Kenya Gazette Supplement No 11 (Kwale County Acts No 8)

KENYA GAZETTE SUPPLEMENT

KWALE COUNTY ACTS, 2019

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THE KWALE COUNTY CO-OPERATIVE SOCIETIES ACT, 2016

No 8 of 2019

Date of Assent 5th October, 2016

Date of Commencement See Section 1

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THE KWALE COUNTY CO-OPERATIVE SOCIETIES ACT, 2016

AN ACT of Kwale County Assembly to provide for the promotion, establishment and regulation of co-operative societies and for purposes incidental thereto

ENACTED by the County Assembly of Kwale County as follows—

PART I – PRELIMINARY

Short title

1 This Act may be cited as the Kwale County Co-operative Societies Act, 2016 and shall come into force upon publication in the Kenya Gazette

interpretation

2 In this Act, unless the context otherwise requires—

“agricultural produce” includes any agricultural product, horticultural, dairy products, livestock and livestock products, products of poultry and bees edible products of forestry and any farm produce,

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

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

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

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

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

“co-operative society” means a society registered under section 19,

“co-operatives societies forum” means the County Co-operative Societies Forum established under section 11,
“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,

“Director” means the Director responsible for Co-operative Development appointed under section 5,

“Directorate” means the Directorate established under section 5,

“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,

“International Accounting Standards” and “International Financial Reporting Standards” means the standards adopted by the Institute of Certified Public Accountants of Kenya

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

“Kwale County Cooperative Development Committee” means a committee elected by the cooperative forum,

“Malfeasance” means wrongful conduct by a public official,

“Misfeasance” means doing a proper act in a wrongful or injurious manner,

“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,

Nominee means an entity or a person appointed by another person to act on its or his behalf in a limited capacity, or in a specific matter or a person appointed by a member who receives the benefit from the member’s share and any interests in the cooperative society,

“Nonfeasance” means a failure by someone to act when under an obligation to do so or a refusal (without sufficient excuse) to do that which it is one's legal duty to do,

“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,

“Sacco society” means a Savings and Credit Cooperative Society registered under the Cooperative Societies Act

“The Sacco Societies Act” means the Sacco Societies Act, No 14 of 2008

“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 the Cooperative Societies Act, Cap 490

“Winding up” means all proceedings subsequent to the dissolution of a co-operative society

**Purpose of the Act**

3 The purpose of this Act is to facilitate the implementation of section 7 (e) of part 2 of the Fourth Schedule of the Constitution and to provide for the establishment of legal and institutional framework for establishment and regulation of co-operative societies in order to—

(a) promote growth and development of cooperative societies,

(b) enhance good corporate governance in co-operative societies,

(c) promote local economic growth and development, and

(d) promote the realization of Article 36 of the Constitution on freedom of association

**Application**

4 This Act shall apply to any co-operative Society formed and established in the County
PART II—ADMINISTRATION

Directorate of Cooperative Development

5  (1) There shall be a Directorate responsible for Co-operative Development, headed by the Director, as established by the County Public Service Board.

   (2) The Directorate shall prepare an annual report on the development and status of co-operative societies which shall provide among others for—

   (a) the status of formation of co-operative societies,
   (b) the level of growth and development of co-operative societies,
   (c) the challenges faced in implementing the Act and proposed mitigation measures,
   (d) the status of promotion of good corporate governance among co-operative societies,
   (e) the challenges faced by co-operative societies and proposed mitigation measures, and
   (f) any other matter as may be prescribed.

   (3) The Director shall submit the report to the Executive Member not later than three months after the end of financial year.

   (4) The Executive Member shall, within fourteen days of receiving the annual report submit it to the County Executive Committee for consideration.

Officers

6  The County Public Service Board shall appoint such number officers as may be necessary to serve in the Directorate for effective carrying out of its functions under this Act.

PART III—PROMOTION AND DEVELOPMENT

Promotion and development

7  The Directorate shall be responsible for promotion, development of cooperatives and popularization of the cooperative movement as provided for in the regulations.

County Co-operative Societies Forum

8  (1) There shall be an annual County Co-operative Societies Forum.
(2) The co-operative society’s forum shall consist of at least 4 representatives from each co-operative society in the county and shall be responsible for—

(a) providing a platform for consultations and dialogue among co-operative societies,

(b) reviewing and monitoring the growth and development of co-operative societies,

(c) identifying and proposing policies, programs and plans to be adopted for promoting and supporting growth and development of co-operative societies,

(d) facilitating coordination of the implementation of this Act,

(e) electing the County Cooperative Development Committee, and

(f) carrying out any other function assigned by the Executive Member.

(3) The Forum shall meet at most twice per year or as directed by the County Executive Member.

(4) The Director or his representative shall be an ex-officio member of the co-operative Societies forum.

(5) The Executive Member shall prescribe the procedures for conduct of business of the co-operative Societies forum.

**Kwale County Co-operative Development Committee**

9 (1) The Forum referenced in section 8 above shall elect a Committee from amongst the Societies representatives to be known as the Kwale County Co-operative Development Committee which shall elect amongst themselves the Chairman, the Vice Chairman, the Treasurer and the Secretary.

(2) The Duties of the County Co-operative Development Committee shall be as outlined in the regulations.

(3) The Director or his representative shall be an ex-officio member of the County Co-operative Development Committee.

**PART IV—REGISTRATION OF CO-OPERATIVE SOCIETIES**

**Registration of co-operative societies**

10 The Director shall register all cooperative societies comprising members fully drawn from the County, whose operations are confined to the geographic boundaries of the County.
Register of co-operative societies

11 (1) The Directorate shall keep at its office a register of co-operative societies wherein shall be entered particulars relating to the registration of societies and their by-laws and any amendments thereto

(2) Every entry in the register shall be made by, or under the direction of, the Director and shall be signed by him and every alteration, interlineations or erasure shall be initialed by the Director

Co-operative society’s principles

12 The Universal cooperatives principles shall be entrenched in each cooperative society's by-laws

Compliance with the Act

13 (1) A co-operative society shall not be formed or established in the county, unless in accordance with the provisions of this Act and any other written law

(2) A co-operative society that contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings

Formation of co-operative society

14 (1) Any 10 or more persons associated for any lawful purpose may, by making an application in a prescribed form, signed by the 10 persons and having complied with the requirements of this Act, form a co-operative society

(2) Notwithstanding subsection (1), any two or more co-operative societies may form a co-operative society and be registered as a co-operative Union

(3) The application form, in case of a union, shall be signed by a person authorized in that behalf by each co-operative Society

Liability of members

15 The liability of members in a co-operative society shall be limited to the amount of shares held or to the contribution made to such society

Application for registration

16 (1) Subject to section 14 any persons intending to form a co-operative society in the county shall apply for registration to the Directorate in accordance with this Act

(2) An application under this section shall—
(a) contain the names, occupation and addresses of the applicants,
(b) state the registered office of the society,
(c) be accompanied by 4 copies of the Proposed by-laws of the society,
(d) ensure that all cooperative societies officials are registered with a recognized and licensed credit reference bureau of Kenya, and
(e) any other information as the executive member may prescribe

(3) The director shall review the application within fourteen days

Registration

17 (1) Where the Director is satisfied that the application meets the conditions of this Act, he/she shall register the co-operative society, upon payment of the prescribed fee and will be issued with the prescribed registration certificate

(2) Where the Directorate is not satisfied with the application, it may—

(a) reject the application giving reasons and notify the applicant accordingly within fourteen days of the decision to reject the application,

(b) make comments and recommendations thereon and return it to the applicant within fourteen days

(3) The applicant to whom the application is returned under subsection (2) (b) may re-submit a revised application

Body Corporate

18 A duly registered cooperative society shall be a body corporate with all rights and obligations accruing to such bodies

De-registration

19 (1) Subject to section 17 subsection (1) and (2), where a co-operative society fails to comply with the requirements of this Act or any other relevant written law, the Director may de-register the society

(2) The Director shall, before de-registration of the co-operative society give it—

(a) a notice of intention to de-register which shall not be less than sixty days, and
(b) an opportunity for hearing on the matters leading to non-compliance

(3) A co-operative society may within the sixty days stipulated under subsection (2) comply with the requirements of this Act as directed by the Director

(4) Where the co-operative society fails within the sixty days to comply with this Act, the Director shall effect de-registration until such a time when the co-operative society complies with the requirements of this Act and re-applies again

Appeals

20 (1) An applicant whose application has been rejected or is candidate for deregistration, may appeal against the decision to the relevant County Executive sub-committee via the Executive Member within fourteen days

(2) The County Executive sub-committee may within thirty days—

(a) uphold the decision of the Director, or

(b) reverse the decision of the Director subject to such conditions as the Committee may stipulate

Undesirable name not fit for registration

21 No co-operative society shall be registered by a name which consists of abbreviations, initials or by a name, which, in the opinion of the Director, is undesirable

Identical name to another Cooperative society not allowed

22 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 Director 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

By-laws

23 (1) A co-operative society shall make its by-laws in respect of the following matters—

(a) its name,

(b) its registered office, postal address and email address
(c) its area of operation and membership common bond,
(d) the objects of the society,
(e) the purposes to which its funds may be applied,
(f) the disposal of its accumulated funds,
(g) the qualification for membership, the terms of admission of members and the mode of their admission,
(h) the withdrawal and expulsion of members and the payment, if any, to be made to such members and the time within which such payment shall be made
(i) the rights, liabilities and obligations of members, including the minimum share-holding and produce delivery,
(j) the transfer of the shares or interests of the members,
(k) the manner of raising funds, including the maximum rate of interest on deposits
(l) its general meetings, the procedure and quorum of such meetings, power of such meetings and representation and voting at such meetings,
(m) the appointment, suspension and removal of members of the Committee and officers and the powers and duties of the Committee and officers
(n) the period of its financial year,
(o) the authorization of officers to sign documents on its behalf, and
(p) the settlement of disputes, and such other matters as may be expedient for the better carrying out of its objects

(2) If the objects of the society include the creation of funds to be lent to its members, the by-laws shall also be made in respect of the conditions and other requirements on which loans and advances may be made to members including—
(a) the rate of interest,
(b) the maximum amount which may be lent to a member,
(c) the extension, renewal and recovery of loans,
(d) the period and purpose of loans
(e) the security for loans, and
the consequences of default in the repayment of any sum due

24 If a cooperative society so chooses, it may comply with the Sharia’h law by adopting Sharia’h compliant by-laws

Amendment 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 approved by the General meeting of the Society and under this Act

(3) If the Director is satisfied that any amendment of the by-laws of the co-operative society is not contrary to this Act or the regulations made thereunder, it may register the amendment

(4) The Director may reject registration of the amendment if satisfied that—

(a) an amendment under this section was effected pursuant to a misrepresentation, or

(b) there is concealment of a material fact by the person applying for the registration

(5) A change of name by a co-operative society under this section—

(a) shall not affect any rights or obligations of the cooperative society,

(b) render defective any legal proceedings by or against the co-operative society or

(c) any legal proceedings that might have been continued or commenced against the cooperative society by its former name may be continued or commenced against it by its new name

By-laws to bind members of co-operative societies

(1) The by-laws of a co-operative society, shall, when registered bind the co-operative society and the members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for himself and his personal representatives to observe all the provisions of the by-laws
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Fines for violation of by-laws

27 The by-laws of a co-operative society may, subject to this Act provide for the imposition of fines as agreed by its members

PART V—MEMBERSHIP OF A CO-OPERATIVE SOCIETY

Prohibition of limitation of number of members

28 No co-operative society shall fix the maximum limit to the number of its members

Qualification for membership

29 (1) 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, and

(b) fits within the common bond for the cooperative society as provided by-law

Membership subject to authorization by annual general meeting

30 No company incorporated or registered under the Companies Act, and no unincorporated body of persons shall be entitled to become a member of a co-operative society, except with a written authorization through a resolution by a general meeting of that co-operative society

Limitation of holding share capital

31 No member, other than a co-operative society shall hold more than one-fifth of the issued and paid-up share capital of any co-operative society

Limitation of membership to one society

32 (1) No person shall be a member of more than one co-operative society having the same or similar object

(2) Notwithstanding subsection (1) a person who—

(a) is a member of a co-operative society, and

(b) carries on business on land or at premises outside the area of operation of that co-operative society, may be a member of a co-operative society in whose area of operation that land or those premises are situated, notwithstanding that its objects are the same as or similar to those of the first-mentioned society
Transfer of shares

33 (1) The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding prescribed in section 31.

(2) Subject to the approval of the Committee, a member may transfer his share or her shares in a co-operative society to any other member of the society or to any person whose membership of the society has been approved by the Committee.

(3) No transfer of a share in a co-operative society shall be valid and effective until such transfer has been recorded in the register of the society.

(4) No transfer of a share or shares in a co-operative society shall be valid and effective if made by a member indebted to a society whether such debt is due for payment or not.

Rights of members

34 (1) A member of a co-operative society shall have the right to—

(a) attend and participate at all general meetings of the society,

(b) to vote on any matter

(c) to elect and be elected to the organs of the society subject to its by-laws,

(d) enjoy the use of all the facilities and services of the society subject to the society’s by-laws, and

(e) all legitimate information relating to the society, including internal regulations, registers, minutes of general meetings, supervisory committees reports, annual accounts and inventories, investigation reports, at the society’s head office.

Voting rights of members

35 (1) Each member of a co-operative society shall have one vote irrespective of the number of shares the member holds.

(2) Notwithstanding subsection (1), members of a co-operative Society, whose membership consists of co-operative societies only may have as many votes as may be prescribed under the by-laws of such co-operative Union.

(3) The obligations and conditions for exercising of rights by members are as stipulated in the regulations of this Act and by-laws of the cooperative society.
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Member’s obligations

36  (1) A member of a co-operative society shall have the obligation to—

(a) observe and comply with all the society by-laws and decisions taken by the relevant organs of the co-operative society in accordance with the established by-laws,

(b) buy and pay up for shares or make any other payments provided for in the by-laws of the society,

(c) protect the name and property of the Society, and

(d) meet the debts of the society in case of bankruptcy in accordance with the provisions of this Act and the by-laws of the society

Conditions for exercising rights

37  (1) No member of a co-operative society shall exercise any of the rights of a member unless he has—

(a) made such payment to the society in respect of membership, or

(b) has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society

PART VI—DUTIES OF COOPERATIVE SOCIETIES

Estimates of income and expenditure

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

Accounts

39  (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 co-operative society or at the Sub-County Business Incubation Center and shall at all times be available for inspection by any member or members of its supervisory committee and the auditor

Audit

40 (1) 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 the Office of the County Director of Audit or an auditor appointed under subsection (2)

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

(3) Where at an annual general meeting no auditor is appointed, the Director may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society or appoint a County Auditor, whose remuneration shall be borne by the co-operative society as per the County Government fee schedule

(4) The accounts referred to in subsection (1) 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

(5) 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 Director in such form as may be prescribed and registered by the Directorate

(5) The auditor shall submit the audited accounts to a general meeting within four months after the end of the financial year 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

(6) 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, and

(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

Annual Returns

41 (1) A co-operative society shall, at such time and in such form as may be prescribed, file with the Directorate 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

(2) 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, provisions of section 47 will apply unless the Director is satisfied that the failure was due to circumstances beyond their control

(3) A Savings and Credit Co-operative Society which operates Front Office Savings Accounts, FOSA and licensed by the Sacco Societies Regulatory Authority, SASRA, shall, in each year, publish in at least two local daily newspapers, the statement of accounts prepared under this section

Approval of auditors

42 (1) A person qualified under the Accountants Act, wishing to be considered to audit co-operative societies shall make an application in writing to the Directorate and shall pay the prescribed fee of three thousand shillings and such application may be made annually

(2) The Directorate may cause the list of auditors approved to audit co-operative societies to be published in the *Kenya Gazette*

Production of books and other documents

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

Compliance and certification audits by Directorate

44 (1) The Directorate shall conduct continuous, compliance and certification audits of a co-operative society's governance, financial and management systems

(2) A co-operative society shall provide any information as the Director may require to facilitate carrying out of such audit

(3) The Directorate shall prepare the audit report and shall submit copies of the report to the Executive Member and to the management committee of the respective co-operative society

(4) The Directorate may, in the audit report prepared under subsection (3) recommend measures to be adopted by the co-operative society

(5) The Co-operative society shall adopt the measures recommended under subsection (4), failure to which it shall commit an offence under this Act

(6) Notwithstanding subsection (1), the Director may require a co-
operative society to make reports as may be prescribed in order to ensure that a co-operative society is in compliance with this Act

PART VII—GOVERNANCE OF CO-OPERATIVE SOCIETIES

General meetings

45 (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 members of the Committee including the office bearers for the following 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 Directorate,

(c) consider and adopt audited accounts,

(d) determine the manner in which any available surplus is to be distributed or invested,

(e) elect the members of the Committee and office bearers for the following year,
(f) determine, where necessary, the maximum borrowing power of the society,

(g) appoint an auditor for the following 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

(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 regulations and the By-laws, 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 co-operative society, stating the objects and reasons for the meeting and the fact that the Committee has failed to convene the meeting

(8) The Director 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 Director or his representative may preside at any meeting convened under subsection (8)

(11) The by-laws shall provide for other matters related to the general meetings such as the—

(a) quorum,

(b) voting, and

(c) resolutions
Committees

Penalties for noncompliance to cooperative governance practices

46 (1) Each cooperative society shall have a management committee, a supervisory committee and any other committee/sub-committee as it deems fit

(2) The functions of these committees are as provided in the regulations and the Society's by-laws

Penalties for noncompliance to cooperative governance practices

47 (1) Any society that fails to have its books audited within the stipulated time or hold an AGM as provided by this Act, commits an offence

(2) for a society referenced in (1) above that fails to comply within six months after expiry of the compliance period, the directorate shall in writing remove the management committee from office and call a special general meeting within 14 days. Any committee member removed from office under this section shall not be eligible for election into any cooperative society within Kwale for five years

(3) A society referenced in (1) above that fails to comply within one year after expiry of compliance period, the Director shall second a staff from the Directorate to manage the affairs of the society for a period of three months

PART VIII — AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

Amalgamation of co-operative societies

48 Any two or more co-operative societies here-in-after 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

Sub-division of Cooperative societies

49 A co-operative 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

Regulations for amalgamation and sub-division

50 Regulations made under this Act shall provide for the process of Amalgamation and Sub—division of Cooperative Societies
Right of appeal

51 Where the Director refuses to approve the Amalgamation of two or more Societies or the division of an existing society under section 48 and 49, the society may appeal to the relevant County Executive sub-committee through the executive member within thirty days of the communication of the refusal.

PART IX – RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

Society to have charge over member’s produce

52 (1) A co-operative society which has as one of its objects the processing, marketing or selling of any agricultural produce, may enter into a contract with its members, either in its bylaws or by a separate document binding the members to process, market or sell all their agricultural produce, or such amounts or descriptions of the same as may be stated therein to or through the society.

(2) The contract referred to under subsection (1) may—

(a) bind the members to produce the quantities of agricultural produce therein specified, and

(b) provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract.

(3) The sum referred under subsection (2) shall on becoming payable—

(a) be a debt due to the society, and

(b) be a charge upon the immovable property of the member subject to registration of the charge under the law under which the property is registered and all stock then being thereon.

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

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

(6) No contract entered into under this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.
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Society to have first charge over debts, assets, etc in certain cases

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

(a) supplied to any member or past member any seeds or manure, or any animals, feeding stuff, agricultural or industrial implements or machinery or materials for manufacture or building, or

(b) rendered any services to any member or past member, or

(c) lent money to any member or past member to enable him to buy any such things as aforesaid or to obtain any such services,

the society shall have a first charge upon such things or, as the case may be, upon any agricultural produce, animals or articles produced therewith or therefrom or with the aid of such money.

(2) The charge shall subsist for such period as the loan or value of the services rendered by a co-operative society to a member shall remain unpaid.

Society to have first charge over members’ share

54 A co-operative society shall have a first charge upon the share or interest in the capital and on the deposits of a member or past member, and upon any dividend, bonus or accumulated funds payable to a member or past member, in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to such member, or past member in or towards the payment of any such debt.

Failure to remit the sum deducted

55 (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) In the event that an employer fails to act as provided in (1) above the Director shall have the power to freeze the accounts of the employer until the stalemate is resolved to the satisfaction of the cooperative society.
Member’s share not subject to attachment

Subject to section 54 the share of a member in the capital of a co-operative society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy shall not have any claim on such share or interest.

Provided that, where a co-operative society is dissolved, the share of any member who is adjudged a bankrupt under such law shall vest in the trustee-in-bankruptcy in accordance with such law.

Liability of past members

The liability of a past member of a co-operative society shall be in respect of the debts of the society as they existed at the date when he ceased to be a member and proceedings in respect thereof may be commenced within a period of two years from such date.

Provided that, if the first audit of the accounts of such society after his ceasing to be a member discloses that the society is solvent, the financial liability of such past member shall cease forthwith.

Liability of deceased members

The estate of a deceased member shall be liable for the debts of the co-operative society as they existed at the time of his death, and proceedings in respect thereof may be commenced within one year of the death.

Provided that—

(i) if the first audit of the accounts of the society after the death discloses the society is solvent, the financial liability of the estate shall cease forthwith and

(ii) a personal representative shall not be liable except in respect of assets in his possession or under his control.

Transfer of share or interest of deceased members

On the death of a member, a co-operative society may transfer the share or interest of the deceased member to—

(a) the person nominated in accordance with this Act, or

(b) if there is no person so nominated, such person as may appear to the Committee of the society to be the personal representative of the deceased member, or
(c) If either of such persons is not qualified under this Act or the by-laws of such society for membership, the committee may dispose such shares or interest, with the consent of the nominee/personal representative, to a qualified person and pay to such nominee or personal representative, as the case may be, a sum representing the value of such member’s share or interest ascertained in accordance with rules made under this Act or by-laws of the society.

Provided that the society shall transfer the share or interest of the deceased member to such nominee or personal representative, as the case may be, being qualified in accordance with this Act or the by-laws of such society for membership of the society, or on his application within one month of the death, to any person specified in the application who is so qualified.

(2) A co-operative society shall pay all other moneys due to the deceased member from the society to such nominee or personal representative, as the case may be.

(3) All transfers and payments made by a co-operative society in accordance with this section shall be valid and effectual against any demand made upon the society by any other person.

**Appointment of nominees**

60 (1) Every member of a society shall appoint his nominee or nominees for the purposes of section 59.

(2) No member of a co-operative society shall be entitled to appoint more than one nominee unless that member holds more than one share.

(3) If more than one nominee is appointed by any member, the number of shares to be transferred to each of these nominees shall be specified at the time of the appointment.

(4) Every appointment of a nominee by any member of a co-operative society shall be made in writing and signed by the member in the presence of two witnesses and shall be in the prescribed form.

(5) Every appointment of nominee shall be acknowledged by the society.

(6) For the purpose of transfer to a nominee the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the society otherwise provide.
(7) Where the deceased member is in credit with the society, any nominee under this section may be paid all dues on evidence of death being produced without awaiting lawful administration of the estate.

(8) Where any money is paid to a nominee who is a minor, a receipt given by his guardian shall be sufficient discharge to the society.

(9) If for any reason on the death of a member a nominee does not exist, the society may pay any money due to the deceased member to the personal representative or recognized heirs of that deceased member.

(10) A member shall nominate in writing every year a nominee and the necessary alteration shall be made in the register of members.

Evidence of member’s interest in society

61 (1) Any register or list of members or of shares which is kept by a co-operative society shall be _prima facie_ evidence of any of the following particulars entered therein—

(a) the date on which the name of any person was entered in such register or list, as a member,

(b) the date on which any such person ceased to be a member, and

(c) the number of shares held by any member.

(2) A copy of any entry in a book of a co-operative society regularly kept in the course of its business, shall, if certified in accordance with the rules made under this Act, be _prima facie_ evidence in any proceedings of the existence of such entry, and of the matters, transactions, and accounts, therein recorded.

Restriction on production of society’s books during legal proceedings

62 No officer of a co-operative society shall in any legal proceedings to the society or liquidator who is not a party may be compelled to produce any of the society’s books where the contents can be proved under or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless the court, for special cause, otherwise orders.

PART X—PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES

Application of society’s property and funds

63 The property and funds of a co-operative society shall only be applied for the benefit of the society and, its members, in accordance with the provisions of this Act, the rules made hereunder and the by-laws of the society.
Procurement and disposal of assets regulations

64 (1) A co-operative society shall establish Procurement and disposal of asset policy as per public procurement and disposal of Assets Act

(2) A co-operative society shall not procure or dispose any asset unless in accordance with the policy established under subsection (1)

Loans to members

65 No loan shall be made to a member of a co-operative society save in accordance with the conditions laid down for the making of such loans in the society’s by-laws or Credit policy

Restriction on giving loans

66 A co-operative society shall not give a loan nor allow any credit to person other than a member

Restriction on borrowing

67 (1) A co-operative society may receive loans from persons who are not members only to such extent and under such conditions as may be prescribed by its by-laws and for the purposes of this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan

(2) A co-operative society other than a society with authorization to operate front office services, may receive deposits and loans from persons who are not members under sub section (1) if—

(a) the general meeting is satisfied that the society needs the deposit or loan
(b) the general meeting is satisfied that the terms of the deposit or loan and the rate of interest are reasonable,
(c) repayment of the deposit or loan is secured to the satisfaction of the general meeting,
(d) the maximum liability fixed under section 69 is not exceeded, and
(e) the general meeting has given specific approval for the deposit or loan

Limitation of borrowing powers

68 (1) A co-operative society which under its by-laws has power to borrow money shall from time to time at a general meeting fix the maximum liability which it may incur in loans or deposits from non-members
Notification of the maximum liabilities fixed shall be sent to the Directorate in the prescribed form

Investment of society's funds

69 (1) A co-operative society may invest or deposit its funds only—
   (a) in and upon such investments and securities as are for the time
       being authorized for the investment of trust funds,
   (b) in the shares of any other co-operative society,
   (c) with any bank licensed under the Banking Act,
   (d) in the stock of any statutory body established in Kenya or in any
       limited liability company incorporated in Kenya or in any other
       manner approved by a resolution at a general meeting of the said
       society, and
   (e) any Sacco society licensed under the Sacco Societies Act.

   (2) Where the society invests in real estate other than for its own
       accommodation, it shall not hold more than twenty per cent of the equity
       in the investment or expend a sum exceeding twenty-five per cent of its
       share capital in such venture

Distribution of surplus

70 (1) Subject to sections 72 and 73 of this Act, the net balance of
      each year with any sum available for distribution from previous years,
      may be distributed in the prescribed manner or as provided for by the by-
      laws of the society

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

Declaration and payment of bonus and dividend

71 (1) Every co-operative society shall declare each year all
      bonuses due to members, but, where the bonuses are required for re-
      investment by the society for capital development or for the redemption
      of bonus certificates, the society shall issue bonus certificates to its
      members in lieu of cash payments, redeemable from a revolving fund
      established by the society for that purpose

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

72  (1) A co-operative society which derives Surplus from its transactions shall maintain a reserve fund

(2) A co-operative society shall pay into the reserve fund one-fifth of the net surplus in each financial year

(3) The reserve fund set up under this section shall be invested in the manner provided for under section 70 of this Act and shall be indivisible, and no member shall be entitled to claim a specific share of it

(4) No withdrawals shall be made from the reserve fund of a co-operative society without the consent in writing of the Directorate and any such withdrawals shall be made good from the net available funds accruing to the society if the Directorate so directs

(5) The reserve fund shall be kept in separate Bank account to be known as the reserve fund account

(6) The society shall cause an annual audit of the reserve fund account

(7) Upon the dissolution of a co-operative society, the assets under the reserve fund shall be applied in the discharge of the liabilities of the society

Powers of the Directorate to inspect Sacco Societies

73  (1) The Director may, at any time cause an inspection to be made by any person authorized by him in writing, of the books of accounts and records of a Sacco society in order to ensure compliance with Act

(2) When an inspection is made under subsection (1) the Sacco society and every officer and employee thereof shall produce all the books accounts, records and other documents of the co-operative society and such correspondence, statements and information relating to the society, its business and the conduct thereof as the person making the inspection may in writing require

(3) All information obtained in the course of the inspection shall be treated as confidential and used solely for the purposes this Act

(4) The person carrying out an inspection shall submit his report to the Directorate, and the report shall state—

(a) any breach or non-observance of the requirements of this Act,
(b) any irregularity in the manner of conduct of the business of the society inspected
(c) any potential risks in financial and corporate governance of the Sacco society,

(d) any mismanagement of the Sacco society, or

(e) any other matter relating to a Sacco society which is in contravention with this Act or that is not consistent with sound and prudent business practice

(5) A copy of the findings of an inspection under this section shall be presented to the Board of Directors of the Sacco Society within one month after the inspection

PART XI—CHARGES BY CO-OPERATIVE SOCIETIES

Creating charge over society’s property

74 A co-operative society may from time to time, charge the whole or any part of its property, if its by-laws expressly empower it to do so, subject to a special resolution by the general meeting

Charge to comply with applicable law

75 A charge created by a co-operative society in accordance with section 77 of this Act shall comply with the provisions of the law applicable to the particular type of charge

Charges to be registered with the Directorate

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

(2) The registration of a charge under subsection (1) may be effected on the application of any interested person

(3) 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 Directorate for such registration

(4) Where a co-operative society fails to register a charge with the Directorate within thirty days of creation of such a charge, the members of the Committee commits an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the default continues

Register of charges

77 The Directorate shall, with respect to each co-operative society, register in such form as may be prescribed all charges requiring
registration and shall enter in the register with respect to every charge the following particulars—

(a) the date of creation of the charge, 
(b) for a previously charged property, 
(c) the date of the acquisition of the property 
(d) the amount secured by the charge, 
(e) short particulars of the property charged, and 
(f) the persons entitled to the charge 

(2) The Directorate shall issue a certificate 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 Directorate shall keep a chronological index in the prescribed form and containing the prescribed particulars of the charges entered in the register

Certificate of satisfaction of charges

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

Keeping of instruments of charge

79 A co-operative society shall cause a copy of every instrument of a charge which is required by this Act to be registered to be kept at the registered address of the society

Keeping of register of particulars of charges

80 (1) A co-operative society shall keep at its registered office 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 three thousand shillings.

**Inspection of register of charges**

81 (1) The copies of the instruments creating charges which are required by this Act to be registered and the register of charges kept by the co-operative society under section 80 shall be open, during business hours, to inspection by any creditor or member of the society, without fee, subject to such reasonable restrictions as the society, in general meeting, may impose.

(2) The register of charges shall be open for inspection by any other person on payment of the prescribed fee.

(3) An inspection under this section shall not be allowed for more than two hours in each day.

(4) Any officer of a co-operative society who—

(a) refuses to allow inspection of the register of charges or copies of the instruments creating charges in accordance with subsection (1), or

(b) permits such refusal,

commits an offence and shall be liable to a fine not exceeding two thousand shillings for each day during which the refusal of permission continues.

(5) The court may order an immediate inspection of such register or copies under subsection (4).

**Receiver to give notice of his appointment**

82 If any person obtains an order for the appointment of receiver or manager of the property of a co-operative society, or if the Director 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 Director and the Director shall enter the notice in the register of charges.

PART XII—INQUIRY AND INSPECTION

**Inquiry by Directorate**

83 (1) The Directorate may, of its own accord, and shall on the direction of the Executive Member, 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 it in writing to hold an inquiry, into violation of 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 Directorate shall report the findings of its 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 Directorate is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, it 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) commits an offence and shall be liable to a fine not exceeding one thousand shillings for each day during which the offence continues.

**Inspection of books of indebted society**

84 (1) The Directorate may, if it deems 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 Directorate 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 Directorate such sum as security for the expenses of the inspection as the Directorate may require.

(2) The Director shall inform the creditor of the results of the inspection within seven days after completion of the inspection.

**Expenses of inquiry**

85 (1) Where an inquiry is held under section 83, or an inspection is made under section 84 of this Act, the Director 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 Director 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.

Routine inspection

86 Notwithstanding the provisions of sections 83 and 84 the Directorate may from time to time carry out impromptu inspections into the affairs of a co-operative society.

PART XIII—DISSOLUTION

Procedure for dissolution

87 (1) If the Directorate, after holding an inquiry under section 83 or making an inspection under section 84 of this Act, or receiving an application made by at least three quarters 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 subsequently cancel its 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 relevant County Executive subcommittee with a final appeal to the Courts of Kenya.

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

(4) Where the Director 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 Director.

Cancellation of registration

88 (1) Where a co-operative society has—

(a) less than the prescribed number of members,

(b) failed to file returns with the Directorate for a period of three years, or
(c) failed to achieve its objects,

the Director may, in writing, effect the cancellation of its registration and dissolution of the society

(2) A person aggrieved by an order of the Director under subsection (1) may appeal against such order to the relevant County Executive subcommittee within thirty days of the order

Effects of cancellation

89 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

Winding up

90 (1) The sections of the Companies Act specified in Part I of the Schedule 1 of 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 Executive Member may, by an order, amend the Schedule of this Act with the approval of the County Assembly

Appointment of liquidator

91 Where the registration of a co-operative society is cancelled under section 87 or 88, the Director may appoint one or more persons to be liquidator(s) of that society and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect

Powers of liquidator

92 The liquidator shall, subject to this Act have powers as provided in Schedule 2 of this Act

Liquidation account of societies

93 The Directorate shall keep an account, to be called the County Co-operative Societies Liquidation Account, with such bank as may be prescribed and shall be administered in the prescribed manner

Powers of Director during liquidation

94 (1) The liquidator shall exercise his powers subject to the guidance and control of the Directorate and to any limitations imposed by
the Director, and 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 society,

(d) by order in writing, in any particular case, limit the powers of the liquidator conferred by schedule 2 of this Act,

(e) at its discretion, require accounts to be rendered to the Directorate 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, and

(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 Directorate 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

**Appeal against order of liquidator or Directorate**

95 (1) A person aggrieved by any order or Decision of the Director or the liquidator under section 94 or schedule 2 of this Act, 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 Courts of Kenya within thirty days of the decision

**Enforcement of orders**

96 Subject to sections 92 and 94, any order or decision made under section 95 (1) on being filed in the court may be enforced in a court in the same manner as if the order or decision were an order or decision of the court

**Institution of winding up proceedings**

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

**Restraint to convicted persons from being officers of society**

98 Any person who is convicted of an offence under sections of the Companies Act specified in section 97 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

**PART XIV—SURCHARGE**

**Power to surcharge officers of co-operative society**

99 (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, malfeasance, nonfeasance or breach of trust in relation to the society, the Director 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 Director 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 Director thinks just or to contribute such sum to the assets of the society by way of compensation as the Director 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

Appeal against order

100 (1) Any person aggrieved by an order of the Director under section 100 (2) 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 Courts of Kenya on matters of law

Recovery of surcharge

101 (1) Subject to section 100, an order made pursuant to section 99 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 100, the Director may, on behalf of the society, institute such action

PART XV—SETTLEMENT OF DISPUTES

Disputes

102 (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 first be referred to the relevant CEC sub-committee and upon failure of resolution of such dispute, proceed 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

Establishment, Functions, proceedings and Operation of Tribunal

103 The establishment, functions proceedings and operation of Tribunal shall be governed by sections 77 78, 79, 80, 81, 82, 83, 84, 85 86, 87 and 88 of the Co-operative Societies Act (Cap 490)

PART XVI—GENERAL PROVISIONS

Remuneration of officers and members of society

104 (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 commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term
not exceeding two years

(4) Any officer of the County Government who receives any remuneration, salary, commission or any other payment from the society for services rendered to the society shall contravene the provisions of the Public officers Ethics Act and shall be liable to the appropriate action under that Act

Repayment

105 Notwithstanding section 104 (3), where the offence is the contravention of subsection (1) of that section, the officer or member of a co-operative society may 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

Restriction on use of word “Co-operative”

106 (1) No person, other than a co-operative society shall trade or carry on business under any name or title of which the word “Co-operative” or its equivalent in any other language is part

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

Rules

107 (1) The Executive Member may in Consultation with the regional offices of the National Cooperative Organizations and the County Cooperative Development Committee make rules for the better carrying out of the provisions and purposes of this Act

(2) Without prejudice to the generality of the foregoing powers, the Executive Member shall, with the approval of the County Assembly make rules and regulations for operationalization of this Act

(3) In any case where the Directorate is satisfied that a substantial number of members of any co-operative society are unacquainted with the English language, it 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

**Exemption**

108 (1) Notwithstanding anything contained in this Act, the Executive Member may, by notice in the *Kenya 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 Executive Member 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 Executive Member within the period of the notice

(4) The Executive Member 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

**Other powers of the Directorate**

109 (1) The Executive Member may at any time and on any matter direct the Directorate as to the exercise of his powers and duties under this Act

(2) Without prejudice to any other powers under this Act the Director 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,

(d) may cause to be suspended committee member(s) after the Director is convinced that their continued holding of such office is prejudicial to the society, and
exercise such other powers consistent with this Act as may be prescribed

**Offences**

110 (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,

(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,

(c) a co-operative society, or an officer or a member thereof, willfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Directorate, or any person duly authorized in that behalf, by the Director,

(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,

(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

(3) The Director of Public Prosecutions may appoint public prosecutors for cases arising under the provisions of this Act

**Certain laws not to apply**

111 (1) The provisions of the Companies Act (Cap 486), other than those referred to in sections 98 and 99 of this Act, and the Registration of Business Names Act (Cap 499) shall not apply to a co-operative society
(2) The provisions of the Co-operative Societies Act, (Cap 490), other than those relating to the Tribunal shall not apply to a co-operative society

(3) Notwithstanding the Trade Unions Act (Cap 233) no co-operative society shall be taken to be a trade union

Savings

112  (1) A co-operative society which was registered under the Co-operative Societies Act (Cap 490), prior to the commencement of this Act shall be deemed to be registered under this Act

(2) Any register kept in pursuance of the Co-operative Societies Act (Cap 490) shall be deemed to be part of the register to be kept in pursuance of this Act,

(3) Any document referring to a provision of the Co-operative Societies Act (Cap 490) shall be construed as referring to the corresponding provision of this Act, and

(4) Any orders, directions, appointments and other acts lawfully made or done under any of the provisions of the Co-operative Societies Act (Cap 490) and in force immediately before the commencement of this Act shall be deemed to have been made or done under the corresponding provision of this Act and shall continue to have effect accordingly

(5) Notwithstanding subsection (1), a co-operative society operating in the County shall comply with this Act within six months

SCHEDULE 1 RELEVANT SECTIONS OF THE COMPANIES ACT

PART I—THE COMPANIES ACT (CAP 486)

<table>
<thead>
<tr>
<th>No of Section</th>
<th>Description of Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>220</td>
<td>Definition of inability to pay debts</td>
</tr>
<tr>
<td>223</td>
<td>Power to stay or restrain proceedings against company</td>
</tr>
<tr>
<td>224</td>
<td>Avoidance of dispositions of property, etc., after commencement of winding-up</td>
</tr>
<tr>
<td>225</td>
<td>Avoidance of attachments, etc</td>
</tr>
<tr>
<td>228</td>
<td>Actions stayed on winding-up order</td>
</tr>
<tr>
<td>229</td>
<td>Effect of winding-up order</td>
</tr>
<tr>
<td>251</td>
<td>Power to stay winding-up</td>
</tr>
<tr>
<td>263</td>
<td>Power to summon persons suspected of having property of company etc</td>
</tr>
</tbody>
</table>
PART II—EFFECT OF THE RELEVANT SECTIONS OF THE COMPANIES ACT

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.
SCHEDULE II—POWERS OF A LIQUIDATOR

A liquidator will have the powers to—

(a) appoint a day, in the prescribed manner, before which the creditors whose claims are not already recorded in the books of the co-operative society shall state their claims for admission, or be excluded from any distribution made before they have proved them

(b) 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) appoint an advocate to assist him in the performance of his duties,

(d) refer disputes to the Tribunal in the prescribed manner,

(e) 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) investigate all claims against the society and subject to this Act to decide questions of priority arising between claimants,

(g) call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation,

(h) 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) carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society

(j) determine, from time to time by what persons and in what proportion the expenses of the liquidation are to be borne,

(k) take possession of the books, documents and assets of the society,

(l) arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Directorate,

(m) 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) compromise, with the approval of the Directorate, any claim by, or against, the society, and

(o) apply to the Directorate for his discharge from the duties of liquidator after completion of the liquidation proceedings
SCHEDULE III—FEES AND CHARGES FOR COOPERATIVES SERVICES

The following is a list of charges for services rendered by the department of co-operative Development

<table>
<thead>
<tr>
<th>S/No</th>
<th>Description of service</th>
<th>Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Registration of a new Society</td>
<td>3,500</td>
</tr>
<tr>
<td>2</td>
<td>Change of society name</td>
<td>3,000</td>
</tr>
<tr>
<td>3</td>
<td>Duplicate Certificate of Registration</td>
<td>2,000</td>
</tr>
<tr>
<td>4</td>
<td>Amendment of By-laws</td>
<td>1,000</td>
</tr>
<tr>
<td>5</td>
<td>Official search</td>
<td>1,000</td>
</tr>
<tr>
<td>6</td>
<td>Name search</td>
<td>200</td>
</tr>
<tr>
<td>7</td>
<td>Certification of By-Laws</td>
<td>3,000</td>
</tr>
<tr>
<td>8</td>
<td>Registration of charges</td>
<td>3,000</td>
</tr>
<tr>
<td>9</td>
<td>Audit fees</td>
<td>1000 to</td>
</tr>
<tr>
<td>10</td>
<td>Registration of Audited accounts, audited by a private auditor</td>
<td>15% of audit fees</td>
</tr>
<tr>
<td>11</td>
<td>File fees of audited accounts</td>
<td>200</td>
</tr>
<tr>
<td>12</td>
<td>Registration of Audit Firms</td>
<td>3,500</td>
</tr>
<tr>
<td>13</td>
<td>Registration of borrowing powers</td>
<td>Free</td>
</tr>
<tr>
<td>14</td>
<td>Liquidation fee</td>
<td>Liquidation fee based on Value of the society</td>
</tr>
<tr>
<td>15</td>
<td>Audit fees towards liquidation</td>
<td>Fees assessed as per the value of the society</td>
</tr>
<tr>
<td>16</td>
<td>Appeal fees to the CEC Member/relevant CEC Sub committee</td>
<td>1,000</td>
</tr>
<tr>
<td>17</td>
<td>Accounting fees/Book-keeping at Biashara center</td>
<td>Negotiable with service providers</td>
</tr>
</tbody>
</table>
SCHEDULE IV—RECORDS TO BE KEPT BY A COOPERATIVE SOCIETY

A co-operative society shall keep the following records:

1. A register of members showing in respect of each member—
   (a) the name, age, date of application for membership, postal address and occupation,
   (b) the date he was admitted to membership,
   (c) the date on which he ceased to be a member and
   (d) the appointment, if any, of his nominees in accordance with section 61 of the Kwale County Cooperative Societies Act, 2015

2. A minute book giving details of the proceedings at general meetings

3. A minute book giving details of the proceedings at Committee meetings

4. A cash book showing details of all moneys received and expended or paid out in any way by the society

5. A ledger containing such accounts as are necessary to properly record the transactions of the business

6. A personal ledger showing transactions of each member with the society including details of produce delivered to the society by each member and the payment made therefor

7. An assets register

8. A stock control ledger

9. A register of charges showing in respect of every charge created by the society the amount of the charge and the person entitled thereto

10. A register of loans to members showing in respect of each loan the name of the borrower, the amount borrowed, the purpose of the loan, the due date of repayment, and the date the repayment is made

11. A ledger showing deposits and withdrawals by members

12. Such other books as the Committee may decide or the Executive Member may prescribe