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CONTENT

Bill for Introduction into the Senate—

PAGE

The Co-operative Societies (Amendment) Bill, 2023 1111

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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 —

Short title.

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

Amendment of section 2 of No. 12 of 1997.

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

(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.

Insertion of new section 2A.

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

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;

Insertion of new Part IA.

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

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

Amendment of section 4 of No. 12 of 1997.

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.

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

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

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.

Amendment of section of No. 12 of 1997.

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

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.

Insertion of new 6A.

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

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.

Amendment of section 7 of No. 12 of 1997.

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

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.

Insertion of new section 7A.

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

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.

Amendment of section 8 of No. 12 of 1997.

12. Section 8 of the principal Act is amended –

(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".

Amendment of section 9 of No. 12 of 1997.

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

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.

Amendment of section 10 of No. 12 of 1997.

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 11 of No. 12 of 1997.

15. Section 11 of the principal Act is amended –

(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".

Amendment of section 26 of No. 12 of 1997.

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 27 of No. 12 of 1997.

19. Section 27 of the principal Act is amended –

(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).

Amendment of section 28 of No. 12 of 1997.

20. Section 28 of the principal Act is amended –

(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".

Amendment of section 29 of No. 12 of 1997.

21. Section 29 of the principal Act is amended –

(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.

Amendment of section 30 of No. 12 of 1997.

22. Section 30 of the principal Act be amended –

(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.

Amendment of section 32 of No. 12 of 1997.

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 35 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";

(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".

Amendment of section 51 of No. 12 of 1997.

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

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.

Amendment of section 52 of No. 12 of 1997.

26. Section 52 of the principal Act is amended –

(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".

Amendment of section 53 of No. 12 of 1997.

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 54 of No. 12 of 1997.

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

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.

Amendment of section 56 of No. 12 of 1997.

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

(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.

Amendment of section 58 of No. 12 of 1997.

30. Section 58 of the principal Act is amended –

(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.

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

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 61 of No. 12 of 1997.

34. Section 61 of the principal Act is amended –

(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".

Repeal of section 62 of No. 12 of 1997.

35. The principal Act is amended by repealing section 62.

Repeal of section 63 of No. 12 of 1997.

36. The principal Act is amended by repealing section 63.

Amendment of section 64 of No. 12 of 1997.

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.

Amendment of section 65 of No. 12 of 1997.

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.

Amendment of section 66 of No. 12 of 1997

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 (l);

(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).

Amendment of section 67 of No. 12 of 1997.

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

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).

Amendment of section 68 of No. 12 of 1997.

41. Section 68 of the principal Act is amended –

(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".

Amendment of section 69 of No. 12 of 1997.

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 71 of No. 12 of 1997.

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

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.

Amendment of section 72 of No. 12 of 1997.

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

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.

Amendment of section 73 of No. 12 of 1997.

45. Section 73 of the principal Act is amended –

(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.

Amendment of section 74 of No. 12 of 1997.

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 75 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 76 of No. 12 of 1997.

48. Section 76 of the principal Act is amended –

(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).

Amendment of section 77 of No. 12 of 1997.

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

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.

Amendment of section 78 of No. 12 of 1997.

50. Section 78 of the principal Act is amended –

(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.

Amendment of section 79 of No. 12 of 1997.

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 80 of No. 12 of 1997.

52. Section 80 of the principal Act is amended –

(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.

Amendment of section 82 of No. 12 of 1997.

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

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.

Amendment of section 84 of No. 12 of 1997.

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

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.

Amendment of section 85 of No. 12 of 1997.

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

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.

Insertion of new sections 85A and 85B.

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

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.

Amendment of section 86 of No. 12 of 1997.

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

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.

Amendment of section 88 of No. 12 of 1997.

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 89 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 –

(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.

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

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

(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".

Amendment of section 91 of No. 12 of 1997.

61. Section 91 of the principal Act is amended –

(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".

Amendment of section 92 of No. 12 of 1997.

62. Section 92 of the principal Act is amended –

(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".

Amendment of section 93 of No. 12 of 1997.

63. Section 93 of the principal Act is amended –

(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".

Amendment of section 93A of No. 12 of 1997.

64. Section 93A of the principal Act is amended –

(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.

Amendment of section 94 of No. 12 of 1997.

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 the Schedule to No. 12 of 1997.

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

SCHEDULE

[Section 64.]

PART I – THE INSOLVENCY ACT (NO. 18 0F 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 it members, calculated by reference to the proportion which that member's volume of business with the society bears to the total volume of business done by the society;

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

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

"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 it's 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 c o-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 condition ns 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 it's 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 pe**nding recovery under this Act.**

(5) The Committee may delegate an**y 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 missioner 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 willfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any rules made thereunder; or

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

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

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

(3) The 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.

(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 [illegible]missioner as to the exercise of his powers and duties under this Act.

The Schedule to No. 12 1997 that the Bill proposes to amend –

SCHEDULE

[Section 64.]

PART I – THE COMPANIES ACT (CAP. 486)

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

No. of section	***Description of section***
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.