill, 2024.

MIN/SEN/SCTIT/425/2024

ADJOURNMENT

There being no other business, the meeting was adjourned at 9.37 am. The next meeting would be held on Tuesday, 19th March, 2024 at 8.00 am in Impala Hall, KICC Building.

SIGNATURE.....

DATE: 14-3-2024

(CHAIRPERSON: SEN. LENKU OLE KANAR SEKI, MP)

SPECIAL ISSUE

Kenya Gazette Supplement No. 235 (Senate Bills No. 53)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

SENATE BILLS, 2023

NAIROBI, 30th November, 2023

CONTENT

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**THE CO-OPERATIVE SOCIETIES (AMENDMENT)
BILL, 2023**

A Bill for

AN ACT of Parliament to amend the Co-operative Societies Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

1. This Act may be cited as the Co-operative Societies (Amendment) Act, 2022.

Short title.

2. Section 2 of the Co-operative Societies Act, in this Act referred to as “the principal Act” is amended —

Amendment of section 2 of No. 12 of 1997.

(a) in the definition of the word “co-operative society” by inserting the words “and includes a provisionally registered co-operative society” immediately after the words “section 4”;

(b) by deleting the definition of the word “Minister”; and

(c) by inserting the following new definitions in their proper alphabetical sequence —

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to co-operative development;

“county executive committee member” means the county executive committee member responsible for matters relating to co-operative development.

“director” means the county director of co-operatives appointed under section 3A of this Act.

3. The principal Act be amended by inserting the following new section immediately after section 2 —

Insertion of new section 2A.

Guiding principles of co-operative societies.

2A. All persons shall, in the performance of their functions under this Act, be guided by the following principles —

(a) non-discrimination of members of a co-operative society;

(b) voluntary and open membership;

- (c) democratic member control;
- (d) autonomy and independence;
- (e) public participation and continuous training and awareness creation;
- (f) co-operation among co-operative societies;
- (g) concern for community in general;
- (h) self-responsibility and commitment in the conduct of the affairs of a co-operative society; and
- (i) equity in the distribution of income derived from a co-operative society;

4. The principal Act is amended by inserting the following new Part IA immediately after the new section 2A —

Insertion of new Part IA.

PART IA — FUNCTIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

Obligation of the National government and county governments.

2B. The National Government and county governments shall, to the extent of their constitutional mandate, put in place measures to promote the development of the co-operative sector and the effective management of co-operative societies.

Functions of the National government.

2C. (1) In ensuring that the National Government fulfils its obligations under section 2B, the Cabinet Secretary shall —

- (a) formulate a national policy framework and standards for the development and growth of co-operative societies;
- (b) maintain a register of approved audit firms in the co-operatives sector;
- (c) formulate management standards for co-operative societies;

- (d) develop and co-ordinate the implementation of an intergovernmental relations mechanism in the co-operatives sector;
- (e) register co-operative unions and the apex society;
- (f) promote of good governance and ethics in the co-operatives sector;
- (g) formulate and regulate co-operative education and training standards;
- (h) carry out capacity building for county governments on matters touching on the co-operatives sector;
- (i) promote public private partnership and facilitate regional and international relations on matters touching on the co-operatives sector;
- (j) establish and maintain a research and information centre for co-operative societies; and
- (k) perform such other functions as may be necessary for the fulfilment of the mandate of the National Government under this Act and for the betterment of the co-operatives sector.

(2) The National Government shall, in the performance of its functions under subsection (1), collaborate with county governments.

Functions of county governments.

2D. In ensuring the effective performance of the functions of a county government under section 2B, the respective county executive committee member shall –

- (a) formulate and implement strategies, guidelines and measures in line with the national policy framework and standards for a sustainable co-operatives sector in the county;
- (b) promote, facilitate and register primary co-operatives societies;
- (c) promote and facilitate value addition, adoption of appropriate technology and facilitate market information sharing in the co-operatives sector;
- (d) collate, analyse and disseminate data on the activities of co-operative societies in the county;
- (e) establish and maintain a county co-operative societies research and information centre;
- (f) facilitate collaboration and linkage between the co-operative societies, the National Government and relevant stakeholders;
- (g) promote good governance in the management of the co-operative societies in the county;
- (h) monitor and evaluate the implementation of policies, standards of this Act by co-operative societies with a view to enhancing efficiency in the co-operatives sector; and
- (i) perform such other functions as may be necessary for the fulfilment of the mandate of the county government under this Act and for the betterment of the co-operatives sector.

5. The principal Act is amended by inserting the following new section immediately after section 3—

Insertion of new section 4A in No. 12 of 1997.

County director of cooperatives.

3A. (1) There shall be an Office of the County Director of Co-operatives which shall be an office within the county public service.

(2) The Office shall consist of –

(a) a director who shall be designated by the respective county executive committee member from amongst the public officers within the county public service; and

(b) such other county public officers designated by the county executive committee member as shall be necessary for the effective performance of the Office.

(3) A county executive committee member shall, in designating a public officer under subsection (2)(a) ensure that such person has knowledge and experience in the administration and management of co-operatives

6. Section 4 of the principal Act is amended –

(a) by renumbering the existing provision as subsection (1);

(b) in the new subsection (1) by –

(i) deleting paragraph (b) and substituting therefor the following new paragraph –

(b) the implementation of the principles set out under section 2A.

(ii) deleting the words “by the Commissioner” appearing immediately after the words “may be registered”; and

(iii) deleting the proviso; and

(c) inserting the following new subsection immediately after the new subsection (1) –

(2) A co-operative union or an apex society shall only be registered as an entity with limited liability.

Amendment of section 4 of No. 12 of 1997.

7. The principal Act is amended by inserting the following new section immediately after section 6 –

Insertion of new section 7A in No. 12 of 1997.

Registration of a primary society.

6A. (1) An application to register a primary society shall be made to the Director in the prescribed form and signed by at least ten persons qualified to be members of the society under section 14.

(2) An application for registration under subsection (1) shall be submitted together with –

- (a) the prescribed fee;
- (b) minutes of the meeting of members;
- (c) four copies of the proposed by laws of the co-operative society;
- (d) information on the names, addresses and signatures of the members of the society;
- (e) proof that the members have met the requirements for membership under this Act; and
- (f) such other information as the director may require.

(3) The Director shall within twenty-one days of receipt of the application under subsection (1) carry out pre-registration procedures including –

- (a) sensitizing applicants on legal requirements for registration;
- (b) facilitating applicants to fill in any forms required for registration; and
- (c) verifying that the registration documents are conform to any conditions set by this Act or the Commissioner.

(4) The Director shall submit an application under subsection (1) to the

Commissioner together with a recommendation –

- (a) for the registration of the society;
or
- (b) for the rejection of the application for registration of the society.

(5) Where the Director intends to recommend to the Commissioner that an application for registration not be granted under this section, the Director shall inform the applicant, in writing of the recommendation.

(6) An applicant who is notified of the recommendation of the respective Director under subsection (5) may lodge an objection with the Commissioner within seven days responding to the recommendation against registration.

(6) The Commissioner shall consider the information received under subsection (4) within fourteen days and shall, if satisfied that the society meets the requirements for registration under this Act, register the society.

8. The principal Act is amended by deleting section 6 and substituting therefor the following new section –

Amendment of section of No. 12 of 1997.

Procedure for registration of a co-operative union or apex society.

6. (1) An application to register a co-operative union or apex society shall be made to the Commissioner in the prescribed form and be signed by a member of each co-operative society authorized by the respective co-operative society or co-operative union, as the case may be.

(2) An application for registration under subsection (1) shall be submitted together with –

- (a) the prescribed fee;

- (b) minutes of the meeting of members;
- (c) four copies of the proposed by-laws of the co-operative society;
- (d) information on the names, addresses and signatures of members;
- (e) information on the names, addresses and signatures of the members of the Committee;
- (f) proof that the members have met the requirements for membership under this Act; and
- (g) such other information as may be prescribed or as the Commissioner may require.

(3) The Commissioner shall, in writing and within thirty days from the date of receipt of an application to register a co-operative society –

- (a) register a co-operative society and issue a certificate of registration;
- (b) register a co-operative society provisionally in accordance with section 7; or
- (c) reject the application.

(4) Where the Commissioner fails to register a co-operative society or give reason for rejection within thirty days of receipt of the application, the co-operative society shall be deemed to have been registered.

(5) A co-operative society registered under this section may operate and have a branch or an office in any part of the country without further requirement for registration.

9. The principal Act is amended by inserting the following new section immediately after section 6 –

Insertion of new
6A.

Refusal to register a co-operative society.

6A. (1) The Commissioner or director may reject an application for registration or pre-registration of a cooperative society where –

- (a) the application does not comply with the provisions of this Act;
- (b) the by-laws of the co-operative society do not conform to this Act;
- (c) the co-operative society has submitted false or misleading information in its application;
- (d) the name of the co-operative society is identical to another registered co-operative society or so nearly resembles the name of another registered co-operative society as to likely mislead the public as to its nature or identity; or
- (e) the objects of the co-operative society are likely to be pursued for an unlawful purpose or used for a purpose incompatible with the peace and welfare of other members of the community.

(2) The Commissioner or the director as the case may be shall notify the applicant of the decision to reject an application for registration within fourteen days of such rejection.

10. Section 7 of the principal Act is amended –

- (a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) If the Commissioner or director is not satisfied that an apex society, co-operative union or primary society, as the case may be, has not complied with this Act and is of the opinion that steps may be taken to comply with this Act, the Commissioner may provisionally register the society or union for a period not exceeding one

Amendment of section 7 of No. 12 of 1997.

year on such terms and conditions as the Commissioner may specify in writing.

- (b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) A provisional registration shall, subject to this section and the conditions that the Commissioner or the director may impose under subsection (1), entitle the apex society, a co-operative union or primary society to operate as a co-operative society under this Act.

- (c) by deleting subsection (4) and substituting therefor the following new subsections –

(4) The Commissioner or the director may, by a notice in writing addressed to the co-operative society and for good cause, cancel the provisional registration of a co-operative society.

(4A) A cancellation of the provisional registration under subsection (4) shall operate as a refusal to register the society and the society shall from the date of service of the notice cease to be a registered co-operative society.

(4B) Where a cooperative society has not been registered at the expiration of the period specified by the Commissioner or the director under subsection (1), the co-operative society shall cease to be a registered co-operative society.

(4C) Where a co-operative society ceases to be a registered as co-operative society —

(a) the Commissioner or the director may appoint a competent person to be the liquidator of the co-operative society; and

(b) the validity of any transaction entered into by that co-operative society during the period of provisional registration shall not be affected.

- (d) by deleting subsection (5) and substituting therefor the following new subsection –

(5) At any time during the period of provisional registration of a co-operative society, the Commissioner or the director may –

- (a) if the co-operative society has complied with this Act and any rules made thereunder, register the co-operative society under section 5; and
- (b) the co-operative society shall be deemed to have been so registered on the date of its provisional registration, and this section shall cease to apply to such a co-operative society.
- (e) by deleting subsection (6) and substituting therefor the following new subsection –

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

11. The principal Act is amended by inserting the following new section immediately after section 7 –

Insertion of new section 7A.

Suspension or cancellation of registration.

7A. (1) The Commissioner may suspend or cancel the registration of a co-operative society, if –

- (a) it ceases to comply with the requirements for registration under this Act;
- (b) the co-operative society has failed to file returns for a period of three consecutive years;
- (c) the co-operative society has failed to achieve its objects; or
- (d) the co-operative society is in serious violation of this Act, any other written law or its by-laws.

(1A) A director may make a recommendation to the Commissioner for the suspension or

cancellation of registration of a primary society where the society meets the conditions for suspension or cancellation of registration under subsection (1).

(2) Before suspending or cancelling the registration of a co-operative society, the Commissioner shall –

- (a) issue the co-operative society with a fourteen days' written notice of the intention to suspend or cancel its registration;
- (b) specify the reasons for the intended suspension or cancellation; and
- (c) require the co-operative society to respond within fourteen days from the date of receipt of the notice.

(3) Where the Commissioner makes an order for the suspension or cancellation of registration of a co-operative society, the Commissioner shall specify –

- (a) the reasons for the suspension or cancellation of the registration;
- (b) in the case of suspension, the action required to be taken by the co-operative society in order to comply; and
- (c) the period within which any action to remedy the violation may be undertaken.

(4) Where a co-operative society fails to comply with subsection (2) or (3), the Commissioner or the county executive committee member may make an order for the cancellation of registration and dissolution of a co-operative society.

(5) Where the registration of a co-operative society is cancelled, the co-

operative society shall cease to exist as a body corporate.

12. Section 8 of the principal Act is amended –

Amendment of section 8 of No. 12 of 1997.

(a) by deleting subsection (2) and substituting therefor the following new subsection –

(2) A co-operative society which intends to amend its by-laws shall submit to an application to amend the by-laws in the prescribed form together with the proposed amendment –

(a) in the case of an apex society or co-operative union, to the Commissioner; or

(b) in the case of a primary society, to the director.

(b) in subsection (3) by inserting the words “or director as the case may be” immediately after the words “If the Commissioner”;

(c) by inserting the following new sub clause immediately after sub clause (3) –

(A3) If the director is satisfied that the amendment by a primary society to its by-laws is not contrary to this Act, the director shall register the amendment and submit information relating to the registration, in the prescribed form, to the Commissioner for purposes of updating the register.

(d) in subsection (3A) by inserting the words “or director” immediately after the words “The Commissioner”; and

(e) in subsection (5) by inserting the words “or director” immediately after the words “the Commissioner”.

13. The principal Act is amended by deleting section 9 and substituting therefor the following new section –

Amendment of section 9 of No. 12 of 1997.

Appeal against refusal to register a co-operative society.

9. (1) A co-operative union or apex society may, within thirty days from the date of receipt of the decision or a notice under section 6, 7A or 8, appeal to the Tribunal against the decision of the Commissioner for –

- (a) refusing to register the co-operative union or apex society and its by-laws or any amendments of its by-laws; or
- (b) suspending or cancelling its registration.

(2) A primary society may, within thirty days from the date of receipt of the decision or a notice under section 6, 7A or 8, appeal to the Tribunal against the decision of the director for –

- (a) refusing to register the co-operative society and its by-laws or any amendments of its by-laws; or
- (b) suspending or cancelling its registration.

(3) A party aggrieved by the decision of the Tribunal under subsection (1) or (2) may, within thirty days from the date of the decision, appeal against the decision to the High Court.

14. Section 10 of the principal Act is amended in subsection (1) by inserting the words “or director’s” immediately after the words “the Commissioner”.

Amendment of section 10 of No. 12 of 1997.

15. Section 11 of the principal Act is amended –

Amendment of section 11 of No. 12 of 1997.

(a) by deleting subsection (1) and substituting therefor the following new subsection -

(1) A certificate of registration or provisional registration signed by the Commissioner or pre-registration signed by the director shall be conclusive evidence that the society is duly registered, provisionally registered or pre-registered.

- (b) in subsection (4) by inserting the words “or director” immediately after the words “by the Commissioner”;
- (c) in subsection (5) by inserting the words “or director” immediately after the words “by the Commissioner”.

16. Section 14 of the principal Act is amended –

Amendment of section 14 of No. 12 of 1997.

- (a) by renumbering the existing provision subsection (1);
- (b) in the new subsection (1) by inserting the following paragraphs immediately after paragraph (c) –
 - (d) he pays the share capital and registration fee required by the co-operative society;
 - (e) he is willing to implement his or her obligation and observe the objectives and by-laws of the co-operative society; and
 - (f) he meets any other requirements which may be specified in the rules and directives issued for the implementation of this Act.
- (c) by inserting the following new subsection immediately after the new subsection (1) –
 - (2) A primary society may become a member of another co-operative society if –
 - (a) the primary society has been fully registered as a co-operative society under this Act;
 - (b) the primary society has passed a resolution authorizing membership in that other co-operative society in accordance; and
 - (c) that other co-operative society has passed a resolution authorizing membership in accordance with section 16.

17. Section 25 of the principal Act is amended –

Amendment of section 25 of No. 12 of 1997

- (a) in subsection (4) by inserting the words “respective directors” immediately after the words “in consultation with the”
- (b) in subsection (5) by inserting the words “or director as the case may be immediately after the words “appointed the Commissioner”;
- (c) by deleting subsection (7) and substituting therefor the following new subsection –
 - (7) The auditor shall, before submitting the audited accounts to the members at a general meeting, submit the audited accounts for comments –

- (a) in the case of a co-operative union or apex society, to the Commissioner; or
- (b) in the case of a primary society, to the director.
- (d) in subsection (8) by deleting the words “accounting period” appearing immediately after the words “end of the” and substituting therefor the words “financial year”;
- (e) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Every co-operative society shall, in the prescribed form and within four months after the end of the financial year submit its annual return together with a certified true copy of the audited accounts and balance sheet of the society for the preceding financial year, -

- (a) in the case of a co-operative union or apex society, to the Commissioner; and
- (b) in the case of a primary society, to the Director.
- (f) in subsection (11) by inserting the words “or director as the case may be” immediately after the words “unless the Commissioner”.

18. Section 26 of the principal Act is amended by inserting the words “or the director, as the case may be,” immediately after the words “by the Commissioner”.

Amendment of section 26 of No. 12 of 1997.

19. Section 27 of the principal Act is amended –

Amendment of section 27 of No. 12 of 1997.

- (a) in subsection (5) by inserting the words “in the case of a co-operative union or the apex society, or the director in the case of a primary society” immediately after the words “or the Commissioner” in paragraph (b);
- (b) in subsection (8) by inserting the words “or the director, as the case may be” immediately after the words “The Commissioner”; and
- (c) by deleting subsection (10) and substituting therefor the following new subsection –

(10) The Commissioner or the director, as the case may be, or a person nominated by the Commissioner or the director, may preside at any meeting convened under subsection (8).

20. Section 28 of the principal Act is amended –

Amendment of
section 28 of No.
12 of 1997.

- (a) in subsection (4) by –
- (i) inserting the words “in the case of a co-operative union or the apex society, or to the director in the case of a primary society” immediately after the words “to the Commissioner” in paragraph (h); and
 - (ii) inserting the words “in the case of a co-operative union or the apex society, or the director in the case of a primary society” immediately after the words “by the Commissioner” in paragraph (k);
- (b) in subsection (7) by inserting the words “in the case of a co-operative union or the apex society, or the director in the case of a primary society” immediately after the words “The Commissioner”.

21. Section 29 of the principal Act is amended –

Amendment of
section 29 of No.
12 of 1997.

- (a) in subsection (7) by inserting the words “or the director” immediately after the words “by the Commissioner” in paragraph (c);
- (b) by inserting the following new subsections immediately after subsection (8) –

(8A) Within fourteen days from the date the further resolution is made under subsection (8) by each amalgamating society, the amalgamating societies shall submit an application to the Commissioner or the director, as the case may be, for the approval of the amalgamation and registration of the amalgamated society.

(8B) The application for approval of amalgamation and registration of the amalgamated society shall, in addition to the requirements set out under section 6, be submitted together with –

- (a) copies of the preliminary resolution made under subsection (1) by each of the amalgamating societies;
- (b) a copy of any notice given under subsection (3), (4) or (5) by a member, a creditor or any other interested person;

- (c) copies of the secondary resolution made under subsection (7) by each of the amalgamating societies;
- (d) copies of the further resolution made under subsection (8) by each of the amalgamating societies confirming the preliminary resolution; and
- (e) the registration certificate of each of the amalgamating societies.

(8C) The Commissioner or the director, as the case may be, shall, in writing and within thirty days from the date of receipt of an application under subsection (8A) –

- (a) approve the application and register the amalgamated society;
- (b) register the amalgamated society provisionally in accordance with section 7; or
- (c) reject the application.

(8D) The Commissioner or the director may, in approving an application under subsection (8C)(a), impose such conditions as may be necessary to ensure compliance.

(8E) The Commissioner or the director shall specify reasons, in writing, where an application made under subsection (8A) is rejected.

- (c) in subsection (9) by deleting the introductory clause and substituting therefor the following new introductory clause –

(9) Upon approval of amalgamation and registration of the amalgamated society, –

- (d) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Where the Commissioner or the director rejects an application made under subsection (8A) or fails to act within thirty days, the amalgamating societies may, within fourteen days from the date of the decision, appeal to the Tribunal.

22. Section 30 of the principal Act be amended –

Amendment of
section 30 of No.
12 of 1997.

(a) in subsection (7) by –

- (i) inserting the words “(in this section referred to as the secondary resolution)” immediately after the words “of the society” in the introductory clause; and
- (ii) inserting the words “or the director, as the case may be,” immediately after the words “as the Commissioner” in paragraph (c);

(b) by deleting subsection (8) and substituting therefor the following new subsection –

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

(c) by inserting the following new subsections immediately after subsection (8) –

(8A) Within fourteen days from the date the further resolution is made under subsection (8), the existing society shall submit an application to the Commissioner or the director, as the case may be, for approval of division of the society and registration of the new societies.

(8B) The application for approval of division of the existing society and registration of new societies shall, in addition to the requirements set out under section 6, be submitted together with –

- (a) a copy of the preliminary resolution of made under subsection (1) by the existing society;
- (b) a copy of any notice given under subsection (3), (4) or (5) by a member, a creditor or any other interested person;
- (c) a copy of the secondary resolution made under subsection (7) by the existing society;
- (d) a copy of the further resolution made under subsection (8) by the existing society confirming the preliminary resolution; and
- (e) the registration certificate of the existing society.

(8C) The Commissioner or the director shall, in writing and within thirty days from the date of receipt of an application under subsection (8A) –

- (a) approve the application and register the new societies;
- (b) register the new societies provisionally in accordance with section 7; or
- (c) reject the application.

(8D) The Commissioner or the director, as the case may be, may, in approving the application under subsection (8C)(a), impose such conditions as may be necessary to ensure compliance.

(8E) The Commissioner or the director shall specify reasons, in writing, where an application made under subsection (8A) is rejected.

- (d) in subsection (9) by deleting the introductory clause and substituting therefor the following new introductory clause –
- (9) Upon approval of division of the existing society and registration of the new societies, –
- (e) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Where the Commissioner or the director rejects an application made under subsection (8A) or fails to act on the application within thirty days, the existing society may, within fourteen days from the date of the decision, appeal to the Tribunal.

23. Section 32 of the principal Act be amended in subsection (1) by deleting the word “twenty” appearing immediately after the words “not exceeding” and substituting therefor the words “fifty”.

Amendment of section 32 of No. 12 of 1997.

24. Section 35 of the principal Act be amended –

- (a) in subsection (2) by inserting the words “or the director, as the case may be,” immediately after the words “The Commissioner”;
- (b) in subsection (3) by inserting the words “or the or the director” immediately after the words “The Commissioner”;

Amendment of section 35 of No. 12 of 1997.

- (c) in subsection (5) by deleting the introductory clause and substituting therefor the following new introductory clause –

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

- (c) in subsection (6) by inserting the words “or the or the director” immediately after the words “notify the Commissioner”.

25. The principal Act is amended by deleting section 51 and substituting therefor the following new section –

Amendment of section 51 of No. 12 of 1997.

Charges to be registered with the Commissioner.

51. (1) A co-operative union or the apex society shall register with the Commissioner every charge created by it and the particulars of the charge within thirty days from the date the charge is created.

(2) A primary society shall register with the director every charge created by it and the particulars of the charge within thirty days from the date the charge is created.

(3) Despite subsection (1) and (2), any interested person may make an application for the registration of a charge and such interested person shall be entitled to recover from the co-operative society the amount of any fees paid by him to the Commissioner or the director for such registration.

(4) If a co-operative society fails to register within thirty days a charge created by it, and unless the registration has been effected by some other person within that period, every officer of the co-operative society commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for every day during which the default continues.

26. Section 52 of the principal Act is amended –

Amendment of
section 52 of No.
12 of 1997.

- (a) in subsection (1) by inserting the words “or the **director**, as the case may be,” immediately after the words “The Commissioner”;
- (b) in subsection (2) by inserting the words “or the **director**” immediately after the words “The Commissioner”; and
- (c) in subsection (4) by inserting the words “or the **director**” immediately after the words “The Commissioner”.

27. Section 53 of the principal Act is amended by inserting the words “or the **director**, as the case may be” immediately after the words “The Commissioner”.

Amendment of
section 53 of No.
12 of 1997.

28. The principal Act is amended by deleting section 54 and substituting therefor the following new section –

Amendment of
section 54 of No.
12 of 1997.

Receiver to give
notice of
appointment.

54. (1) Where a person appointed as receiver or manager of the property of a co-operative society under any powers contained in any instrument, that person shall, within seven days from the date of the order of the appointment, give written notice of the appointment to the Commissioner or the **director**, as the case may be.

(2) Where a person appointed as receiver or manager of the property of a co-operative society under the powers contained in any instrument ceases to act as such receiver or manager, that person shall, within seven days of so ceasing, give written notice to the Commissioner or the **director**

(3) The Commissioner or the **director** shall, within seven days of receipt of the notice of appointment or the notice of cessation of appointment as receiver or manager under subsection (1) or (2), enter the notice in the register of charges.

(4) A person who contravenes the provisions of subsection (1) or (2) commits an offence and shall be liable, on conviction,

to a fine not exceeding five thousand shillings for every day during which the default continues.

29. Section 56 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection –

Amendment of section 56 of No. 12 of 1997.

(2) An officer of a co-operative society who knowingly fails to make any entry required to be made in any register in accordance with this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings.

30. Section 58 of the principal Act is amended –

Amendment of section 58 of No. 12 of 1997.

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The Commissioner or the director may, on its own motion, on request by members or where required by the Cabinet Secretary, undertake an inquiry into the by-laws, working or financial conditions of a co-operative society he or she has registered.

(b) by inserting the following new subsection immediately after the new subsections (1) –

(1A) At least one-third of the total members of a co-operative union or the apex society present and voting at a meeting of the co-operative society which has been duly convened in accordance with this Act may by a resolution request the Commissioner to undertake an inquiry into the by-laws, working or financial conditions of any co-operative society.

(1B) At least one-third of the total members of a primary society present and voting at a meeting of the co-operative society which has been duly convened in accordance with this Act may by a resolution request the director to undertake an inquiry into the by-laws, working or financial conditions of any co-operative society.

(c) in subsection (3) by inserting the words “or the director” immediately after the words “The Commissioner”;

(d) in subsection (4) by deleting the introductory clause and substituting therefor the following new clause –

(4) The Commissioner or the **director** may, where it is found, upon the inquiry, that a co-operative society is not being managed in accordance with this Act or its by-laws, -

(a) by deleting subsection (5) and substituting therefor the following new subsection –

(5) A person who contravenes subsection (2) shall commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for each day during which the offence continues or to imprisonment for a term not exceeding three years or to both.

31. Section 59 of the principal Act is amended –

Amendment of
section 59 of No.
12 of 1997.

(a) in subsection (1) by -

(i) inserting the words “or the director as the case may be” immediately after the words “The Commissioner” in the introductory clause;

(ii) inserting the words “or the Director” immediately after the words “satisfies the Commissioner” in paragraph (a); and

(iii) deleting paragraph (b) and substituting therefor the following new paragraph –

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

(b) in subsection (2) by inserting the words “or the director as the case may be” immediately after the words “The Commissioner”.

32. Section 60 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection –

Amendment of
section 60 of No.
12 of 1997.

(1) Where an inquiry is held under section 58 or an inspection is made under section 59, the Commissioner or the **director** may, by a certificate

issued under his hand, make an order apportioning the expenses between the co-operative society, the members of the co-operative society or a creditor demanding the inquiry or inspection, and the officers or former officers of the co-operative society.

33. Section 60A of the principal Act is amended by inserting the words “or the director, as the case may be,” immediately after the words “the Commissioner”.

Amendment of section 60A of No. 12 of 1997.

34. Section 61 of the principal Act is amended –

Amendment of section 61 of No. 12 of 1997.

- (a) by deleting subsection (1) and substituting therefor the following new subsection –
- (1) The Commissioner or the director may make an order for dissolution of a co-operative society where –
 - (a) a special resolution for its dissolution is passed by the members;
 - (b) in the case of a primary society, the number of members falls below ten;
 - (c) the co-operative society’s registration has been cancelled;
 - (d) a court of competent jurisdiction makes an order for its dissolution;
 - (d) an inquiry or an inspection reveals that the co-operative society is not being managed in accordance with this Act or the by-laws; or
 - (e) the co-operative society is adjudged bankrupt.
 - (b) in subsection (2) by deleting the words “Minister with a final appeal to the High Court” appearing immediately after the words “order to the” and substituting therefor the word “Tribunal”;
 - (c) in subsection (3) by deleting the words “Minister or by the High Court, as the case may be” appearing immediately after the words “confirmed by the” and substituting therefor for the word “Tribunal”;
 - (d) in subsection (4) by inserting the words “or the director” immediately after the words “Where the Commissioner”; and

- (e) in subsection (5) by inserting the words “or the director” immediately after the words “of the Commissioner”.
62. 35. The principal Act is amended by repealing section 62.
63. 36. The principal Act is amended by repealing section 63.
37. The principal Act is amended by deleting section 64 and substituting therefor the following new section –
- Application of Insolvency Act. 64. (1) The sections of the Insolvency Act specified in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule, shall apply *mutatis mutandis* in relation to the liquidation of a co-operative society as they apply to that of a registered company.
- (2) The Cabinet Secretary may, by order, amend the Schedule to this Act.
38. The principal Act is amended by deleting section 65 and substituting therefor the following new section –
- Appointment of a liquidator. 65. Where an order for dissolution of a co-operative society has been made under section 61, the Commissioner or the director may appoint one or more persons to be liquidator or liquidators of that co-operative society and the property of the co-operative society shall vest in the liquidator from the date upon which the order of cancellation takes effect.
39. Section 66 of the principal Act is amended in subsection (1) by –
- (a) deleting the introductory clause and substituting therefor the following new clause –
- (1) The liquidator shall have all the powers necessary to wind up a co-operative society and shall, in particular have powers –
- (b) inserting the words “or the director, as the case may be” immediately after the words “by the Commissioner” in paragraph (1);
- Repeal of section 62 of No. 12 of 1997.
- Repeal of section 63 of No. 12 of 1997.
- Amendment of section 64 of No. 12 of 1997.
- Amendment of section 65 of No. 12 of 1997.
- Amendment of section 66 of No. 12 of 1997.

- (c) inserting the words “or the director” immediately after the words “of the Commissioner” in paragraph (n); and
- (d) inserting the words “or the director, as the case may be,” immediately after the words “to the Commissioner” in paragraph (o).

40. The principal Act is amended by deleting section 67 and substituting therefor the following new section –

Amendment of section 67 of No. 12 of 1997.

Liquidation account.

67. (1) The Commissioner shall open and administer a co-operative societies liquidation account for co-operative unions and the apex society with such bank as the Commissioner may determine.

(2) The director shall open and administer a co-operative societies liquidation account for primary societies with such bank as the director may determine.

(3) The Commissioner or the director, as the case may be, shall pay into the co-operative societies liquidation account opened under subsection (1) or (2) –

- (a) all moneys realized in the liquidation where a bank account does not exist at the commencement of the liquidation;
- (b) any unpaid claims on closure of a liquidation of a co-operative society; and
- (c) any surplus balance on closure of a liquidation of a co-operative society.

(3A) The Commissioner or the director, as the case may be, may utilise the funds in the co-operative societies liquidation

account to pay distribution or unpaid claims which have been certified.

(4) The Cabinet Secretary shall make regulations for the administration of the liquidation accounts established under subsection (1) and (2).

41. Section 68 of the principal Act is amended –

Amendment of
section 68 of No.
12 of 1997.

(a) by deleting subsection (1) and substituting therefor the following new subsections –

(1) The liquidator shall exercise his powers subject to the guidance and control of the Commissioner or the director, as the case may be, and to any limitations imposed by the Commissioner or the Director.

(1A) The Commissioner or the Director may

- (a) rescind or vary any order made by the liquidator and make any new order he thinks proper;
- (b) remove the liquidator from office and appoint a new liquidator in his place;
- (c) call for all books, documents and assets of the co-operative society;
- (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66;
- (e) at his discretion, require accounts to be rendered to the Commissioner or the Director by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the co-operative society;
- (g) make an order for the remuneration of the liquidator;
- (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;

- (i) require any member or past member of the co-operative society and any trustee, banker, receiver, agent or officer of the co-operative society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or documents in his control to which the co-operative society appears to be entitled;
 - (j) appoint a special manager for the management of the business of the co-operative society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties;
 - (k) any third party consents in writing, refer any dispute between a liquidator and that third party to the Tribunal; or
 - (l) require the indemnification of the liquidator.
- (b) in subsection (2) by inserting the words “or the director” immediately after the words “by the Commissioner”.

42. Section 69 of the principal Act is amended in subsection (1) by inserting the words “the director” immediately after the words “of the Commissioner”.

Amendment of section 69 of No. 12 of 1997.

43. The principal Act is amended by deleting section 71 and substituting therefor the following new section –

Amendment of section 71 of No. 12 of 1997.

Institution of liquidation proceedings.

No. 18 of 2015.

71. (1) If a liquidator of a society whose registration has been cancelled alleges that any of the offences specified under sections 498, 499, 500, 501, 502, 503, 504, 505, 506, 508, or 510 of the Insolvency Act have been committed, he shall report the facts to the Commissioner or the director, as the case may be.

(2) On receipt of a report of a liquidator under subsection (1), the Commissioner or the director may institute such proceedings as may be necessary.

44. The principal Act is amended by deleting section 72 and substituting therefor the following new section –

Amendment of section 72 of No. 12 of 1997.

Power to restrain convicted persons from being officers of a society.

72. (1) A person who has been convicted of an offence under the Insolvency Act as specified under section 71 shall cease to be an officer of a co-operative society or to be involved in the management of a co-operative society for a period of five years from the date of the conviction.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

45. Section 73 of the principal Act is amended –

Amendment of section 73 of No. 12 of 1997.

- (a) in subsection (1) by inserting the words “or the director” immediately after the words “the Commissioner”; and
- (b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) The Commissioner or the director may, upon inquiry under subsection (1), make an order requiring the person –

- (a) to repay the money or restore the property or any part thereof to the co-operative society together with interest as the Commissioner or the director may determine; or
- (b) to contribute such sum to the assets of the co-operative society by way of compensation as the Commissioner or the director shall consider just.

46. Section 74 of the principal Act is amended in subsection (1) by deleting the words “under section 73(1)” appearing immediately after the words “of the Commissioner” and substituting therefor the words “or the director under section 73(2)”.

Amendment of section 74 of No. 12 of 1997.

47. Section 75 of the principal Act is amended in subsection (2) by inserting the words “or the director” immediately after the words “the Commissioner”.

Amendment of section 75 of No. 12 of 1997.

48. Section 76 of the principal Act is amended –

Amendment of section 76 of No. 12 of 1997.

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (c) –

(d) between a co-operative society and the Commissioner or the director including a claim for refusal to grant registration, cancellation or suspension of registration.

(b) in subsection (2) by deleting paragraph (c).

49. The principal Act is amended by deleting section 77 and substituting therefor the following new section –

Amendment of section 77 of No. 12 of 1997.

Establishment of the Tribunal.

77. (1) There is hereby established a tribunal to be known as the Co-operative Tribunal which shall consist of the following members appointed by the Judicial Service Commission by a notice in the *Gazette* —

(a) a chairperson and deputy chairperson, who shall be of the opposite gender, competitively recruited by the Judicial Service Commission;

(b) two persons, who shall be of the opposite gender, nominated by the Law Society of Kenya; and

(c) three persons, at least one of whom shall be of the opposite gender, appointed by the Cabinet Secretary in consultation with the apex society.

(2) A person is qualified for appointment under subsection (1) if such a person –

(a) holds a degree from a university recognised in Kenya;

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

(c) in the case of a person appointed under –

- (i) subsection (1) (a), is an advocate of the High Court of Kenya and has at least ten years' experience as a practitioner;
- (ii) subsection (1) (b), is an advocate of the High Court of Kenya and has at least five years' experience as a practitioner; or
- (iii) subsection (1)(c), has at least ten years' experience in the field of co-operative management and practice.

(3) A member of the Tribunal shall serve for a term of three years which may be renewed for one further term.

(4) A person ceases to be a member of the Tribunal if that person –

- (a) no longer meets the requirements under subsection (2);
- (b) is absent from three consecutive sittings of the Tribunal without reasonable cause;
- (c) resigns in writing, addressed to the Judicial Service Commission;
- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (e) is adjudged bankrupt;
- (f) accepts appointment to an office the holding of which, if he were not a member of the Tribunal, would make him ineligible for the appointment to the office of a member of the Tribunal;

(g) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or

(h) dies.

50. Section 78 of the principal Act is amended –

Amendment of section 78 of No. 12 of 1997.

(a) by deleting subsection (2) and substituting therefor the following new subsection –

(2) An application or reference by the Commissioner, director, the Committee or an officer or member of a co-operative society to the Tribunal under this Act shall be in writing.

(b) by inserting the following new subsection immediately after subsection (2) –

(2A) The Tribunal shall, in writing, and upon an inquiry into an application or reference made to it, communicate its decision to all the parties.

51. Section 79 of the principal Act is amended in subsection (2) by deleting the words “shall be guilty of” appearing immediately after the words “contempt of the Tribunal,” and substituting therefor the word “commits”.

Amendment of section 79 of No. 12 of 1997.

52. Section 80 of the principal Act is amended –

Amendment of section 80 of No. 12 of 1997.

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The chairperson and any two members of the Tribunal shall form a quorum for the purpose of hearing and determining any matter referred to it under this Act.

(b) by inserting the following new subsection immediately after subsection (1) –

(1A) Notwithstanding subsection (1), where one or two members are absent for any part of the hearing, the chairperson sitting alone or with one member may hear and determine an application.

(c) in subsection (3) by deleting the proviso;

(d) in subsection (4) by deleting the word “Chairman” appearing immediately after the words “this Act the” and substituting therefor the word “chairperson”;

(e) by deleting subsection (5) and substituting therefor the following new subsection –

(5) The deputy chairperson may perform the functions of the chairperson if –

- (a) the chairperson is unable perform the functions of the office of the chairperson; or
- (b) the chairperson authorises the deputy chairperson, in writing, to perform the function of the chairperson.

53. The principal Act is amended by deleting section 82 and substituting therefor the following new section –

Amendment of section 82 of No. 12 of 1997.

Power to appoint assessors.

82. The chairperson of the Tribunal may appoint any person with special skills or knowledge on matters regarding the co-operatives sector which are the subject matter of any proceedings or inquiry before the Tribunal to act as an assessor in an advisory capacity where it appears to the Tribunal that such special skills or knowledge is required for the proper determination of the matter.

54. The principal Act is amended by deleting section 84 and substituting therefor the following new section –

Amendment of section 84 of No. 12 of 1997.

Remuneration of members of the Tribunal.

84. The chairperson and members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission, in consultation with the Salaries and Remuneration Commission, shall determine.

55. The principal Act is amended by deleting section 85 and substituting therefor the following new section –

Amendment of section 85 of No. 12 of 1997.

Secretary to the Tribunal.

85. The Judicial Service Commission shall appoint a secretary to the Tribunal and such other officers as may be necessary for the effective administration of the affairs of the Tribunal.

56. The principal Act is amended by inserting the following new sections immediately after section 85 –

Insertion of new sections 85A and 85B.

Qualifications for

85A. A person shall be qualified for

appointment as secretary.

appointment as secretary to the Tribunal if the person –

- (a) is an advocate of the High Court of Kenya with at least five years' experience as a practitioner;
- (b) has demonstrated competence in the performance of administrative duties for at least three years; and
- (c) meets the requirement of Chapter Six of the Constitution.

Functions of the secretary.

85B. (1) The secretary shall perform the duties assigned to the secretary under this Act and such other duties as the Tribunal may direct, and in particular, be responsible for —

- (a) the day-to-day management of the affairs of the Tribunal;
- (b) the establishment and maintenance of a register in which all records of the Tribunal shall be kept;
- (c) the acceptance, transmission, service and custody of documents in accordance with the rules;
- (d) the enforcement of the decisions of the Court and those of the Tribunal;
- (e) certifying that order, direction or decision of the Tribunal;
- (f) maintaining the records of the proceedings and minutes of the Tribunal and such other records as the Tribunal may direct;
- (g) managing and supervising the staff of the Tribunal; and
- (h) facilitating access to decisions and records of the Tribunal.

(2) The secretary may consider and dispose of procedural or administrative

matters in accordance with the rules or on the direction of the Tribunal.

57. The principal Act is amended by deleting section 86 and substituting therefor the following new section —

Amendment of section 86 of No. 12 of 1997.

Power to establish branches of the Tribunal.

86. The Judicial Service Commission shall, in consultation with the chairperson of the Tribunal, establish such offices or registries of the Tribunal in every county.

58. Section 88 of the principal Act is amended by deleting the word “Chairman” appearing immediately after the word “The” and substituting therefor the word “chairperson”.

Amendment of section 88 of No. 12 of 1997.

59. Section 89 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection —

Amendment of section 89 of No. 12 of 1997.

(3) An officer or member of a co-operative society who receives any remuneration, salary, commission or other payment in contravention of this section commits an offence and shall be liable, on conviction, —

- (a) to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both; and
- (b) if the offence is the contravention of subsection (1) of this section, be ordered to repay the amount of the remuneration, salary, commission or other payment received from the society in addition to any other punishment.

60. Section 90A of the principal Act is amended —

Amendment of section 90A of No. 12 of 1997.

- (a) in subsection (1) by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”;
- (b) by deleting subsection (4) and substituting therefor the following new subsection —

(4) The Fund shall vest in a board of trustees composed of the following persons appointed by the Cabinet Secretary by a notice in the *Gazette* —

- (a) one person nominated by the Cabinet Secretary;
 - (b) one person nominated by the Council of County Governors;
 - (c) one person nominated by the apex society;
 - (d) two persons nominated by co-operative unions; and
 - (e) two persons nominated by primary societies.
- (c) by inserting the following new subsection immediately after subsection (4) –
- (4A) A member of the board of trustees shall serve for a term of four years renewable for one further term.
- (d) in subsection (5) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”.

61. Section 91 of the principal Act is amended –

Amendment of
section 91 of No.
12 of 1997.

- (a) in subsection (1) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”; and
- (b) in subsection (2) by –
 - (i) deleting the word “Minister” appearing immediately after the words “made to the” in paragraph (p) and substituting therefor the word “Tribunal”;
 - (ii) inserting the words “or the director” immediately after the words “to the Commissioner” in paragraph (q); and
 - (iii) inserting the words “or the director” immediately after the words “by the Commissioner” in paragraph (r).
- (c) in subsection (3) by inserting the words “or the director” immediately after the words “where the Commissioner”.

62. Section 92 of the principal Act is amended –Amendment of
section 92 of No.
12 of 1997.

- (a) in subsection (1) by deleting the words “the Minister” appearing immediately after the words “in this Act,” in the introductory clause and substituting therefor the words “the Cabinet Secretary”;
- (b) by deleting subsection (2) and substituting therefor the following new subsection –
 - (2) Where the Cabinet Secretary intends to grant an exemption under subsection (1), the Cabinet Secretary shall publish a notice in the *Gazette* of the intention to grant such an exemption at least thirty days before the decision.
- (c) in subsection (3) by deleting the word “Minister” appearing immediately after the words “representation to the” and substituting therefor the words “Cabinet Secretary”; and
- (d) in subsection (4) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”.

63. Section 93 of the principal Act is amended –Amendment of
section 93 of No.
12 of 1997.

- (a) in the marginal note by deleting the word “Minister” appearing immediately after the words “of the” and substituting therefor the words “Cabinet Secretary”; and
- (b) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”.

64. Section 93A of the principal Act is amended –Amendment of
section 93A of
No. 12 of 1997.

- (a) by renumbering the existing provision subsection (1);
- (b) in the new subsection (1) by inserting the words “in the case of co-operative unions or the apex society” immediately after the words “the Commissioner may”; and
- (c) by inserting the following new subsection

immediately after the renumbered subsection (1) –

(2) The respective director member may exercise the powers of the Commissioner under subsection (1) with respect to a primary society registered in the respective county.

65. Section 94 of the principal Act is amended in subsection (3) by deleting the word “Attorney-General” appearing immediately after the word “The” and substituting therefor the words “Director of Public Prosecutions”.

Amendment of section 94 of No. 12 of 1997.

66. The principal Act is amended by deleting the Schedule and substituting therefor the following new Schedule –

Amendment of the Schedule to No. 12 of 1997.

SCHEDULE	
[Section 64.]	
PART I – THE INSOLVENCY ACT (NO. 18 OF 2015)	
No. of section	Description of section
384	The circumstances in which a company is unable to pay its debts.
403	Effect of company's insolvency.
420	Questions relating to liquidation may be referred to the Court for determination.
428	Power to stay or restrain proceedings against company when liquidation application has been made.
429	Dispositions of property by company after commencement of liquidation to be void unless the Court otherwise orders.
430	Attachments and other forms of execution against company in liquidation to be void.
432	Consequences of liquidation order.
457	Power to arrest absconding contributory.
471	Preferential debts (general provision).
472	Preferential charge on property of company distrained within three months before making of liquidation order.
473	Expenses of liquidation to have priority over claims under floating charge.
474	Share of assets to be made available for unsecured creditors where floating charge relates to company's property.
475	Power of the Court to appoint special manager of company's business or property when company is in liquidation or provisional liquidator appointed.
476	Power of liquidator to disclaim onerous property.
477	Special provisions relating to disclaimer of leaseholds.
478	Effect of disclaimer in relation to land subject to rent charge.

479	General powers of the Court in respect of disclaimed property.
480	Powers of the Court in respect of leaseholds held by company in liquidation.
481	Creditor not entitled to retain benefit of execution or attachment against liquidator unless creditor completes execution or attachment before commencement of liquidation.
482	Duties of judicial enforcement officers charged with execution of writs and other processes involving companies in liquidation.
483	Power of the Court to rescind contracts entered into by company in liquidation.
484	Power of liquidator to transfer assets of company to its employees.
485	Company in liquidation required to state that it is in liquidation in all invoices, letters and other communications.
486	Interest on debts to be paid if surplus permits.
487	Certain documents relating to company in liquidation to be exempt from stamp duty.
488	Records of company in liquidation to be evidence.
489	Liquidator to lodge periodic statements with Registrar of Companies with respect to current position of liquidation.
490	Effect of resolutions passed at adjourned meetings of company's creditors and contributories.
491	Court may order meetings to be held to ascertain wishes of creditors or contributories.
492	Judicial notice to be taken of documents of the Court.
PART II	
For the purpose of this Act, the provisions of the Insolvency Act specified in Part I of this Schedule shall have effect as if for reference to "company", "court", "commencement of liquidation", "liquidation order", "contributory" and "director, manager or other officer" there were substituted with "co-operative society", "Tribunal", "the date of dissolution", "order for the cancellation of the registration of a co-operative society", "contributor", and "officer or manager of a co-operative society" respectively.	

MEMORANDUM OF OBJECTS AND REASONS**Statement of the Objects and Reasons for the Bill**

The principal object of this Bill is to amend the Co-operative Societies Act, No. 12 of 1997 so as to align it to the Constitution of Kenya, 2010 by setting out the functions of the National Government and the county governments in relation to governance of co-operative societies.

Whereas under paragraph 7(e) of Part 2 of the Fourth Schedule to the Constitution co-operative societies falls under county governments, the organisation and the role of co-operative societies in the economy of the country necessitates that the National government play a role in the governance of co-operative societies. This Bill seeks to provide that governance of primary co-operative societies be overseen by county governments while the National Government shall be responsible for national policy and be responsible for the apex society and co-operative unions.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Paragraph 7(e) of Part 2 of the Fourth Schedule to the Constitution provides that co-operative societies is a function which falls under the county governments. The Bill proposes to set out the respective functions of the National government and those of the county governments as regards governance of co-operative societies.

The Bill is therefore a Bill concerning county governments in terms of Article 110(1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 29th August, 2023.

OMAR MARIAM SHEIKH,
Senator.

Section 2 of No. 12 1997 that the Bill proposes to amend —

2. Interpretation

In this Act, except where the context otherwise requires—

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

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

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

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

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

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

“Committee” means the governing body of a co-operative society to whom the management of its affairs is entrusted, and includes a board of directors;

“contributor” means a person liable to contribute to the assets of a cooperative society in the event of its being wound up and for the purposes of any proceedings for determining and before the final determination of the persons who are to be deemed contributors, includes any person alleged to be a contributor;

“co-operative society” means a society registered under section 4;

“co-operative union” means a co-operative society whose membership is restricted to primary societies;

“date of dissolution” means the date on which the Commissioner’s order canceling the registration of a co-operative society takes effect;

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

“district co-operative unions” deleted by Act No. 2 of 2004, s. 2;

“dividend”, in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s share capital bears to the total share capital of the society;

“limited liability” means limited by shares or limited by guarantee, according to the nature of the liability prescribed by the by-laws of the cooperative society;

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

“Minister” means the Minister for the time being responsible for Co-operative development;

“officer” includes a chairman, vice-chairman, secretary, treasurer, committee member, employee or any other person empowered under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society;

“personal representative” means any person who, under law or custom, is responsible for administering the estate of a deceased person;

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

“Registrar” deleted by Act No. 2 of 2004, s. 2;

“secondary society” deleted by Act No. 2 of 2004, s. 2;

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

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

“special resolution” means a resolution passed by two thirds of the members present and voting at a general meeting of a society;

“supervisory committee” means an oversight committee elected at a general meeting;

“Tribunal” means the Co-operative Tribunal established under section 77; “winding up” means all proceedings subsequent to the dissolution of a cooperative society.

Section 4 of No. 12 1997 that the Bill proposes to amend —

4. Registration of co-operative societies

Subject to the provisions of this Act, a society which has as its objects —

- (a) the promotion of the welfare and economic interests of its members or adherence to the principles of Islamic law; and
- (b) has incorporated in its by-laws the following co-operative principles —
 - (i) voluntary and open membership; (ii) democratic member control;
 - (ii) economic participation by members;
 - (iii) autonomy and independence;
 - (iv) education, training and information;
 - (v) co-operation among co-operatives; and
 - (vi) concern for community in general, may be registered by the Commissioner as a co-operative society under this Act with or without limited liability.

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

Section 6 of No. 12 1997 that the Bill proposes to amend —

6. Procedure for registration

(1) An application to register a society shall be made to the Commissioner in the prescribed form, and be signed —

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

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

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

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

Section 7 of No. 12 1997 that the Bill proposes to amend –

7. Provisional registration

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

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

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

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

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

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

(i) the Commissioner may appoint a competent person to be the liquidator of the society; and

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

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

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

Section 8 of No. 12 1997 that the Bill proposes to amend —

8. Amendments of by-laws

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

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

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

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

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

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

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

Section 9 of No. 12 1997 that the Bill proposes to amend –

9. Appeal against refusal to register

(1) A co-operative society may appeal to the Minister against the Commissioner’s refusal to register the society and its by-laws or any amendments of its by-laws under section 8 within thirty days of being notified of the refusal. (2) Any party aggrieved by the decision of the Minister under subsection (1) may appeal against the decision to the High Court within thirty days.

Section 10 of No. 12 1997 that the Bill proposes to amend –

10. Protection of the name “Co-operative”

(1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the Commissioner, to mislead the members of the public as to its identity.

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

Section 11 of No. 12 1997 that the Bill proposes to amend –

11. Evidence of registration

(1) A certificate of registration or of a provisional registration signed by the Commissioner shall be conclusive evidence that the society therein

mentioned is duly registered or provisionally registered, unless it is proved that such registration of the society has been canceled or has been terminated.

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

(3) Deleted by Act No. 2 of 2004, s. 8.

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

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

Section 14 of No. 12 1997 that the Bill proposes to amend —

14. Qualification for membership

A person other than a co-operative society shall not be qualified for membership of a co-operative society unless —

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

Section 25 of No. 12 1997 that the Bill proposes to amend —

25. Account and audit

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

- (a) be prepared in accordance with International Accounting Standards;
- (b) reflect the true and fair state of the co-operative society's affairs; and
- (c) explain the co-operative society's transactions including —
 - (i) all sums of money received and paid by the co-operative society and the reasons thereto;

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

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

(2) The books of accounts shall be kept at the registered office of the cooperative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.

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

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

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

(6) The accounts referred to in subsection (3) shall—

(a) conform with International Financial Reporting Standards;

(b) include the following records—

(i) a balance sheet;

(ii) an income and expenditure account; and

(iii) a cash flow statement;

(c) be approved by the Committee; and

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

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

(8) The auditor shall submit the audited accounts to a general meeting within four months after the end of the accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted—

(a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in

agreement therewith and give a true and fair view of the state of the affairs of the society; and

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

(9) The auditor shall have the right to—

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

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

(c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit—

(i) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs;

(ii) require the production of any book, document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities;

(iii) demand such other information or explanation from any officer of the co-operative society as may be necessary for the performance of his duties as an auditor.

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

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

(12) For the purposes of this section, "International Accounting Standards" and "International Financial Reporting Standards" means the

standards established by the Institute of Certified Public Accountants of Kenya.

Section 26 of No. 12 1997 that the Bill proposes to amend —

26. Production of books and other documents

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

Section 27 of No. 12 1997 that the Bill proposes to amend —

27. General meetings

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

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

(3) In the first year after registration of a co-operative society, the general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall—

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

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

(5) At the annual general meeting of a co-operative society, the members shall— (a) consider and confirm the minutes of the last general meeting;

- (b) consider any reports of the Committee or the Commissioner;

- (c) consider and adopt audited accounts;
- (d) determine the manner in which any available surplus is to be distributed or invested;
- (e) elect the co-operative society's office bearers for the ensuing year;
- (f) determine, where necessary, the maximum borrowing power of the society;
- (g) appoint an auditor for the ensuing year; and
- (h) transact any other general business of the co-operative society of which notice has been given to members in the manner prescribed in the by-laws of the co-operative society.

(6) A special general meeting of a co-operative society may be convened— (a) by the Committee for the purpose of approving annual estimates or discussing any urgent matter which in the Committee's opinion is in the interest of the co-operative society; or (b) on receipt of a written notice for such meeting signed by such number of the members of the co-operative society as may be prescribed in the rules and stating the objects and reasons for calling the meeting.

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

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

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

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

Section 28 of No. 12 1997 that the Bill proposes to amend —

28. Membership and powers of the Committee

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

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

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

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

(o) is a person against whom any amount of money is due under a decree, decision or order or is pending recovery under this Act.

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

(6) In the conduct of the affairs of a co-operative society the Committee shall exercise the prudence and diligence of ordinary men of business and the members shall be held, jointly and severally liable for any losses sustained through any of their acts which are contrary to the Act, rules, by-laws or the directions of any general meeting of the co-operative society.

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

Section 29 of No. 12 1997 that the Bill proposes to amend –

29. Amalgamation of co-operative societies

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

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

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

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

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

the date of amalgamation, object to the amalgamation unless his claim is satisfied.

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

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

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

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

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

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

- (a) each of the amalgamating societies shall stand dissolved and its registration cancelled;
- (b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;
- (c) the remaining members of the amalgamating societies shall become members of the amalgamated society and will be subjected to its bylaws;
- (d) any shareholders of the amalgamating societies or any other persons who have claims against the amalgamating societies and whose claims were not satisfied in accordance with the secondary

resolution, may pursue such claims against the amalgamated society.

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

Section 30 of No. 12 1997 that the Bill proposes to amend —

30. Division of co-operative societies

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

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

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

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

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

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

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

(7) At the special general meeting held under subsection (6), provision shall be made by a further resolution of the society for—

- (a) the repayment of the share capital of any member who has given notice under subsection (3);
- (b) the satisfaction of any claims by creditors who have given notice under subsection (4);
- (c) the satisfaction of the claims of such other persons who have given notice under subsection (5) or the securing of their claims as the Commissioner may determine, or direct:

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

(8) The society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution, with or without changes as in the opinion of the Commissioner are not substantial, and the decision of the Commissioner as to whether any changes are or are not substantial shall be final.

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

- (a) the registration of the existing society shall stand dissolved;
- (b) the registration of the new societies shall be sufficient to vest the assets and liabilities of the existing society in the new societies in the manner specified in the preliminary resolution, as confirmed;
- (c) the remaining members of the existing society shall become members of one or other of the new societies, as is provided by the preliminary resolution, as confirmed; and
- (d) any share holders or creditors of the existing society and any other persons who have claims against the existing society and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against one or other of the new societies, as is provided by the preliminary resolution, as confirmed.

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

Section 32 of No. 12 1997 that the Bill proposes to amend –

32. Fines for violation of by-laws

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

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

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

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

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

Section 35 of No. 12 1997 that the Bill proposes to amend –

35. Failure to remit the sum deducted

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

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

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

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

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

- (a) accept the notification and cancel or amend the notice accordingly; or
- (b) if he is not satisfied with the reasons, reject the notification in writing.

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

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

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

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

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

Section 51 of No. 12 1997 that the Bill proposes to amend —

51. Charges to be registered with the Commissioner

(1) It shall be the duty of every co-operative society to register with the Commissioner, every charge created by it and the particulars thereof:

Provided that registration of a charge may be effected on the application of any person interested therein:

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

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

Section 52 of No. 12 1997 that the Bill proposes to amend —

52. Register of charges

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

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

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

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

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

Section 53 of No. 12 1997 that the Bill proposes to amend —

53. Certificate of satisfaction of charges

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

Section 54 of No. 12 1997 that the Bill proposes to amend —

54. Receiver to give notice of his appointment

(1) If any person obtains an order for the appointment of receiver or manager of the property of a co-operative society, or if the Commissioner appoints such a receiver or manager under any powers contained in any instruments, he shall, within seven days from the date of the order of the appointment under the said powers, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.

(2) Where any person appointed receiver or manager of the property of a cooperative society under the powers contained in any instrument ceases to act as such receiver or manager, he shall, on so ceasing, give written notice of the fact to the Commissioner and the Commissioner shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues.

Section 56 of No. 12 1997 that the Bill proposes to amend —

56. Society to keep register of particulars of charges

(1) Every co-operative society shall keep, at the registered address of the society, a register of charges in which shall be entered all charges specifically affecting the property of the society and all floating charges on the property or assets of the society, giving in each case a short description of the property charged, the amount of the charge, and the name of the person entitled thereto.

(2) If any officer of a co-operative society knowingly omits, or permits the omission of, any entry required to be made in any register in

pursuance of this section, he shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings.

Section 58 of No. 12 1997 that the Bill proposes to amend –

58. Inquiry by Commissioner

(1) The Commissioner may, of his own accord, and shall on the direction of the Minister, as the case may be, or on the application of not less than one-third of the members present and voting at a meeting of the society which has been duly advertised, hold an inquiry or direct any person authorized by him in writing to hold an inquiry, into the by-laws, working and financial conditions of any co-operative society.

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

(3) The Commissioner shall report the findings of his inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report.

(4) Where the Commissioner is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, he may—

- (a) dissolve the Committee; and
- (b) cause to be appointed an interim Committee consisting of not more than five members from among the members of the society for a period not exceeding ninety days.

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

Section 59 of No. 12 1997 that the Bill proposes to amend –

59. Inspection of books of indebted society

(1) The Commissioner may, if he thinks fit, on the application of a creditor of a co-operative society, inspect, or direct some persons authorized by him in writing to inspect, the books of the society, if—

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

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

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

Section 60 of No. 12 1997 that the Bill proposes to amend –

60. Expenses of inquiry

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

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

Section 60A of No. 12 1997 that the Bill proposes to amend –

60A. Routine inspection

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

Section 61 of No. 12 1997 that the Bill proposes to amend –

61. Procedure for dissolution

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

(2) Any member of a co-operative society who feels aggrieved by an order under subsection (1) may, within two months after the making of such order, appeal against the order to the Minister with a final appeal to the High Court.

(3) Where no appeal is filed within the prescribed time, the order shall take effect on the expiry of that period, but where an appeal is filed

within the prescribed time the order shall not take effect unless it is confirmed by the Minister or by the High Court, as the case may be.

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

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

Section 62 of No. 12 1997 that the Bill proposes to amend —

62. Cancellation of registration

(1) Where a co-operative society has—

- (a) less than the prescribed number of members; or
- (b) failed to file returns with the Commissioner for a period of three years; or
- (c) failed to achieve its objects, the Commissioner may, in writing, order the cancellation of its registration and dissolution of the society and the order shall take effect immediately.

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

Section 63 of No. 12 1997 that the Bill proposes to amend —

63. Effects of cancellation

Where the registration of a co-operative society is cancelled, the society shall cease to exist as a corporate body from the date the order takes effect.

Section 64 of No. 12 1997 that the Bill proposes to amend —

64. Application of Companies Act

(1) The sections of the Companies Act (Cap. 486) specified in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule, shall apply *mutatis mutandis* in relation to the winding-up of a co-operative society as they apply to that of a company registered under that Act.

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

Section 65 of No. 12 1997 that the Bill proposes to amend —

65. Appointment of liquidator

Where the registration of a co-operative society is cancelled under section 61 or 62, the Commissioner may appoint one or more persons to be liquidator or liquidators of that society (hereinafter referred to as the liquidator) and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect.

Section 66 of No. 12 1997 that the Bill proposes to amend —

66. Powers of liquidator

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

- (a) to appoint a day, in the prescribed manner, before which the creditors whose claims are not already recorded in the books of the cooperative society shall state their claims for admission, or be excluded from any distribution made before they have proved them;
- (b) to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society;
- (c) to appoint an advocate to assist him in the performance of his duties;
- (d) to refer disputes to the Tribunal in the prescribed manner;
- (e) to determine from time to time the contributions to be made by the members and past members, and by the estates of deceased members of the society, to the funds of the society;
- (f) to investigate all claims against the society, and subject to this Act, to decide questions of priority arising between claimants;
- (g) to call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;
- (h) to sell the movable and immovable property and rights of action of the society, by public auction or private contract with power to transfer the whole thereof to any person or company or to transfer the same in parcels;
- (i) to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society;

- (j) to determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;
- (k) to take possession of the books, documents and assets of the society;
- (l) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Commissioner;
- (m) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding up the affairs of the society;
- (n) to compromise, with the approval of the Commissioner, any claim by, or against, the society;
- (o) to apply to the Commissioner for his discharge from the duties of liquidator after completion of the liquidation proceedings.

(2) The liquidator shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be necessary, in the same manner as is provided in the case of a court under the Civil Procedure Act (Cap. 21), in so far as such powers are necessary for carrying out the purposes of this section.

Section 67 of No. 12 1997 that the Bill proposes to amend –

67. Liquidation account of societies

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

Section 68 of No. 12 1997 that the Bill proposes to amend –

68. Powers of Commissioner during liquidation

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

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

- (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66;
- (e) at his discretion, require accounts to be rendered to the Commissioner by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society;
- (g) make an order for the remuneration of the liquidator;
- (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;
- (i) require any member or past member of the society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or papers in his hands to which the society appears to be entitled;
- (j) appoint a special manager for the management of the business of the society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties;
- (k) refer any dispute between a liquidator and any third party to the Tribunal if that party consents in writing to be bound by the decision of the Tribunal;
- (l) require the indemnification of the liquidator.

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

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

Section 69 of No. 12 1997 that the Bill proposes to amend –

69. Appeal against order of liquidator or Commissioner

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

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

Section 71 of No. 12 1997 that the Bill proposes to amend –

71. Institution of winding up proceedings

If the liquidator of a society whose registration has been cancelled alleges that any of the offences mentioned in sections 318, 319, 320, 321, 322 or 323 of the Companies Act (Cap. 486) have been committed, he shall report the facts to the Commissioner, who shall, if he thinks fit, institute such proceedings as may be necessary.

Section 72 of No. 12 1997 that the Bill proposes to amend –

72. Power to restrain convicted persons from being officers of society

Any person who is convicted of an offence under sections of the Companies Act (Cap. 486) specified in section 71 shall cease to be, or remain, an officer of a co-operative society, and shall cease to be concerned in or take part in, whether directly or indirectly, the management of a co-operative society, for a period of five years from the date of his conviction, and any person acting as, or purporting to be acting as such an officer, or being so concerned in, or taking part in the management of a co-operative society during that period, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years.

Section 73 of No. 12 1997 that the Bill proposes to amend –

73. Power to surcharge officers of co-operative society

(1) Where it appears that any person who has taken part in the organization or management of a co-operative society, or any past or present officer or member of the society—

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

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

or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.

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

Section 74 of No. 12 1997 that the Bill proposes to amend —

74. Appeal against order

(1) Any person aggrieved by an order of the Commissioner under section 73(1) may, within thirty days, appeal to the Tribunal.

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

Section 75 of No. 12 1997 that the Bill proposes to amend —

75. Recovery of surcharge

(1) Subject to section 74, an order made pursuant to section 73 for any moneys to be repaid or contributed to a co-operative society shall be filed with the Tribunal and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.

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

Section 77 of No. 12 1997 that the Bill proposes to amend —

76. Disputes

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

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or
- (c) between the society and any other co-operative society, it shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include —

- (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal

representative of a deceased member, whether such debt or demand is admitted or not; or

- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
- (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

Section 2 of No. 12 1997 that the Bill proposes to amend —

77. Establishment of the Tribunal

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

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

(2) No person shall be qualified for appointment as chairman or deputy chairman of the Tribunal unless he holds, and has held for a total period of not less than five years, the qualifications specified in sections 12 and 13 of the Advocates Act (Cap. 16).

(3) All appointments to the Tribunal shall be by notice in the *Gazette* issued by the Minister and shall be for a period of three years, provided that no one shall serve for more than two consecutive terms.

- (4) The office of a member of the Tribunal shall become vacant—
 - (a) if he accepts any office the holding of which, if he were not a member of the Tribunal, would make him ineligible for the appointment to office of a member of the Tribunal;
 - (b) if he is removed from membership of the Tribunal by the Minister after due inquiry for failure to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misconduct; or if he fails to attend three consecutive sittings of the Tribunal without reasonable cause.

Section 78 of No. 12 1997 that the Bill proposes to amend —

78. Proceedings of Tribunal

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

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

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

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

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

Section 79 of No. 12 1997 that the Bill proposes to amend —

79. Award of Tribunal

(1) The Tribunal may—

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

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

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

(2) Any person who—

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

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

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

(d) at any sitting of the Tribunal—

- (i) wilfully insults any member or officer of the Tribunal; or
- (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal, shall be guilty of an offence under this Act.

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

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

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

Section 80 of No. 12 1997 that the Bill proposes to amend —

80. Quorum for Tribunal

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

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

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

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

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

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

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

- (a) the Chairman is unable to exercise or perform that power or duty owing to illness or absence;
- (b) the Chairman authorises the Deputy Chairman to exercise or perform that power or duty.

Section 82 of No. 12 1997 that the Bill proposes to amend —

82. Power to appoint co-operative assessors

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

Section 84 of No. 12 1997 that the Bill proposes to amend —

84. Remuneration of members of Tribunal

There shall be paid to the Chairman and members of the Tribunal such remuneration and allowances as the Minister shall, from time to time determine.

Section 85 of No. 12 1997 that the Bill proposes to amend —

85. Appointment of secretary to Tribunal

(1) The Minister shall appoint a public officer to be the secretary to the Tribunal who shall be paid such allowances as the Minister shall determine.

(2) No person shall be appointed under subsection (1) unless he holds the qualification specified under sections 12 and 13 of the Advocates Act (Cap. 16).

Section 86 of No. 12 1997 that the Bill proposes to amend —

86. Powers to establish benches of Tribunal

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

Section 88 of No. 12 1997 that the Bill proposes to amend –

88. Immunity

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

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

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

Section 89 of No. 12 1997 that the Bill proposes to amend –

89. Remuneration to officers and members of society

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

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

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

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

Section 90A of No. 12 1997 that the Bill proposes to amend —

90A. Co-operative Development Fund

(1) The Minister may establish a fund to be known as the Co-operative Development Fund (hereinafter referred to as “the Fund”).

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

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

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

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

Section 91 of No. 12 1997 that the Bill proposes to amend —

91. Rules

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

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

- (a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a society and the procedure to be followed;
- (b) prescribe the matter in respect of which a co-operative society may or shall make by-laws, and the procedure to be followed in making, varying and revoking by-laws, and the conditions to be satisfied before making, varying or revoking by-laws;
- (c) prescribe the conditions to be complied with by persons applying for admission or admitted as members, and the payments to be made and the interest to be acquired before the exercise of the right of membership;
- (d) regulate the manner in which funds may be raised whether by means of shares or debentures or otherwise;
- (e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

- (f) provide for the appointment, suspension and removal of the members of the Committee and other officers, and for the procedure at meetings of the Committee, and for the powers to be exercised and the duties to be performed by the Committee and other officers;
- (g) prescribe the accounts and books to be kept by a co-operative society;
- (h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;
- (i) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and for the liabilities of past members;
- (j) provide for the persons by whom and the form in which copies of entries in books of co-operative societies may be certified;
- (k) provide for the inspection of documents and registers at the Commissioner's office and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;
- (l) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares or limited by guarantee, of the register of shares;
- (m) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to section 39 for the nomination of a person to whom such interest may be paid or transferred;
- (n) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
- (o) provide for the manner of formation and maintenance of reserve funds and the objects to which such funds may be applied and for the investments of any funds under the control of a co-operative society;
- (p) prescribe the procedure to be followed in appeals made to the Minister under this Act;
- (q) prescribe the returns to be submitted by a co-operative society to the Commissioner and the person by whom and the form in which such returns shall be submitted;

- (r) prescribe the fees to be paid on applications, registrations and other acts done by the Commissioner under this Act;
- (s) prescribe the procedures to be followed in the liquidation of societies; and
- (t) prescribe anything which under this Act may be prescribed.

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

Section 92 of No. 12 1997 that the Bill proposes to amend —

92. Exemption

(1) Notwithstanding anything contained in this Act, the Minister may, by notice in the *Gazette*—

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

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

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

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

- (a) abstain from granting the intended exemption; or
- (b) grant such exemption subject to such terms and conditions as he may deem fit.

Section 93 of No. 12 1997 that the Bill proposes to amend —

93. Powers of the Minister

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

Section 93A of No. 12 1997 that the Bill proposes to amend —

93A. Other powers of the Commissioner

Without prejudice to any other powers under this Act the Commissioner may—

- (a) call for elections in any co-operative society;
- (b) attend meetings of a co-operative society and require every society to send to him at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;
- (c) require that societies update their by-laws; and
- (d) exercise such other powers consistent with this Act as may be prescribed.

Section 2 of No. 12 1997 that the Bill proposes to amend —

94. Offences

- (1) It shall be an offence under this Act if—
 - (a) a co-operative society, or an officer or a member thereof, fails to do or to cause to be done any act or thing which is required by or under this Act or any rules made thereunder to be done; or
 - (b) a co-operative society, or an officer or a member thereof, does anything which is prohibited by or under this Act or any rules made thereunder; or
 - (c) a co-operative society, or an officer or a member thereof, wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Commissioner or the Registrar, or any person duly authorized in that behalf, by the Commissioner or the Registrar; or
 - (d) a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any rules made thereunder; or
 - (e) any person wilfully and without reasonable excuse disobeys any summons, requirement or lawful order issued under this Act, or fails to furnish any return or information lawfully required from him by a person authorized to do so, or which he is required to furnish, by or under this Act or any rules made thereunder; or

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

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

(3) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for cases arising under the provisions of this Act.

The Schedule to No. 12 1997 that the Bill proposes to amend –

SCHEDULE

[Section 64.]

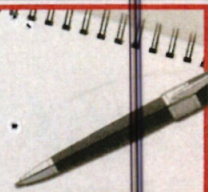
PART I – THE COMPANIES ACT (CAP. 486)

<i>No. of section</i>	<i>Description of section</i>
220	Definition of inability to pay debts.
223	Power to stay or restrain proceedings against company.
224	Avoidance of dispositions of property, etc, after commencement of winding-up.
225	Avoidance of attachments, etc.
228	Actions stayed on winding-up order.
229	Effect of winding-up order.
251	Power to stay winding-up.
263	Power to summon persons suspected of having property of company, etc.
266	Power to arrest absconding promoters, officers and contributors.
309	Debts of all descriptions may be proved.
310	Application of bankruptcy rules in winding-up of insolvent companies.
311	Preferential payments (except subsection (6) thereof.)
312	Fraudulent preference.
313	Liabilities and rights of certain fraudulently preferred persons.
314	Effects of floating charge.
315	Disclaimer of onerous property in case of company wound up.
316	Restriction of rights of creditor as to execution or attachment in case of company being wound-up. (Except proviso (i) to subsection (1) thereof.)

<i>No. of section</i>	<i>Description of section</i>
317	Duties of court as to goods taken in execution.
318	Offences by officers of companies in liquidation.
319	Penalty for falsification of books.
320	Fraud by officers of companies which have gone into liquidation.
321	Officers of company failing to account for loss of part of company's property.
322	Liability where proper accounts not kept.
323	Responsibility for fraudulent trading of persons concerned.

PART II

For the purpose of this Act, the provisions of the Companies Act mentioned in Part I of this Schedule shall have effect as if for reference to “company”, “court”, “commencement of the winding-up”, “winding-up order”, “contributory” and “director, manager or other officer” there were substituted references to “society”, “Registrar”, “the date of dissolution”, “order for the cancellation of the registration of a society”, “member of a society” and “officer or manager of a society” respectively.




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REPUBLIC OF KENYA



MANDERA COUNTY GOVERNMENT

ADDENDUM TO TENDER

Mandera County Government wishes to notify all prospective bidders that the closing date for tenders advertised on the Standard of 6th February, 2024, which has been extended to 7th March, 2024 remains effective.

That this addendum is hereby issued to bring to your attention that:

- Tender No. MCG/01/66/2023-2024 - Proposed Desilting and Expansion of Kobadadi West Earth Pan By 20,000M3 In Mandera West Sub County has changed from 20,000M3 to 30,000M3
- That the new tender document has been uploaded in the county website and can be downloaded at www.mandera.go.ke
- That the tenderers are advised to confirm the correct tender document before submitting their bids
- That Tender no MCG/01/012/2023-2024 Proposed Construction of 30,000m3 Earthpan at Mikoreb is erroneously indicated in Mandera West instead of Mandera South Sub-County. The BQ for this tender remains the same.

All other terms and conditions remain the same.

N/B: Bidders who have already submitted bids for tender no. MCG/01/66/2023-2024 - Proposed Desilting and Expansion of Kobadadi West Earth Pan By 20,000M3 In Mandera West Sub-county need to resubmit their bids again.

County Head of Supply Chain Management.

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION

THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

At the sitting of the Senate held on Thursday, 29th February, 2024, the Bills listed at the second column below were introduced in the Senate by way of First Reading and thereafter stood committed to the respective Standing Committees indicated at the third column.

Pursuant to the provisions of Article 118 of the Constitution and standing order 145 (5) of the Senate Standing Orders, the Committees now invite interested members of the public to submit any representations that they may have on the Bills by way of written memoranda.

The memoranda may be submitted to the Clerk of the Senate, P. O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk of the Senate, Main Parliament Buildings, Nairobi or emailed to clerk.senate@parliament.go.ke and copied to the email addresses of the respective Committee indicated at the fourth column below, to be received on or before **Friday, 15th March, 2024 at 5.00 p.m.**

Bill	Committee Referred To	Email Address
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b) The Early Childhood Education (Amendment) Bill (Senate Bills No. 54 of 2023)	Standing Committee on Education	educationcommittee.senate@parliament.go.ke
c) The Fire and Rescue Services Professionals Bill (Senate Bills No. 55 of 2023)	Standing Committee on National Security, Defense and Foreign Relations	senate.nsdfr@parliament.go.ke
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The Bills may be accessed on the Parliament website at <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

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For 27 years now, Mr Musyoka has been fully immersed into music and sound production, **Legendary producer's big money in film**

He has created records for big names like Sauti Sol, Morgan Heritage, Nyashinski, Profesa Jay, Mwana FA, Juliani and others

Y SINDA MATIKO

Eric Musyoka comes into his studio at a KTM 190 Adventure R superbike. He loves any speeds just as he loves music, the only thing he has done to alter his bread since the 1990s when he was still in high school is days ago, he and his friends from an overland of 240 kilometres from Moyale to Marsabit in one day.

“The bike has a top speed of 100km/h. After 220km/h you don't feel anything, it's like you're inside a bubble, the way the bike sounds, the rattle of the engine, the wind speed everything is constant, the gears aren't shifting, it's very relaxing but also dangerous if you do that on the streets, high speeds you hit them in the middle of nowhere like we did in Moyale to Marsabit, it's just you and the desert,” Mr Musyoka says as he walks into the inner chambers of the studio. “Even then, the 44-year-old doesn't see any problems with it.”

“Living is a risk, investing is a risk as well, I choose to invest in this kind of vibes. Bike is my device, it helps me decompress after a day with music parade,” he adds. “I bring the machines to the studio to life.”

For 27 years now, starting out as a rapper, Mr Musyoka has been fully immersed into music and sound production, creating records for big names from Kenya and beyond — Sauti Sol, Morgan Heritage, Nyashinski, Profesa Jay, Mwana FA, Juliani, Hart The Band, you name it.

The walls of the Decimal studio are a testament, littered with decorations of vinyls and placards of his creation, some dating as far as 2000s. One that stands out is the Coca-Cola pop star group SE-A that Sanapei Tando into the spotlight. For his virtuosity and wit, often than not there has been an argument as to whether Mr Musyoka is Kenya's Dr Dre — the popular American billionaire rapper and producer.

Despite lack of academic success, Dr Dre is ranked among the most shrewd and powerful forces in the world of hip hop and music. Just like Mr Musyoka, Dr Dre is responsible for launching careers of a notable number of influential artists. The six-time Grammy award winner and Aftermath entertainment founder, was listed by Forbes as the second richest hip-hop producer in 2019.

But Mr Musyoka politely agrees he has been instrumental in shaping a lot of musical careers in Kenya but insists he doesn't compare to Dr Dre in many ways. A case in point would be their different upbringing. Whereas Mr Musyoka was raised in a well-off household by a fr-



Legendary Kenyan producer Eric Musyoka, alias Musox during an interview at his studio along Kiambu Road, Nairobi on Wednesday. WILFRED NYAN-GARESI/NATION

gical accountant mother and an artistic father, Dr Dre grew up surrounded by questionable influences. The American associated with known drug dealers and spent most of his younger days getting well acquainted with the street hustle.

However, just like Dr Dre, Mr Musyoka can easily point out to you where exactly the money is in the world of music, something which most music producers in Kenya seem to miss. Mr Musyoka reveals a chunk of his money comes from licensing of music and scoring for films — a business strategy majority of Kenya producers do not know or understand.

“Distribution and licensing are the two main aspects of monetizing music. I don't subscribe to this idea of just creating and selling beats — a model liked by many Kenyan producers. With distribution is getting the content to different distributors through various music streaming platforms. Licensing is lending license to commercials, TV etc for a set period of time at a fee,” he says.

Running of his Decimal record label is yet another venture that adds to his basket.

“A good example is a Somali

movie called Buifs by an Italian, shot in Eastleigh. I licensed four songs from Decimal Records, used in the movie at \$4,000. The film is currently doing festival runs in Poland. The songs aren't even that huge in the country, but because they fit in the movie script they are good,” he says.

Trained at School of Audio Engineering (SAE) Institute in the US, that's where Mr Musyoka fine-tuned his craft with key highlights being when he interned at the American rapper mogul Sean Combs alias Puff Daddy's record label.

“Our school had good connection with New York labels, some of my colleagues got placements at Wyclef Jean, Jay Z, some went to Sony Music. I landed mine at Diddy's,” he says. Armed with all the knowledge, expertise and experience while in the US, Mr Musyoka says he saw an unexploited opportunity in Kenya and that's what informed his decision to start a music label immediately he jetted back.

P-Unit were the first artists Mr Musyoka signed at Decimal Records and that's when his name started gaining traction despite having been in the business for 10 years.

“The market was growing, social media had just started, we had proper PR (public relation) and now there was a face to the product, so I began to get noticed with the masses.”

The model employed here was Decimal to run as a label.

When the label began in 2009, Mr Musyoka says there was good money.

“In terms of performances P-Unit were making up to Sh500,000 per concert right now I see people going home with Sh1.8 million and even more. Licensing wasn't a big source of income for us but streaming sales and performances and brand endorsements,” he says.

At this point, a majority of Digital Service Providers (DSP) hadn't

opened up in the Kenyan market.

“What we did was find distributors for our music worldwide so people in diaspora had access to P-Unit music. iTunes was the biggest stop. Spotify was also there but not as huge. We would make about \$3,000 (Sh300,000 at the then exchange rate) a year from streaming,” he says. When the group P-Unit of Frasha, Gabu and Bon-eye folded in 2015, Mr Musyoka took a break from label business. “For close to three years I didn't sign any artists. During this period, I became work for hire, producing Sauti Sol, Octopizzo, June Gachui, Elani, Gilad, Hart The Band, Arrow bow albums.”

Besides music placards furnishing the Decimal Records wall studios, several films placard add to the tally. Katikati, Nafasi, Country Queen, Supa Modo, Nairobi Half Life, Veve, Twende are but a few of Kenyan films productions Mr Musyoka has written sound tracks for.

“I also score for movies. This is basically writing music to a motion picture. You are paid a one-

fee to write music for the project whether it flops or becomes a box office. We still earn money from movie royalties every time its screened from what is called a cue sheet,” he says. The model of making money here is pretty much different from music.

“In the film world, you charge your labour cost, that's the amount of time you will spend writing music to the film. If its an hour movie I know I will need to compose 38 minutes of music, then I give a quote. After finishing scoring you do a cue sheet which you submit to your publisher. That cue sheet is what collects your royalties every time the films is screened from anywhere in the world.”

“The beauty of films is that they have good budgets. I mean you could even make over \$6,000 plus if you lock in a good deal. Another beauty of scoring for film is that you don't have to wait long enough to get paid, you are paid up front.” Mr Musyoka says.

tmatiko@ke.nationmedia.com

REPUBLIC OF KENYA



THIRTEENTH PARLIAMENT | THIRD SESSION THE SENATE

INVITATION FOR SUBMISSION OF MEMORANDA

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J.M. NYEGENYE, CBS, CLERK OF THE SENATE.



**REPUBLIC OF KENYA
MINISTRY OF CO-OPERATIVES AND MSME DEVELOPMENT
OFFICE OF THE CABINET SECRETARY**

Tel: +254 (0)020-315001/2-4
Email: cs@ushirika.go.ke
When replying, please quote

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P.O. Box 30430-00100
Nairobi
KENYA

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Dear *CS*

**MEMORANDA ON THE CO-OPERATIVE SOCIETIES
(AMENDMENT) BILL 2023 (SENATE BILL NO. 53 of 2023)**

Reference is made to your letter referenced: SEN/DSEC/SCTIT/2024/152 dated 5th April 2024 regarding the Cooperative Societies (Amendment) Bill 2023.

I take this opportunity to express my appreciation for the Senate's proactive role in supporting the cooperative sector, particularly through the sponsorship of the Cooperative Societies (Amendment) Bill 2023. This initiative demonstrates a commitment to driving necessary reforms within the sector.

I would like to bring to your attention that the Ministry has since developed a draft Cooperatives Bill 2024. This Bill underwent extensive public participation and received unanimous endorsement from stakeholders during a National Cooperative leaders' conference. The Cabinet has since approved the Bill, and it was tabled for the first reading in the National Assembly on 9th April 2024.

Moreover, on 16th February 2024, the Senate Standing Committee on Trade, Industrialization, and Tourism, along with the National Assembly Standing

memorandum on emerging areas on the Bill to the respective Committees during deliberations on the Bill.

In addition to the above development, the Ministry wishes to submit the following:

1. The Cooperative sector has undergone significant changes since the last major amendment of the Cooperative Societies Act in 2004. These changes, including the devolved system of governance, changes in management, governance, and operations of cooperatives, as well as advancements in technology, necessitate a comprehensive overhaul of the Cooperative Societies Act rather than piecemeal amendments.
2. The proposed amendments in the Cooperative Societies (Amendment) Bill 2023 are insufficient to address the challenges facing the Cooperative sector. These challenges include weak governance structures, limited access to affordable credit and markets, limited participation in value addition, and underutilization of technology. The Cooperatives Bill 2024 offers progressive interventions designed to tackle these challenges effectively.
3. The Cooperative Societies (Amendment) Bill 2023 introduces the County Executive Committee Member (CEC) alongside the Commissioner for Co-operative Development in administering the Act. However, CECs are politically appointed State Officers, whereas the Act should be administered by Technical Officers in the Public Service. The Sessional Paper No. 4 of 2020 on National Cooperative Policy advocates for a complete overhaul of the Act.
4. The Cooperative Societies (Amendment) Bill 2023 proposes substantial government control over cooperatives, contrary to International Guidelines of the International Co-operative Alliance (ICA) and ILO Recommendation 193. The Cooperatives Bill 2024 introduces a four-tier cooperative structure for self-regulation, aligning with international standards.
5. Certain provisions of the Cooperative Societies (Amendment) Bill 2023 are inconsistent and contradictory with Sessional Paper. While acknowledging the need for the devolved nature of cooperatives, the Cooperative Societies (Amendment) Bill 2023 proposes 48 cooperative registers (one in each county and one at the national level), without a central one whereas the Sessional Paper advocates for a National Cooperative Register to achieve standardization, as agreed upon by the Ministry and the Council of Governors.

In conclusion, while the Ministry appreciates the Senate's initiative in sponsoring the Cooperative Societies (Amendment) Bill 2023, it is our considered view based on the observations outlined above, that the Cooperative Societies (Amendment) Bill 2023 be withdrawn to allow for the consideration and enactment of the Cooperatives Bill 2024.

Attached find:

1. Annexure One: Summary of Observations of Proposed Amendments and Justification for Withdrawal of the Co-operative Societies (Amendment) Bill 2023
2. Annexure Two: A copy of the Cooperatives Bill 2024 as published by the National Assembly.

Yours



Simon K. Chelugui, EGH
CABINET SECRETARY

ANNEXURE ONE: SUMMARY OF OBSERVATIONS OF PROPOSED AMENDMENTS AND JUSTIFICATION FOR WITHDRAWAL OF THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL 2023

Clause	Sub Title	Provisions in the Co-Operative Societies (Amendment) Bill	Cooperatives Bill 2024	Justification for Withdrawal of Amendment Bill and Consideration of Cooperatives Bill 2024
2	Interpretation	Provide for provisional registration of cooperatives	The Cooperatives Bill does provide for provisional registration	The Ministry ceased registering provisionally because the banks and other agents did not recognize such registration. The cooperative has since done away with provision registration
3	Guiding Principles	Introduces a new section 2 (A) on cooperative guiding principles that include the five ICA cooperative principles and four others	The Cooperative Bill 2024 under clause 4 prescribe the guiding principles that include the seven International Cooperative principles and National values and principles of governance provided under article 10 of the constitution	The ILO through ICA prescribe that all cooperatives must adhere to all seven International Cooperative Principles.
4	Functions of the National and County Governments	Introduces a new part I A which provide for functions of the two levels of government	The Cooperatives Bill 2024 has also a Part II which also establishes of offices for administration of the Act at both levels of the government	The Cooperatives Bill is more comprehensive and considers inputs from IGRTC legal Notices , Sessional Paper No. 4 of 2020 on National Cooperative Policy and emerging areas have been agreed

				upon by the Ministry , COG and IGRTC
		The amendment bill under clause 2 C provides among the roles of the National government to include registration of the unions and Apex	The Cooperatives Bill 2024 in clause 9 provide for the function of the commissioner which include registration of cooperatives, maintenance of the national register and promotion of Apex and Federations. The Bill under clause has introduced a new four tier cooperative structure s. The tiers include primary, secondary ((union) , Federations and Apex	The Cooperative Bill provide reforms in sector through introduction of self-regulation through four tier structure. This is intended to improve governance and efficiency in management of cooperatives
2D	Functions of County governments	Provides the respective County Executive Committee members shall among others formulate and implement strategies, promote, facility and register primary cooperative societies	The Cooperative Bill 2024 under clause 14 provide that County Director for Cooperative to be responsible for promoting the formation of cooperatives and day to day supervision of cooperatives in the county. Specifically the director shall implement national and county policies and strategies and promote registration of primary and secondary cooperatives.	Just like Cabinet Secretaries, CECM are policy makers and not implementers. The role of administration of legislation at the county as rightfully provided by the Cooperative Bill should be bestowed to officers appointed under County Public Service
3 A	County Director of Cooperatives	This clause provides for designation of the County Director of Cooperatives by the respective CCM from amongst public officers in the county	The Cooperative Bill 2024 under clause 11 establishes the office of the County Director for Cooperatives which shall be an office in the county public service. The Director shall have necessary academic qualifications, competence s and experience in cooperative management and practice. In	For the enforcement of the administration of the Act, the Director should be competitively recruited and deployed by the county public service as provided by the Cooperatives Bill 2024

			<p>addition, the Director shall be a member of a professional body for cooperative practitioners in good standing /</p> <p>Clause 13 further provide that whenever a vacancy arises in the position of the Director, it shall be filled through a competitive recruitment process</p>	
6 A	Registration of a primary cooperative	<p>This section provide how the Director shall process registration of primary cooperatives.</p> <p>The clause further provides that the Director shall submit the application for registration to the Commissioner together with a recommendation for registration or rejection.</p>	<p>The Cooperatives Bill 2024 under clause 29 stipulate procedure for registration which are more elaborate but similar to the proposed in the amendment Bill provided here.</p> <p>In addition to processing registration documents for primary cooperatives the Bill further bestows the Director with function of processing registration for secondary (unions) cooperatives</p>	<p>The amendment Bill contradicts itself by providing the registration of primary cooperatives to CECM under clause 2D but the actual function being done by the Director under clause 6A.</p> <p>This may cause conflicts</p>
7A	Suspension or cancellation of registration	<p>The Amendment Bill provide for the Commissioner to suspend or cancel registration of a cooperative. It further provides that the Director may make a recommendation to the Commissioner for the suspension or cancellation of primary cooperative.</p> <p>Further clause 7A (4) provide that the Commissioner or the CECM may make order for the cancellation of registration and dissolution of a cooperative society</p>	<p>The Cooperatives Bill 2024 dedicate a whole part, part 13 with procedure for dissolution. Under clause 106, the Commissioner , after holding an inquiry or receiving an application made by at least three fourths of the members of a cooperative or recommendations form County Director for Cooperatives or Authority may order the dissolution of a cooperative</p>	<p>This clause contradict itself by providing for the director to recommend for cancellation and dissolution at the same time providing the CECM with powers to cancel and dissolve.</p>

9(2)	Appeal against refusal to register a primary cooperative Society	<p>Clause 6A (4) of the amendment Bill provides that Director shall submit an application under subsection (1) to the Commissioner together with a recommendation registration or rejection of application.</p> <p>Further clause 9(2) provides that a primary society may, within thirty days from the date of receipt of the decision or a notice under section 6, 7A or 8, appeal to the Tribunal against the decision of the director for refusing to register the co-operative society and its bylaws</p>		The two clauses contradict each other by 6A(4) providing for recommendation for registration of primary cooperatives by Directors to Commissioner and Clause 9(2) asserting that the Director can be sued at the Tribunal for refusal to register
11		Clause 11 (1) provides that certificate of registration or provisional registration signed by the Commissioner or pre: registration signed by the director shall be conclusive evidence that the society is duly registered, provisionally registered or pre: registered.		The amendment Bill does not clearly define what is pre-registration of cooperatives. In addition, a provisional registration or pre-registration cannot be the same as registration
14		Clause 14(2) of amendment Bill provide that a primary society may become a member of another cooperative society	The Cooperatives Bill 2024 under clause 29 is very explicit on affiliations where primary cooperatives can affiliate to secondary (union) and not vice versa.	This clause is not clear what constitute being a member of another cooperative society. A primary Cooperative cannot become a member of another primary cooperative

25		<p>Clause 25(7) of the amendment Bill provides that he auditor shall, before submitting the audited accounts to the members at a general meeting, submit the audited accounts for comments –</p> <p>(a) in the case of a cooperative union or apex society, to the Commissioner or</p> <p>(b) in the case of a primary society, to the director.</p>	<p>The Cooperatives Bill 2024 under clause No. 14(2) (e) provides that counties shall provide external auditing services to cooperatives in the county while clause 9(2) (j) provides that the National government will register audited financial statements of cooperatives</p>	<p>The county government are involved in the actual auditing of cooperative societies and hence counties cannot independently verify and register their own work. In addition, the Commissioner is expected to be responsible for issuance and enforcement of accounting standards in liaison with ICPAK</p>
29		<p>In clause 29 and 30, the amendment Bill has proposed amendments to provide for the role of the Director in amalgamation and division of cooperatives</p>	<p>The Cooperatives Bill 2024 under part VIII provide that the Commissioner shall approve amalgamation and division of cooperatives</p>	<p>Since the director will recommend to the Commissioner for registration as provided in clause 6A (4) of the amendment Bill, it makes sense for the commissioner to be also be responsible for dissolution, amalgamation and division. This more so because the amalgamating cooperatives may be domiciled in two or more counties and again it is the commissioner who will eventually issue the certificate of registration to the amalgamating cooperative or splitting cooperatives</p>

35	Failure to remit sum deducted	The amendment Bill provide for the Director to institute proceedings on non-remittances by employers or marketing agents to cooperatives	The Cooperatives Bill 2024 provides the Commissioner shall enforce remittances in all cooperatives	Some of the defaulting employers for a cooperative society may be found in different counties. In addition county government and state corporations are some of the employers that default in remittances. On understanding of this the Ministry and COG have agreed that the county to issue demand notices while the national government to issue agency notice and enforce it
51, 52,53	Charges registered with the Commissioner	The Amendment Bill clause 51(2) provides for registration of charges of primary cooperatives by the Director	The Cooperatives Bill 2024 part 11 provides for registration of charges all cooperatives by the Commissioner	Cooperatives borrow across the country and sometimes offshore. Because of this, it is important that we have one central register of charges instead of over 47 registries spread out the country
54	Receiver to give notice of his appointment	The Clause provide for Director to receive written notice for a person appointed under any instrument as a receiver of a primary cooperative	The Cooperatives in clause 95 provides for appointment of a receiver by the Commissioner and receiving written Notice for the appointment of the receiver for the purpose of entering the Notice in the register of charges	The amendment Bill does provide details on who to appoint a receiver. In addition, makes sense for the custodian of register of charges to receive the written Notice
58	Inquiry by the Commissioner	The Amendment Bill clause 58 provides that the Commissioner or the director may, on its own motion, on request by	The Cooperatives Bill 2024 in clause 99 provides for inquiry of all cooperatives by the commissioner on his own accord, request by the	The inquiry should be undertaken by the Commissioner since the Director is in charge of the day to day

		members or where required by the Cabinet Secretary, undertake an inquiry into the b:laws, working or financial conditions of a cooperative society he or she has registered.	Director or the Authority or on application of a liquidator or any creditor or not less than one third members voting a general meeting	supervisions of the cooperatives in a county. This is for uniformity and also other cooperatives operate beyond one county. The Ministry and the COG have agreed on this proposal
61-71	Procedure for Dissolution	The Amendment Bill provide for Director role in dissolution of primary cooperatives	The Cooperatives Bill 2024 provide for dissolution under part 13 by the Commissioner. It furthers provide that the Director may recommend for dissolution	The Commissioner being the custodian of the national cooperative register and also being the one that the Director recommends to register primary cooperatives should be the one to dissolve. This has been agreed upon by the Ministry and COG under mediation of IGTRC
72	Powers to restrain convicted persons from being officers of society	The amendment bill quotes insolvency Act	The Cooperatives Bill adopts relevant provisions from insolvency Act	There is a danger of quoting a provision of another Act since that Act may be amended. The best practice is to adopt the relevant content
73,74,75	Power to surcharge officers of cooperative society	The amendment Bill provides the Director with powers to surcharge officers of cooperatives	The Cooperatives Bill provide that Commissioner shall surcharge all officers of cooperatives	Whoever undertakes inquiry should also surcharge

76	Disputes	Introduces a new clause bring on board the Commissioner and Director being sued for various claims including refusal to grant registration, cancelation or suspension of registration	The Cooperatives Bill 2024 expand this through clause 129 by bring onboard, commissioner, Director and employer	The amendment Act contradicts itself may asserting that the director can be sued for failure to register while the same Bill provides that the Director shall recommend registration of a cooperative to the Commissioner. The Bill also expunges a clause dealing with SASRA despite SASRA being a National State Corporations in charge of financial cooperatives
77	Establishment of the Tribunal	The amendment Bill provide that the members of the Tribunal shall be appointed by the Judiciary Service Commission, the Cabinet Secretary and others nominated by LSK	The Cooperative Bill 2024 through clause 125 provides that Judicial Service Commission shall appoint the chair and deputy chair while the remaining members shall be nominated by the Cabinet Secretary for appointment by JSC	
93 A	Other power of the Commissioner	The amendment Bili clause limits the powers of Commissioner to Unions and Apex and introduces a sub clause (2) which provides powers to the Director	The Cooperatives Bill 2024 through clause retains the powers of the commissioner providing the Director with similar powers on primary and secondary cooperatives	Limiting the power of the Commissioner is unnecessary
Schedule	Insolvency Act 18 of 2025	The amendment Bill replaces the Companies Act Cap 486 Schedule make references Insolvent Act Schedule	On the other hand, The Cooperatives Bill 2024 introduces new schedules which have been borrowed from the Insolvency Act and customized them to fit cooperatives	It is more prudent to borrow and customize from the legislations rather than making references

11 APR 2024



COUNCIL OF GOVERNORS

THE SENATE RECEIVED 11 APR 2024 DEPUTY CLERK

Westlands Delta House 2nd Floor, Waiyaki Way. P.O. BOX 40401-00100, Nairobi.

Tel: (020) 2403314, 2403313 E-mail: info@cog.go.ke

Our Ref: COG/2/19/1A Vol.3 (67)

Jeremiah M. Nyegenye, CBS Clerk of the Senate Parliament Buildings NAIROBI

Dear Mr. Nyegenye,

THE SENATE RECEIVED 11 APR 2024 CLERK'S OFFICE SENATE

11th April, 2024

Handwritten initials: DMS, DSEC

Handwritten note: 'Kindly deal'

Handwritten date: 11/04/2024

REQUEST FOR MEMORANDA ON THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2023 (SENATE BILLS NO.53 OF 2023)

The above subject matter refers.

Referenced is made to your letter Ref. SEN/DSEC/SCTIT/2024/152 dated 5th April 2024 inviting the Council of Governors to submit a written Memorandum on the Co-operatives Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023).

Handwritten note: 'Kindly deal'

Handwritten date: 11/04/2024

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable. Further, the Council takes note of the existence of two distinct Cooperative Societies Bills currently under consideration, one tabled at the National Assembly, referenced as the "Cooperative Bill, 2024," as published in the Kenya Gazette Supplement No. 32 (National Assembly Bills No. 7), and the other tabled at the Senate, referenced as the "Cooperative Societies (Amendment) Bill, 2023 (Senate Bills No.53 of 2023)."

Handwritten note: 'Kindly deal'

Handwritten date: 12/04/24

Noting the importance of effective consultation and collaboration between the National Government and the County Governments in the execution of the Cooperatives Function, the Council of Governors and the Ministry of Cooperatives and MSMEs, have engaged in a series of discussions aimed at proposing amendments to the Bill currently tabled at the National Assembly. A meeting between the Cabinet Secretary for Cooperatives and Governors in the cooperatives meeting held on 7th February 2024 resolved that it would be prudent for the two levels of government to share an agreed version of the Bill with both houses for deliberation. This Bill is aligned to the constitution of Kenya, 2010 and respects the functions of the two levels of government as envisioned by the Fourth Schedule. Enclosed herewith, please find the amended National Assembly Bill for your consideration.

In light of our collaborative efforts and mutual agreement on the proposed amendments, the Council respectfully urges the Senate to deliberate on the Bill tabled at the National Assembly along with the attached amendments, jointly proposed by the two levels of government. We believe that this approach will contribute to the enhancement of the Cooperative Societies legislation in alignment with the interests and needs of all stakeholders involved.

Please be assured of our highest esteem and consideration.

Yours sincerely,



Mary Mwiti
Chief Executive Officer

Copy: **Mr. Simon K. Chelugul, EGH**
Cabinet Secretary
Ministry of Cooperatives and Micro, Small & Medium Enterprises (MSMEs)
Development
NAIROBI

Mr. Patrick Kilemi
Principal Secretary
State Department for Cooperatives
NAIROBI

Mr. David. K. Obonyo
Co-operative Commissioner
State Department of Cooperatives
NAIROBI



COUNCIL OF GOVERNORS
LEGISLATIVE MEMORANDUM ON THE DRAFT COOPERATIVE BILL, 2023

TO

THE STATE DEPARTMENT FOR COOPERATIVES

FROM

THE COUNCIL OF GOVERNORS

Introduction

THE COUNCIL OF GOVERNORS,

In recognition of the fact that sovereign power of the state is exercised at two levels of government, that is, the National Government and the County Governments, whose distinctness is recognized by Article 6 (2);

In further recognition of the need to ensure that all legislation are cognizant of the fact that Trade development and regulation, including—cooperatives societies is a fully devolved function under section 7 of Part 2 of the Fourth Schedule to the Constitution;

Aware of the need for coordinated action and approach between the National and County Governments in promoting the development of cooperatives in Kenya for the benefit of our farmers.

Having reviewed the draft Cooperative Bill, 2023 in its entirety, the Council of Governors recommends the following amendments for better implementation of the proposed Act by the County Governments:

CLAUSE	PROVISION OF THE BILL	PROPOSED AMENDMENT	JUSTIFICATION
2. Interpretation	“County director for Cooperatives” means a public officer appointed by a County Public Service Board to be responsible for the promotion, regulation, supervision and development of Cooperatives in a county;	Amend the definition of the word “County Director for Cooperatives” to read as follows: “County Director” means the County Director for the time being responsible for Cooperatives development in a county;	To avoid ambiguity and provide for clarity as to the definition of County Director
	“Secondary Cooperative” means a Cooperative whose membership is restricted to primary Cooperatives;	“Secondary Cooperative” means a cooperative whose membership is two or more primary cooperatives	To provide clarity on the definition of the term
9. Functions of the Commissioner.	9.(1) The Commissioner shall be responsible for the growth, development and regulation of Cooperatives in Kenya	Amend clause 9(1), 9(2)(c) and (e) to read as follows: <u>9. (1) The Commissioner shall be responsible for provision of technical assistance to the County Governments in the growth and development of cooperatives.</u>	To align to the provisions of the Fourth Schedule to the Constitution which has devolved trade development and regulation including cooperatives societies to County Governments and capacity building and provision of technical assistance to the

(2) Despite the generality of subsection (1), the Commissioner shall:

(a) ...;

(b) co-ordinate the implementation of an intergovernmental relations mechanism in the Cooperatives sector;

(c) „

(d) register all Cooperatives in Kenya, and maintain a national register of all Cooperatives;

(e) conduct inquiries into the affairs of cooperatives in accordance with this Act;

(f) ...;

(g) ...;

(2) Despite the generality of subsection (1), the Commissioner may:

(a) recommend to the Cabinet Secretary the formulation of a national policy framework and standards for the development and growth of cooperatives;

(b) ... Intergovernmental relations if any, should be strictly within the confines of policy development and capacity building;

(c) register cooperative federations and the apex Cooperative in Kenya, and

(d) maintain a national register of all Cooperatives;

(e) conduct inquiries into the affairs of Cooperative federations and the Apex Cooperative in accordance with this Act;

counties as the functions of National Government.

2. Replace the word "shall" with the word "may"

The use of the word "shall" makes it mandatory for the commissioner to co-ordinate the implementation of an intergovernmental mechanisms. This is unconstitutional and contravenes the fully devolved functions requirement.

b). This section purports to force a consensus on sharing of functions between Counties and National Government yet cooperatives are constitutionally fully devolved functions.

**** The Functions of the Commissioner should be limited to the formulation of national policy framework and standards for development and growth of cooperatives.*

This has been unbundled exhaustively during the unbundling exercise.

d. Cooperatives being fully devolved, registration thereof should be done at County level by the respective County Governments, who in turn, submit the registration return: to the commissioner. This will also be a source of own source revenue for the counties.

	(h) develop and enforce good governance, ethics and integrity guidelines in Cooperatives;	(f) develop good governance and ethics in <u>cooperative federations and the apex cooperative</u> in accordance with this Act;	Delete the word "enforce" enforcing will amount to meddling and overstepping.
12. Staff of the office of the County Director for Cooperatives	12. The County Public Service Board shall appoint such number of technical officers to the office of County Director for Cooperatives, as may be necessary for the implementation of the provisions of this Act.	Amend clause 12 to read as follows: 12. The County Public Service Board shall in <u>consultation with the County Executive Committee Member, competitively recruit and</u> appoint such number of technical officers to the office of County Director for Cooperatives, as may be necessary for the implementation of the provisions of this Act.	To provide for a consultative mechanism between the County Public Service Board and the County Executive Committee Member in charge of cooperatives in the identification of the necessary human resource for the office.
14. Functions of the County Director for Cooperatives	14. (1) The County Director for Cooperatives shall be responsible for promoting the formation of Cooperatives and day-to-day supervision of Cooperatives in the county. (2) Despite the generality of subsection (1), the County Director for Cooperatives shall— (a) formulate and implement strategies, guidelines, and measures in cooperative matters in accordance with the national policy framework; (b) carry out inspections into the affairs of Cooperatives in the county; (c) supervise elections of Cooperatives within the county; (d) enforce good governance in the	Amend by deleting clauses 14(1) and (2) and replace with the following new clauses 14(1) and (2) 14(1) The County Director for Cooperatives shall be responsible for <u>the growth, development, regulation and day-to-day supervision of Cooperatives in the county.</u> (2) <u>Despite the generality of subsection (1), the County Director for Cooperatives shall:-</u> (a) <u>recommend to the County Executive Committee Member the formulation of policies, strategies guidelines and measures for growth, development, and regulation in the county;</u>	To align to the provisions of Article 209(4) & (5) and Part 2 sections 7 of the Fourth Schedule to the Constitution, which allows the county governments to impose charges for services as well as mandate of trade development and regulation including cooperatives societies.

<p>management of Cooperatives in the county;</p> <p>(e) provide external auditing services to Cooperatives in the county;</p> <p>(f) carry out capacity building of Cooperatives in the counties;</p> <p>(g) promote value addition, joint venture and adoption of appropriate technology in Cooperatives;</p> <p>(h) establish and maintain a county Cooperative research and information centre;</p> <p>(i) facilitate collaboration and linkages between primary and secondary Cooperatives;</p> <p>(j) collect, collate, analyse, and disseminate data on the activities of Cooperatives in the county;</p> <p>(k) develop strategies on the improvement of governance and growth of Cooperatives in the county; and</p> <p>(l) perform such other functions as may be necessary for the implementation of this Act.</p>	<p>(b) <u>implement policies, strategies, guidelines, and measures in line with the national policy framework;</u></p> <p>(c) <u>Register all the primary and secondary cooperatives and maintain a county register of cooperatives;</u></p> <p>(d) <u>carry out inspections into the affairs of cooperatives in the county;</u></p> <p>(e) <u>supervise over elections of cooperatives within the county;</u></p> <p>(f) <u>facilitate and promote the registration of primary and secondary cooperatives;</u></p> <p>(g) <u>conduct inquiries into the affairs of primary and secondary cooperatives in the county;</u></p> <p>(h) <u>enforce good governance in the management of the primary and secondary cooperatives in the county;</u></p> <p>(i) <u>provide external auditing services to cooperatives in the county;</u></p> <p>(j) <u>carry out capacity building of cooperatives in the county;</u></p>
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		<p>(k) <u>promote value addition, joint venture and adoption of appropriate technology in cooperatives;</u></p> <p>(l) <u>establish and maintain a county cooperative research and information centre;</u></p> <p>(m) <u>facilitate collaboration and linkages between primary and secondary cooperatives;</u></p> <p>(n) <u>collect, collate, analyze, and disseminate data on the activities of cooperatives in the county;</u></p> <p>(o) <u>develop strategies on the improvement of governance and growth of cooperatives in the county;</u></p> <p>(p) <u>perform such other functions as may be necessary for the fulfilment of the provisions of this Act.</u></p> <p>(3) <u>Upon registration, the County Director shall share with the Commissioner all the registered primary and secondary cooperatives for purposes of national statistics.</u></p> <p>3) <u>A county government may, pursuant to the Fourth Schedule of the Constitution, impose fees for issuance of licenses for cooperative societies within the county.</u></p>	
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		<p><u>(4) The fees imposed by a county government under subsection (3) shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.</u></p> <p><u>(5) Despite the provisions of this section, cooperatives in respect of which the provisions of the Sacco Societies Act apply shall be supervised and regulated in accordance with the provisions of the Sacco Societies Act.</u></p>	
<p>other powers of the Commissioner.</p>	<p>158(1) Without prejudice to any other powers under this Act the Commissioner may—</p> <ul style="list-style-type: none"> (a) call for elections in any Cooperative; (b) (c) issue circulars and guidelines for the better administration of this Act; (d) require that Cooperatives update their by-laws; and (e) exercise such other powers consistent with this Act as may be prescribed in Regulations. <p>(2) The Commissioner may in writing delegate any of his powers conferred upon him to an officer or any other person.</p>	<p>Delete the entire section</p>	<p>The section allows the Commissioner to over step the mandate outlined in section 9 of the Bill.</p> <p><i>The Commissioner has no power to delegate powers to any other person</i></p>

Conclusion

The centrality of devolution in the cooperatives sector is something that cannot be wished away in the process of developing a legal framework for promotion and supervision of cooperatives in the country. It is therefore imperative that the Cooperative Bill is aligned to the provisions of the Constitution. We therefore urge the State Department of Cooperatives to ensure that the functions of Commissioner of Cooperatives is only limited to provisions of technical assistance and capacity building to the County Governments and development of standards for cooperatives in Kenya. On the other hand, the County Governments role is to ensure development and regulation of cooperatives in their respective jurisdictions as well as registration of primary and secondary cooperatives as this is a function fully devolved under the Fourth Schedule to the Constitution.

Further, centralizing regulatory functions of the cooperatives at the National Level through the Bill undermines the objects and principles of devolution, particularly section 174 (f) which stipulates that ***“to promote social and economic development and the provisions of proximate, easily accessible services through Kenya”***

15th May 2024

The Clerk of the Senate,
Parliament Buildings,
NAIROBI.

RE: COMMITTEE STAGE AMENDMENTS TO THE COOPERATIVE SOCIETIES (AMENDMENT) BILL, SENATE BILLS NO. 53 OF 2023

NOTICE is given that Sen. Seki Lenku Ole Kanar, the Chairperson to the Standing Committee on Trade, Tourism and Industrialization intends to move the following amendments to the Cooperative Societies (Amendment) Bill, Senate Bills No. 53 of 2023, at the Committee Stage—

CLAUSE 3

THAT clause of 3 the Bill be amended in the proposed section 2A by inserting the following paragraphs immediately after paragraph (i) —

- (j) Member economic participation
- (k) Education, training and information

CLAUSE 4

THAT clause 4 of the Bill be amended in the proposed section 2D by deleting paragraph (b)

CLAUSE 5

THAT clause 5 of the Bill be amended in the proposed Section 3A —

- (i) by deleting paragraphs (a) and (b) in subsection 2 and substituting thereof with the following paragraphs—
 - (a) a director who shall be competitively recruited by the County Public Service Board; and

(b) such other staff from within the County Public Service that shall be necessary for the effective performance of the Office.

(ii) by deleting subsection 3 and substituting thereof with the following new subsection—

(3) The County Public Service Board in recruiting a director under subsection 2(a) shall ensure that such person has knowledge and experience in the administration and management of cooperatives.

CLAUSE 11

THAT Clause 11 of the Bill be amended in the proposed section 7A by deleting the words “county executive committee member” appearing immediately after the words “or the” in paragraph 4 and substituting thereof with the word “director”.

CLAUSE 15

THAT Clause 15 of the Bill be amended in subsection 1 of the proposed section 7A by—

- (i) deleting the word “pre-registration” appearing immediately after the words “commissioner or” ;
- (ii) inserting the word “and” immediately after the words “duly registered”;
- (iii) deleting the comma appearing immediately after the words “duly registered”; and
- (iv) deleting the words “or pre-registered” appearing immediately after the words “duly registered”.

CLAUSE 21

THAT Clause 21 of the bill be amended by inserting the following new subsection immediately after sub-section 10 –

“Provided that where an application under this section is in respect to societies registered in different counties, the application shall be received and determined by the

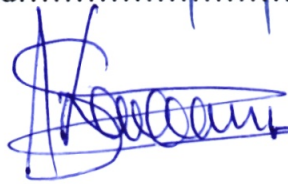
commissioner”

CLAUSE 24

THAT Clause 24 be amended by—

- (a) Deleting paragraphs (a) and (b);
- (b) Deleting the word “or the director” appearing immediately after the words “the commissioner” in section 5 under paragraph (c); and
- (c) Deleting Paragraph (d)

Dated.....15/5/....., 2024.



Sen. Lenku Ole Kanar Seki, MP,
Chairperson,
Standing Committee on Trade, Industrialization and Tourism.