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**THE CO-OPERATIVE SOCIETIES ACT**

CHAPTER 490

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**CHAPTER 490**

**CO-OPERATIVE SOCIETIES ACT**

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## CHAPTER 490

## CO-OPERATIVE SOCIETIES ACT

[Date of assent: 22nd December, 1997.]

[Date of commencement: 1st June, 1998.]

**An Act of Parliament relating to the constitution, registration and regulation of cooperative societies and for purposes incidental thereto**

[Act No. 12 of 1997, Legal Notice 42 of 1998, Act No. 2 of 2004, Act No. 14 of 2008, Legal Notice 153 of 2009, Act No. 19 of 2015, Legal Notice 105 of 2017, Act No. 15 of 2017, Act No. 19 of 2023.]

## PART I – PRELIMINARY

**1. Short title**

This Act may be cited as the Co-operative Societies Act.

**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 cooperative 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 co-operative movement in Kenya and registered under this Act to promote co-operative development and represent the interests of co-operative societies locally and internationally;

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

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

**"Cabinet Secretary"** means the Cabinet Secretary for the time being responsible for co-operative development;

**"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 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 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 cancelling 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;

**"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;

**"liquidator"** means a liquidator appointed under section 65;

**"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;

**"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;

**"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;

**"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 co-operative society.

[Act No. 2 of 2004, s. 2, Act No. 19 of 2015, s. 97.]

## PART II – OFFICERS

**3. Commissioner and other officers**

(1) There shall be a Commissioner for Co-operative Development whose office shall be an office in the public service.

(2) There shall be such number of officers, including deputy Commissioners, as may be necessary to assist the Commissioner in the administration of the provisions of this Act.

(3) The Commissioner shall be responsible for the growth and development of co-operative societies by providing such services as may be required by co-operative societies for their organization, registration, operation, advancement and, dissolution and for administration of the provisions of this Act.

[Act No. 2 of 2004, s. 3.]

## PART III – REGISTRATION OF CO-OPERATIVE SOCIETIES

**4. Registration of co-operative societies**

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

- (a) the promotion of the welfare and economic interests of its members or adherence to the principles of Islamic law; and
- (b) has incorporated in its by-laws the following co-operative principles—
  - (i) voluntary and open membership;
  - (ii) democratic member control;
  - (iii) economic participation by members;
  - (iv) autonomy and independence;
  - (v) education, training and information;
  - (vi) co-operation among co-operatives, and
  - (vii) 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.

[Act No. 2 of 2004, Sch., Act No. 15 of 2017, s. 51.]

**5. Essentials for registration of a Co-operative society**

For a society to be registered under this Act, it must:—

- (a) in the case of a primary society, consist of at least ten persons all of whom shall be qualified for membership of the co-operative society under section 14, or;
- (b) in the case of a co-operative union has at least two registered societies as its members;
- (c) *deleted by Act No. 2 of 2004, s. 4.*

[Act No. 2 of 2004, s. 4.]

**6. Procedure for registration**

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

- (a) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14;
- (b) in the case of a secondary or apex society, by a person duly authorized in that behalf by each co-operative society or co-operative union, as the case may be, who are members thereof.

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

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

[Act No. 2 of 2004, Sch.]

## **7. Provisional registration**

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

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

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

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

[Act No. 2 of 2004, s. 5 & Sch.]

## **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 society.

[Act No. 2 of 2004, s. 6, & Sch.]

## **9. Appeal against refusal to register**

(1) A co-operative society may appeal to the Cabinet Secretary against the Commissioner's refusal to register the society and its by-laws or any amendments of its by-laws under section 8 within thirty days of being notified of the refusal.

(2) Any party aggrieved by the decision of the Cabinet Secretary under subsection (1) may appeal against decision to the High Court within thirty days.

[Act No. 2 of 2004, s. 7 & Sch., Act No. 19 of 2015, s. 98.]

#### **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.

[Act No. 2 of 2004, Sch.]

#### **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.

[Act No. 2 of 2004, s. 8 & Sch.]

### **PART IV – PRIVILEGES OF REGISTERED SOCIETIES**

#### **12. Co-operative Society to be body corporate**

Upon registration, every society shall become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to sue and be sued and to do all things necessary for the purpose of, or in accordance with, its by-laws.

#### **13. By-laws to bind members of co-operative societies**

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.

### **PART V – RIGHTS AND LIABILITIES OF MEMBERS**

#### **14. Qualifications 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.

**15. Limitation of holding share capital**

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.

**16. Membership subject to authorisation by annual general meeting**

No company incorporated or registered under the Companies Act (Cap. 486) and no unincorporated body of persons shall be entitled to become member of a co-operative society, except with a written authorisation through a resolution by a meeting of that co-operative society.

[Act No. 2 of 2004, s. 9, Act No. 19 of 2015, s. 99.]

**17. Membership of co-operative society**

No member of a co-operative society shall exercise any of the rights a member unless he has made such payment to the society in respect of membership, or has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society.

**18. Limitation of membership to one society**

No person shall be a member of more than one co-operative society, with unlimited liability and, no person shall be a member of more than one co-operative society having the same or similar object;

Provided that a person who:—

- (i) is a member of a co-operative society; and
- (ii) 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 situate, notwithstanding that its objects are the same as or similar to those of the first-mentioned society.

**19. Voting rights of members**

Each member of a co-operative society shall have one vote only in the affairs of the society, irrespective of the number of shares he holds:

Provided that a co-operative society which is a member of a co-operative union or an apex society shall have as many votes as may be prescribed by the by-laws of the co-operative union or apex society of which it is a member, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

**20. Transfer of shares**

(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 as are laid down in section 15.

(2) In the case of a co-operative society registered with unlimited liability, a member shall not transfer or charge any share held by him or his interest in the capital of the society or any part thereof, unless:—

- (a) he has held such share or interest for at least one year; and
- (b) the transfer or charge is in favour of the society or a member of the society.

### **21. Rights of members**

A member of a co-operative society shall have the right to:—

- (a) attend and participate in decisions taken at all general meetings of the society and vote;
- (b) be elected to organs of the society, subject to its by-laws;
- (c) enjoy the use of all the facilities and services of the society subject to the society's by-laws;
- (d) all legitimate information relating to the society, including: internal regulations, registers, Minutes of general meetings, supervisory committees, reports, annual accounts, inventories and investigation reports, at the society's head office.

[Act No. 2 of 2004, s. 10.]

### **22. Member's rights *vis-a-vis* the co-operative society**

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 by-laws of that society;
- (b) buy and pay up for shares or make any other payments provided for in the by-laws of the society.
- (c) meet the debts of the society in case of insolvency in accordance with the provisions of this Act and the by-laws of the society.

[Act No. 19 of 2015, s. 100]

## **PART VI – DUTIES OF CO-OPERATIVE SOCIETIES**

### **23. Registered address of co-operative society**

Every co-operative society shall have a registered address to which notices and communications may be sent and shall send to the Commissioner notice of every change of address within one month of the change.

[Act No. 2 of 2004, Sch.]

### **24. Society to keep a copy of the Act and by-laws at registered office**

Every co-operative society shall keep a copy of this Act and of the rules made thereunder and of its own by-laws and a list of its members (excluding details of nominees and shareholdings) at its registered office and shall keep them open for inspection by any person, free of charge, at all reasonable times during business hours.

### **24A. Estimates of income and expenditure**

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.

[Act No. 2 of 2004, s. 11.]

## **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 co-operative 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.

[Act No. 2 of 2004, s. 12.]

## **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 so to do 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.

[Act No. 2 of 2004, Sch.]

## PART VII – MANAGEMENT OF CO-OPERATIVE SOCIETIES

**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 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 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 Commissioner may preside at any meeting convened under subsection (8).

[Act No. 2 of 2004, s. 13.]

## **28. Membership and powers of the Committee**

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

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

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

- (a) enter into contracts;
- (b) institute and defend suits and other legal proceedings brought in the name of or against the co-operative society; and
- (c) do all other things necessary to achieve the objects of the co-operative society in accordance with its by-laws.

(4) No person shall be a member of a Committee if he—

- (a) is not a member of the co-operative society;
- (b) is under eighteen years of age;
- (c) is unable to read and write;
- (d) receives any remuneration, salary or other payment from the co-operative society save in accordance with this Act;
- (e) is a committee member in two other co-operative societies;
- (f) being a member of a co-operative society that lends money to its members, lends money on his own account;
- (g) being a member of a co-operative society which trades in goods or produce, trades either on his own account or some other person's account in the same type of goods or produce;
- (h) has not, within thirty days of being appointed, declared his wealth to the Commissioner in the prescribed manner;
- (i) is an undischarged bankrupt;
- (j) is of unsound mind;
- (k) has been adversely named by the Commissioner in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the Committee;
- (l) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding three months;

- (m) has been convicted of any offence under this Act or rules made thereunder;
- (n) has any uncleared debt owing to a co-operative society at the end of its financial year other than in respect of a loan under the provision of any rules made under this Act;
- (o) is a person against whom any amount of money is due under a decree, decision or order or is pending recovery under this Act.

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

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

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

[Act No. 2 of 2004, s. 14.]

#### PART VIII – AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES

##### **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) (1) 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 by-laws;
- (d) any share holders 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 Cabinet Secretary.

[Act No. 2 of 2004, s. 15 & Sch., Act No. 19 of 2015, s. 101.]

### **30. Division of co-operative societies**

(1) 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).

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) At the special general meeting held under subsection (7), 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 (4);
- (b) the satisfaction of any claims by creditors who have given notice under subsection (6);
- (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 (9).

(9) 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.

(10) 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.

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

[Act No. 2 of 2004, s. 16 & Sch., Act No. 19 of 2015, s. 102.]

## PART IX – RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES

### **31. Society to have charge over members' produce**

(1) A co-operative society which has as one of its objects the disposal of any agricultural produce, may enter into a contract with its members, either in its by-laws or by a separate document binding the members to dispose of all their agricultural produce, or such amounts or descriptions of the same as may be stated therein, to or through the society, and the contract may bind the members to produce the quantities of agricultural produce therein specified, and the contract may also provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract, and any such sum on becoming payable shall be a debt due to the society and shall 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.

(2) 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.

(3) 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.

(4) 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.

### **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 sub-section (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 sub-section (4).

[Act No. 2 of 2004, s. 17.]

### **33. Society to have first charge over debts, assets, etc. in certain cases**

(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.

### **34. Society to have first charge over members' share**

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.

### **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 percent 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.

[Act No. 2 of 2004, s. 18.]

### **36. Member's share not subject to attachment**

(1) Subject to section 34, the share or interest of a member in the capital of a co-operative society is not liable to attachment or sale under a judgment or order of a court in respect of a debt or liability incurred by the member.

(2) if such a member is adjudged bankrupt under the Insolvency Act, 2015, the bankruptcy trustee appointed in respect of the member's estate does not have a claim on the member's share or interest, but if such a member is adjudged bankrupt under that Act and the society is dissolved, the share or interest of the member vests in the bankruptcy trustee appointed in respect of the member's estate.

[Act No. 19 of 2015, s. 103.]

### **37. 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, in the case of a co-operative society with limited liability, 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.

### **38. 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:—

- (a) in the case of a co-operative society with limited liability, if the first audit of the accounts of the society after the death discloses a credit

balance in favour of the society, the financial liability of the estate shall cease forthwith; and

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

### **39. Transfer of share or interest of deceased members**

(1) 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 and any rules made thereunder; 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 and any rules made thereunder or the by-laws of such society for membership, such person, specified by the nominee or personal representative, as the case may be, who is so qualified, or may 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 any rules made under this Act or the by-laws of the society:

Provided that:—

- (a) in the case of a co-operative society with unlimited liability, such nominee or personal representative, as the case may be, may require the society to pay him the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection: or
- (b) in the case of a co-operative society with limited liability, 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 any rules made thereunder 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.

### **40. Evidence of member's interest in society**

(1) Any register or list of members or of shares which is kept by a co-operative society shall be *prima facie* evidence of in society, 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.

#### **41. Restriction on production of society's books**

No officer of a co-operative society shall in any legal proceedings to the society or liquidator is not a party may be compelled to produce any of the society's books where the contents can be proved under section 40 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**

#### **42. Application of society's property and funds**

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.

#### **43. Restriction on giving loans**

A co-operative society shall not give a loan nor allow any credit, to person other than a member, unless the by-laws of the giving loans society provide for giving loan subject to a resolution passed at the general meeting of the society to that effect.

[Act No. 2 of 2004, s. 19.]

#### **44. Restriction on borrowing**

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 or by rules under this Act, and for the purposes of this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan.

[Act No. 14 of 2008, s. 70.]

#### **45. Investment of society funds**

A co-operative society may invest or deposit its funds only:

- (a) in the Post Office Savings Bank;
- (b) in and upon such investments and securities as are for the time being authorized for the investment of trust funds;
- (c) in the shares of any other co-operative society;
- (d) with any bank licenced under the Banking Act (Cap. 488);
- (e) 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.

[Act No. 2 of 2004, s. 20.]

#### **46. Declaration and payment of bonus**

(1) Subject to this section, 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) 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.

(3) 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.

#### **47. Maintenance of reserve fund**

(1) Every co-operative society which does or can derive surplus from its transactions shall maintain a reserve fund.

(2) A co-operative society may carry to the reserve fund such portion of the net surplus in each year as may be prescribed by rules made under this Act or by the by-laws of the society.

(3) The reserve fund shall be invested in the manner provided for under section 45 of this Act.

(4) The reserve fund set up under this section shall be indivisible and no member shall be entitled to claim a specific share of it.

(5) 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.

[Act No. 2 of 2004, s. 21.]

#### **48. Distribution of net balance**

Subject to sections 46 and 47, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the manner prescribed by rules made under this Act or by the by-laws of the society.

### **PART XI – CHARGES BY CO-OPERATIVE SOCIETIES**

#### **49. Creating charge over society's property**

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.

[Act No. 2 of 2004, s. 22.]

#### **50. Charge to comply with applicable law**

A charge created by a co-operative society in accordance with section 49 of this Act shall comply with the provisions of the law applicable to the particular type of charge.

#### **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, within thirty days after creating a charge in accordance with section 49, a co-operative society fails to register the charge with the Commissioner, each officer of the society who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) Subsection (2) does not apply if registration of the charge was effected by a person other than the society.

(4) If, after an officer of a co-operative society is convicted of an offence under subsection (2), the failure to register the charge continues, each officer of the society who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.

[Act No. 2 of 2004, s. 23 & Sch., Act No. 19 of 2015, s. 104.]

## **52. Register of charges**

(1) The Commissioner shall, with respect to each co-operative society's register of charges, 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 certificate 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.

## **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.

[Act No. 2 of 2004, Sch.]

## **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 instrument, he shall, within seven days from the date of the order or 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 co-operative 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.

[Act No. 2 of 2004, s. 24 & Sch.]

#### **55. Society to keep register of instruments of charge at registered office**

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

#### **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.

[Act No. 2 of 2004, s. 25.]

#### **57. Right of members and creditors to inspect register of charges**

(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 52 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. Provided however, that not more than two hours in each day shall be allowed for inspection, and the register of charges shall also be open to inspection by any other person on payment of the prescribed fee.

(2) An officer of a co-operative society who prevents or obstructs a person from inspecting the society's register of charges, or copies of the documents by the society has created charges as provided by subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) On convicting an officer of a co-operative society of an offence under subsection (2), the court may order the officer to facilitate the inspection of the society's register of charges and the copies of the relevant documents.

[Act No. 2 of 2004, s. 26, Act No. 19 of 2015, s. 105.]

### **PART XII – INQUIRY AND INSPECTION**

#### **58. Inquiry by Commissioner**

(1) The Commissioner may, of his own accord, and shall on the direction of the Cabinet Secretary, 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, and the 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.

[Act No. 2 of 2004, s. 27 & Sch.]

#### **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.

[Act No. 2 of 2004, Sch.]

#### **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 sub-section (1) shall be a civil debt recoverable summarily on production of the certificate referred to in that sub-section.

[Act No. 2 of 2004, Sch.]

#### **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.

[Act No. 2 of 2004, s. 28.]

PART XIIA – SPECIAL POWERS OF THE COURT  
TO SET ASIDE CERTAIN TRANSACTIONS

**60B. Power of the Court to set aside transaction that is under value**

(1) This section applies to a co-operative society in respect of which a liquidator is appointed.

(2) In this section, "relevant time" has the meaning given by section 60D.

(3) If the liquidator reasonably believes that the society has at a relevant time entered into a transaction with a person at an undervalue, the liquidator may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court finds that the transaction was undervalue, it shall make an order setting aside the transaction and restoring the position to that which would have existed if the society had not entered into the transaction.

(5) For the purposes of this section and section 60E, a co-operative society enters into a transaction with a person at undervalue if—

- (a) the society makes a gift to the person or otherwise enters into a transaction with the person on terms that provide for the society to receive no consideration; or
- (b) the society enters into a transaction with the person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the society.

(6) The Court may not make an order under subsection (4) in respect of a transaction at an undervalue if it is satisfied—

- (a) that the society that entered into the transaction did so in good faith and for the purpose of carrying on its business; and
- (b) that at the time when the society did so there were reasonable grounds for believing that it would benefit from the transaction.

[Act No. 19 of 2015, s. 107.]

**60C. Power of the Court to void preference**

(1) In this section, "relevant time" has the meaning given by section 60D.

(2) If of the view that a co-operative society has at a relevant time given a preference to a person, the Commissioner may apply to the Court for an order under subsection (3).

(3) If, on the hearing of an application made under subsection (2), the Court is satisfied that the society has at a relevant time given a preference to a person, it shall make an order voiding the act constituted by giving the preference and restoring the position that which would have existed if the preference had not been given.

(4) For the purposes of this section and section 60E, a co-operative society gives a preference to a person if—

- (a) the person is one of the society's creditors or a surety or guarantor for any of the society's debts or other liabilities; and
- (b) the society does any act or allows an act to be done that (in either case) has the effect of placing the person in a position that, if the

society were in insolvent liquidation, is better than the position the person would have been in had that act not been done.

(5) The Court may not make an order under subsection (3) in respect of a preference given to a person unless it is satisfied that the society that gave the preference was influenced in deciding to give it by a wish to produce in relation to that person the effect referred to in subsection(4)(b).

(6) A co-operative society that has given a preference to a person connected with the society (otherwise than by being its employee) at the time when the preference was given is presumed, in the absence of evidence to the contrary, to have been influenced in deciding to give it by such a wish as is referred to in subsection (5).

(7) The fact that action has been taken in accordance with the order of a Court does not, without more, prevent the doing or suffering of that action thing from constituting the giving of a preference.

[Act No. 19 of 2015, s. 107.]

#### **60D. What "relevant time" means in sections 60B and 60C**

(1) Subject to subsection (2), the time at which a co-operative society enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference is given—

- (a) in the case of a transaction at an undervalue or of a preference that is given to a person who is connected with the society (otherwise than through being its employee) at a time during the two years immediately preceding the appointment of the liquidator; or
- (b) in the case of a preference that is not such a transaction and is not so given at a time during the six months immediately preceding that appointment.

(2) If a co-operative society enters into a transaction at an undervalue, or gives a preference at a time referred to in subsection (1)(a) or (b), that time is a relevant time for the purposes of section 60B or 60C only if the society—

- (a) is at that time unable to pay its debts; or
- (b) becomes unable to pay its debts in consequence of the transaction or preference.

(3) However, the conditions in subsection (2) are, in the absence of evidence to the contrary, presumed to exist in relation to a transaction at undervalue that is entered into by the society with a person who is connected with it.

[Act No. 19 of 2015, s. 107.]

#### **60E. Orders under sections 60B and 60C ancillary provisions**

(1) An order under section 60B or section 60C with respect to a transaction or preference entered into or given by a co-operative society may, subject to subsection (2)—

- (a) require property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the society;
- (b) require the property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the society;

- (d) require any person to pay, in respect of benefits received from the society, such amounts to the liquidator as the Court may specify;
- (e) provide for any surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be subject to such new or revived obligations to the person as the Court considers appropriate;
- (f) provide —
  - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order;
  - (ii) for such an obligation to be charged on specified property; and
  - (iii) for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and
- (g) provide for the extent to which a person whose property is vested by the order in the society, or on whom obligations are imposed by the order, is to be able to prove in the liquidation of the society for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 60B or 60C may affect the property of, or impose an obligation on, a person whether or not the person is the one with whom the relevant co-operative society entered into the transaction, or the person to whom the preference was given.

(3) However, such an order—

- (a) may not detrimentally affect an interest in property that—
  - (i) was acquired from a person other than the society; and
  - (ii) was acquired in good faith and for value, or detrimentally affect any interest that is derived from such an interest; and
- (b) may not require a person who received a benefit from the transaction or preference in good faith and for value to pay an amount to the liquidator, unless —
  - (i) the person was a party to the transaction; or
  - (ii) the payment is to be in respect of a preference given to that person at a time when the person was a creditor of the society.

(4) If a person has acquired an interest in property from a person other than the relevant co-operative society, or has received a benefit from the transaction or preference and, at the time of the acquisition or receipt, the person—

- (a) had notice of the relevant surrounding circumstances and of the relevant proceedings; or
- (b) was connected with, or was an associate of, either the relevant co-operative society or the person with whom that co-operative society entered into the transaction or to whom that co-operative society gave the preference,

then, for the purposes of paragraph (a) or paragraph (b) of subsection (3), the interest is presumed to have been acquired, or the benefit to have been received, otherwise than in good faith.

(5) For the purposes of subsection (4)(a) the relevant surrounding circumstances, in relation to a co-operative society, are—

- (a) the fact that the society entered into the transaction at an undervalue; or
- (b) the circumstances that amounted to the giving of the preference by that co-operative society,

and subsection (6) has effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(6) For the purposes of subsection (5), a person has notice of the relevant proceedings if the person has notice of the fact that a liquidator has been appointed in respect of the society.

(7) Nothing in this section or sections 60B to 60D affects the availability of any other remedy, even in relation to a transaction or preference that the society had no power to enter into or give.

(8) Nothing in subsection (1) limits the Court's powers under sections 60B (4) and 60C (3).

[Act No. 19 of 2015, s. 107.]

#### **60F. Power of the Court to set aside certain extortionate credit transactions**

(1) This section applies to a transaction to which a co-operative society is, or has been, a party to a transaction for, or involving, the provision of, credit to the society.

(2) The Commissioner may apply to the Court for an order under subsection (3) if the Commissioner believes that such a transaction—

- (a) is or was extortionate; and
- (b) was entered into during the three years immediately preceding the date on which the society entered administration or on which a liquidator was appointed in respect of the society.

(3) If, on the hearing of an application made by the Commissioner under subsection (2), the Court is satisfied that the transaction is or was extortionate and was entered into within the period referred to in section (b) of that subsection, it shall make one or more of the following orders:—

- (a) an order setting aside the whole or part of an obligation created by the transaction;
- (b) an order otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) an order requiring a person who is or was a party to the transaction to pay to the Commissioner any amounts paid to that person by the society in accordance with the transaction;
- (d) an order requiring a person to surrender to the Commissioner property held by the person as security for the purposes of the transaction;
- (e) an order directing accounts to be taken between the specified persons.

(4) For the purposes of this section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
- (b) it otherwise grossly contravened ordinary principles of fair dealing.

(5) A transaction with respect to which an application is made under subsection (2) is, in the absence of evidence to the contrary, presumed to be or to have been extortionate.

(6) The powers conferred by this section are exercisable in relation to a transaction concurrently with any powers exercisable in relation to the transaction as one at an undervalue.

[Act No. 19 of 2015, s. 107.]

**60G. Circumstances in which floating charge on co-operative society's undertaking or property to be invalid**

(1) Except as otherwise provided by this section, a floating charge on a co-operative society's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

- (a) an amount equal to the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the society at the same time as, or after, the creation of the charge;
- (b) an amount equal to the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the society; and
- (c) the amount of such interest (if any) as is payable on the amount referred to in clause (a) or (b) in accordance with an agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(2) Subject to subsection (3), the time at which a floating charge is created by a cooperative society is a relevant time for the purposes of this section if the charge is created—

- (a) in the case of a charge which is created in favour of a person who is connected with the society—within the two years immediately preceding the appointment of a liquidator in respect of the society;
- (b) in the case of a charge that is created in favour of any other person at a time within the period of twelve months ending with the date of that appointment.

(3) If a co-operative society creates a floating charge at a time referred to in subsection (2)(b) and the person in favour of whom the charge is created is not connected with the society, that time is not a relevant time for the purposes of this section unless the society—

- (a) is at that time unable to pay its debts; or
- (b) becomes unable to pay its debts in consequence of the transaction under which the charge is created.

(4) For the purposes of subsection (1)(a), the value of any goods or services supplied as consideration for a floating charge is the amount in money that, at the time they were supplied, could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same

terms (apart from the consideration) as those on which they were supplied to the society.

[Act No. 19 of 2015, s. 107.]

## PART XII – DISSOLUTION

### **61. Procedure for dissolution**

(1) If the Commissioner, after holding an inquiry 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 Cabinet Secretary 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 Cabinet Secretary 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.

[Act No. 2 of 2004, s. 29 & Sch.]

### **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 Cabinet Secretary within thirty days of the order.

[Act No. 2 of 2004, s. 30.]

### **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.

### **64. Liquidation of co-operative society whose registration is cancelled under section 61 or 62**

The First Schedule has effect with respect to the liquidation of a co-operative society whose registration has been cancelled under section 61 or 62.

[Act No. 19 of 2015, s. 108.]

**65. Appointment of liquidators**

(1) If the registration of a co-operative society is cancelled under section 61 or 62, the Commissioner may appoint one or more authorised insolvency practitioners to be the liquidator or liquidators of the society.

(2) The property of the society vests in the liquidator or liquidators from and including the date on which the cancellation of registration took effect.

(3) In this section, 'authorised insolvency practitioner' means an insolvency practitioner authorised under Part H of the Insolvency Act (Cap. 53).

[Act No. 2 of 2004, Sch., Act No. 19 of 2015, s. 109]

**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 co-operative society shall state their claims for admission, or he 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, in so far as such powers are necessary for carrying out the purposes of this section.

[Act No. 2 of 2004, Sch.]

#### **67. Liquidation account of societies**

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

[Act No. 2 of 2004, Sch.]

#### **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.

[Act No. 2 of 2004, Sch.]

### **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.

[Act No. 2 of 2004, s. 31 & Sch.]

### **70. Enforcement of orders**

Subject to sections 68 and 69, any order or decision made under section 66 or section 68 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.

### **71. Offences relating to the liquidation of cooperative society**

(1) The Third Schedule prescribes offences relating to conduct before and during liquidation and provides for criminal proceedings relating to those offences.

(2) If the liquidator of a co-operative society whose registration has been cancelled reasonably suspects that an offence specified in the Third Schedule has or may be committed during or before the liquidation of the society, the liquidator shall report the matter to the Commissioner.

(3) As soon as practicable after a suspected offence is reported in accordance with subsection (2), the Commissioner shall take such action (including prosecution of the offence) as the Commissioner considers appropriate.

[Act No. 2 of 2004, Sch., Act No. 19 of 2015, s. 110.]

### **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.

[Act No. 19 of 2015, s. 111.]

## **PART XIII – SURCHARGE**

### **73. Inquiry by Commissioner**

(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.

[Act No. 2 of 2004, s. 32.]

#### **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.

[Act No. 2 of 2004, s. 33.]

#### **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.

[Act No. 2 of 2004, s. 34.]

### **PART XIV – SETTLEMENT OF DISPUTES**

#### **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.

[Act No. 2 of 2004, s. 35, Act No. 14 of 2008, s. 71.]

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

[Act No. 2 of 2004, s. 36, Act No. 19 of 2015, s. 112.]

### 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, the Commissioner or any Committee or officer of a co-operative 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 there under, the Tribunal shall regulate its own procedure.

[Act No. 2 of 2004, Sch.]

### **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.

[Act No. 2 of 2004, s. 37.]

### **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.

[Act No. 2 of 2004, s. 38.]

### **81. Appeal to High Court**

(1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

(2) Upon the hearing of an appeal under this section, the High Court may:—

- (a) confirm, set aside or vary the order in question;
- (b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give;
- (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or
- (d) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.

(3) The decision of the High court on any appeal shall be final.

### **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.

### **83. Contempt of Tribunal**

It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish any such person for contempt in accordance with the provisions of this Act.

**84. Remuneration of members of Tribunal**

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

[Act No. 19 of 2015, s. 113.]

**85. Appointment of secretary to Tribunal**

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

[Act No. 2 of 2004, s. 39, Act No. 19 of 2015, s. 114]

**86. Powers to establish benches of Tribunal**

The Cabinet Secretary 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.

**87. Right of parties before Tribunal**

Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an Advocate.

**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.

**PART XV – GENERAL****89. Remuneration to officers and members of society**

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.

[Act No. 2 of 2004, s. 40.]

#### **90. Restriction on use of word “Co-operative”**

(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, without the written approval of the Commissioner.

(2) Any person who contravenes subsection (1) of this section shall be guilty of 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.

[Act No. 2 of 2004, s. 41 & Sch.]

#### **90A. Co-operative development fund**

(1) The Cabinet Secretary 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 Cabinet Secretary.

(5) The Cabinet Secretary may, in consultation with the apex society, prescribe the manner of formation and maintenance of the Fund.

[Act No. 2 of 2004, s. 42, Act No. 19 of 2015, s. 115.]

#### **91. Rules**

(1) The Cabinet Secretary 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 Cabinet Secretary 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;
  - (ra) provide for societies that become insolvent to be placed under administration instead of liquidation if it appears that it may be possible for them to recover from their insolvency;

- (s) prescribe the procedures to be followed in the liquidation of societies; and
- (t) prescribe anything which under this Act may be prescribed.

(2A) In making rules for the purpose of subsection (2)(ra), the Cabinet Secretary may apply such provisions of the Insolvency Act (Cap. 53), relating to the administration of insolvent companies as the Cabinet Secretary considers appropriate and, in applying those provisions for that purpose, may make such modifications to them as appear to the Cabinet Secretary to be necessary.

(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.

[Act No. 2 of 2004, s. 43 & Sch, Act No. 19 of 2015, s. 116.]

#### 91A.

[Repealed by Act No. 14 of 2008, s. 73.]

#### 92. Exemption

(1) Notwithstanding anything contained in this Act, the Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary within the period of the notice.

(4) The Cabinet Secretary 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.

[Act No. 2 of 2004, s. 45.]

#### 93. Powers of the Cabinet Secretary

The Cabinet Secretary may at any time and on any matter direct the Commissioner as to the exercise of his powers and duties under this Act.

#### 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.

[Act No. 2 of 2004, s. 46.]

#### **94. Offences**

(1) It shall be an offence under this Act if:

- (a) a co-operative society, or an officer or a member hereof, 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 any person duly authorized in that behalf, by the Commissioner or the Commissioner; or
- (d) a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information with respect to any return or information in or which is required by or under this Act or any rules made thereunder; or
- (e) any person wilfully and without reasonable excuse disobeys any summons, requirement or lawful order issued under this Act, or fails to furnish any return or information lawfully required from him by a person authorized to do so, or which he is required to furnish, by or under this Act or any rules made thereunder; or
- (f) any person acts or purports to act as an officer of a co-operative society when not entitled to do so.

(2) A co-operative society, an officer or member of such a society, or other person who is convicted of an offence under subsection (1) is liable to a fine not exceeding five hundred thousand shillings.

(3) The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for cases arising under the provisions of this Act.

[Act No. 2 of 2004, s. 47, Act No. 19 of 2015, s. 117, Act No. 19 of 2023, Sch.]

#### **95. Certain laws not to apply**

Except as expressly provided by rules made under section 91, the Companies Act (Cap. 486), the Insolvency Act (Cap. 53) and the Registration of Business Names Act (Cap. 499) do not apply to a co-operative society.

[Act No. 19 of 2015, s. 118.]

#### **96. Repeal and savings**

- (1) The Co-operative Societies Act, 1966, is hereby repealed.
- (2) Notwithstanding the repeal of the Co-operative Societies Act, 1966,
  - (a) every society, and all by-laws of a society and any amendments thereof, registered under the repealed Act shall be deemed to have been registered under this Act;

*Co-operative Societies*

- (b) any register kept in pursuance of the repealed Act shall be deemed to be part of the register to be kept in pursuance of this Act;
- (c) any document referring to a provision of the repealed Act shall be construed as referring to the corresponding provision of this Act; and
- (d) any orders, directions, appointments and other acts lawfully made or done under any of the provisions of the repealed Act 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.

## (3) If —

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

[Act No. 19 of 2015, s. 119.]

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**FIRST SCHEDULE**

[s. 64]

**LIQUIDATION OF CO-OPERATIVE SOCIETIES**

[Act No. 19 of 2015, s. 120.]

**1. Interpretation: this Schedule**
**(1) In this Schedule—**

"contributory", in relation to a cooperative society in respect of which a liquidator is appointed, means a member or past member of the society in respect of whom the liquidator has made a determination that the member or past member is liable to make a contribution to the funds of the society;

"deliver", in relation to documents or other property, includes surrender and transfer;

"inability to pay its debts", in relation to a co-operative society, has the meaning given by paragraph 2;

"past member" includes a deceased member.

**2. The circumstances in which co-operative society is unable to pay its debts**

(1) For the purposes of this Schedule, a co-operative society is unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the society is indebted for hundred thousand shillings or more has served on the society, by leaving it at the society's registered office, a written demand requiring the society to pay the debt and the society has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;

- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the society is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the High Court that the society is unable to pay its debts as they fall due.

(2) A co-operative society is also unable to pay its debts for the purposes of this Schedule if it is proved to the satisfaction of the High Court that the value of the society's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(3) The regulations may increase or reduce the amount specified in subparagraph (1)(a).

**3. Dispositions of property by co-operative society after commencement of liquidation to be void unless the High Court otherwise orders**

After the Commissioner has cancelled the registration of a co-operative society under section 61 or 62—

- (a) any disposition of the society's property; and
- (b) any transfer of shares, or alteration in the status of the society's members,

made after the cancellation is void, unless the High Court otherwise orders.

**4. Attachments and other forms of execution against co-operative society in liquidation to be void**

After the registration of a co-operative society is cancelled under section 61 or 62, any attachment, sequestration, distress or execution instigated against the assets of the society is void.

**5. Liquidator may require co-operative society to submit statement of affairs**

(1) When a liquidator is appointed in respect of a co-operative society, the liquidator may require some or all of the persons to whom this paragraph applies to make out and submit to the liquidator a statement concerning the affairs of the society.

(2) The persons required to submit such a statement shall verify it by statutory declaration and shall include in it—

- (a) such particulars of the society's assets, debts and liabilities as are prescribed by the regulations for the purposes of this paragraph;
- (b) the names and addresses of the society creditors;
- (c) the securities (if any) held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as the liquidator may reasonably require.

(3) This paragraph applies to the following persons:

- (a) those who are or have been officers of the society;
- (b) those who have taken part in the formation of the society at any time during the twelve months before the cancellation of the society's registration;
- (c) those who—

(i) are in the society's employment, or have been in its employment during that period; and

(ii) are in the liquidator's opinion capable of giving the information required.

(4) A prescribed person who is required under this paragraph to submit a statement of affairs to the liquidator shall subject to subparagraph (5) do so within twenty-one days from and including the date on which notice of the requirement was given to the person by the liquidator.

(5) The liquidator may

(a) at any time release a person from an obligation imposed on the person under subparagraph (1) or by subparagraph (2); or

(b) either when giving the notice referred to in subparagraph (4) or subsequently extend the period referred to in that subparagraph.

(6) If the liquidator has declined to exercise a power conferred by subparagraph (5), the High Court may, on the application of the Attorney-General or a person who is dissatisfied with the liquidator's decision, exercise the power if it considers it appropriate to do so.

(7) A person who, without reasonable excuse, fails to comply with an obligation imposed by or under this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) If, after being convicted of an offence under subparagraph (8), a person, without reasonable excuse, continues to fail to comply with the relevant obligation, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) In this paragraph, "employment" includes employment under a contract for services.

## **6. Duty of Commissioner to conduct investigation into failure of co-operative society**

As soon as practicable after cancelling the registration of a co-operative society, the Commissioner shall conduct an investigation

(a) if the society has failed to discover why the society failed; and

(b) generally, to investigate the promotion, formation, business, dealings and affairs of the society.

## **7. Public examination of officers and past officers of co-operative society**

(1) When a liquidator is appointed in respect of a co-operative society, the liquidator may apply to the High Court for the public examination of any person who—

(a) is or has been an officer of the society;

(b) has acted as provisional liquidator, liquidator or administrator of the society; or

(c) not being a person referred to in paragraph (a) or (b) is or has been concerned, or has taken part, in the promotion, formation or management of the society.

(2) Unless the High Court otherwise orders, the liquidator shall make an application under subparagraph (1) on receiving a written request to do so from

- (a) creditors of the society holding not less than one-half in value of the total amount of the society's debts; or
- (b) contributories of the society holding not less than three-quarters of the voting rights at general meetings of the society.

(3) If, on the hearing of an application made under subparagraph (1), the High Court is satisfied that a public examination of the person to whom the application relates is warranted, it shall make an order directing such an examination to be held on a date and at a time and place specified in the order.

(4) On being served with a copy of an order made under subparagraph (3), the person concerned shall attend on the date and at the time and place specified in the order and be publicly examined

- (a) about the promotion, formation or management of the society; or
- (b) about the conduct of its affairs, or conduct or dealings in relation to the society.

(5) The persons specified in subparagraph (6) may—

- (a) participate in the public examination of a person under this paragraph; and
- (b) may question the person concerning the matters referred to in subparagraph (4).

(6) The following persons are specified for the purpose of subparagraph (5):

- (a) the Commissioner;
- (b) the liquidator of the society;
- (c) any person who has been appointed as special manager of the society's property or business;
- (d) any creditor of the society who has submitted a proof;
- (e) any contributory of the society.

#### **8. Consequences of failing to attend public examination**

(1) A person who, without reasonable excuse, fails at any time to attend the person's public examination under paragraph 7 is guilty of a contempt of Court and is liable to be punished accordingly (in addition to any other punishment to which the person may be subject).

(2) If a person fails without reasonable excuse to attend the person's examination under paragraph 7, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying the examination, the High Court may issue a warrant to be issued to a police officer or a prescribed officer of that Court

- (a) for the arrest of that person; and
- (b) for the seizure of any documents or property in that person's possession.

(3) In such a case, the High Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under it to be kept, in accordance with the directions of that Court, until such time as that Court orders.

#### **9. Power of the High Court to halt liquidation**

(1) When a liquidator is appointed in respect of a co-operative society, the liquidator, the Commissioner or any creditor or contributory of the society,

and on proof to the satisfaction of the High Court that all proceedings in the liquidation ought to be halted, that Court may make an order halting the liquidation proceedings, either permanently or for a specified period, on such terms as that Court considers appropriate.

(2) Before making an order under subparagraph (1), the High Court may require the liquidator to provide it with a report on any facts or matters that appear to the liquidator to be relevant to the application.

(3) The liquidator shall comply with such a requirement within such period as the High Court specifies.

#### **10. Payment of expenses of liquidation.**

(1) If, in the case of a co-operative society in respect of which a liquidator is appointed, the assets of the society are insufficient to satisfy its liabilities, the liquidator—

- (a) may direct the expenses incurred in the liquidation to be paid out of the society's assets; and
- (b) may direct that that payment be given such of priority as the liquidator considers appropriate.

(2) A direction under subparagraph (1) has effect irrespective of the provisions of this Act relating to preferential debts.

#### **11. Power to arrest absconding contributory**

(1) This paragraph applies when the Commissioner has cancelled the registration of a co-operative society.

(2) On the application of the Commissioner made either before or after the registration of the society is cancelled, the High Court may, if satisfied on reasonable grounds that a contributory is—

- (a) about to quit Kenya or otherwise to abscond; or
- (b) has concealed or removed, or is about to conceal or remove, any of the contributory's property for the purpose of evading payment of calls,

issue a warrant authorising the contributory to be arrested and the contributory's documents and moveable personal property to be seized.

(2) In such a case, the High Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under the warrant to be kept, in accordance with the directions of the High Court, until such time as that Court orders.

#### **12. Preferential debts (general provision)**

(1) The liquidator of a co-operative society shall distribute the assets of the society available for the payment of creditors in accordance with the Second Schedule.

(2) Subparagraph (1) is subject to the provisions of this Schedule.

#### **13. Preferential charge on property of co-operative society distrained within three months before appointment of liquidator**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a person (whether or not a landlord or person entitled to rent) has distrained on the property of the society during the three months immediately preceding the date on which a liquidator was appointed, that property, or the proceeds of its sale, is charged for the benefit of the society with the preferential debts of the society to the extent that the society's assets are for the time being insufficient to satisfy them.

(3) If, because of a charge under subparagraph (2), a person surrenders property to the society or pays money to the society, the person ranks, in respect of the amount of the proceeds of sale of the property by the liquidator, or the amount of money paid, as a preferential creditor of the society, except as against so much of the society's property as is available for the payment of preferential creditors because of the surrender or payment.

(4) This paragraph does not limit the effect of paragraph 4 (avoidance of attachments, *etc.*).

#### **14. Expenses of liquidation to have priority over claims under floating**

(1) The expenses of liquidating a co-operative society, so far as the assets of the society available for payment of general creditors are insufficient to meet those expenses, have priority over any claims to property comprised in or subject to any floating charge created by the society and are to be paid out of any such property accordingly.

(2) In subparagraph (1), the reference to claims to property comprised in or subject to a floating charge is to the claims of—

- (a) the holders of debentures secured by, or holders of, the floating charge; and
- (b) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made restricting the application of subparagraph (1), in such circumstances as may be prescribed by the regulations, to expenses authorised or approved—

- (a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them; or
- (b) by the High Court.

(4) References in this paragraph to the expenses of the liquidation are to all expenses properly incurred in the liquidation, including the remuneration of the liquidator.

#### **15. Power of liquidator to disclaim onerous property**

(1) The liquidator of a co-operative society may, by the giving such notice as may be prescribed by the regulations, disclaim any onerous property and may do so even if the liquidator has taken control of it, tries to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this paragraph:

- (a) an unprofitable contract;
- (b) other property of the society that is unsalable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this paragraph—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the society in or in respect of the property disclaimed; but
- (b) does not, except so far as is necessary for the purpose of releasing the society from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer may not be given under this paragraph in respect of any property if—

- (a) a person interested in the property has applied in writing to the liquidator, or a predecessor of the liquidator, requiring the liquidator or liquidator's predecessor to decide whether the property will be disclaimed or not; and
- (b) twenty-eight days from and including the date on which that application was made (or such extended period as the High Court may allow) has expired without a notice of disclaimer having been given under this paragraph in respect of the property.

(5) A person who has sustained loss or damage in consequence of the operation of a disclaimer under this paragraph is a creditor of the society to the extent of the loss or damage and accordingly may prove for the loss or damage in the liquidation.

#### **16. Special provisions relating to disclaimer of leaseholds**

(1) The disclaimer under paragraph 15 of any property comprising a leasehold interest does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the society as under-lessee or mortgagee and either—

- (a) an application under paragraph 18 (general powers of the High Court in respect of disclaimed property) has not been made with respect to that property within fourteen days from and including the date on which the last notice served under this subparagraph was served; or
- (b) if such an application is made that Court makes an order directing the disclaimer to take effect.

(2) If the High Court makes an order under subparagraph (1)(b) it may also, instead of or in addition to any order it makes under paragraph 18, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

#### **17. Effect of disclaimer in relation to land subject to rentcharge**

(1) If, as a result of the disclaimer under paragraph 15 of land subject to a rentcharge, the land vests by operation of law in a person, the person is not subject to any liability in respect of amounts becoming due under the rentcharge except amounts that become due after the proprietor (or some person claiming under or through the proprietor) has taken possession or control of the land or has occupied it.

(2) The reference in subparagraph (1) to a person includes the State and to any a successor in title to the person.

#### **18. General powers of the High Court in respect of disclaimed property**

(1) This paragraph and paragraph 19 apply to property that the liquidator of a co-operative society has disclaimed in accordance with paragraph 15.

(2) An application to the High Court for an order under subparagraph (3) may be made by—

- (a) any person who claims an interest in the disclaimed property; or
- (b) any person who is under a liability in respect of the disclaimed property, other than a liability discharged by the disclaimer.

(3) On the hearing of an application made under subparagraph (2), the High Court may make an order, on such terms as it considers appropriate, for the vesting of the disclaimed property in, or for its delivery—

- (a) a person entitled to it or a trustee for such a person; or
- (b) a person subject to such a liability as is referred to in subparagraph (2)(b) or a trustee for such a person.

(4) The High Court may make an order under subparagraph (3)(b) only if it appears to that Court that it would be just to do so for the purpose of compensating person subject to the liability in respect of the disclaimer.

(5) The effect of an order made under this paragraph is to be taken into account in assessing for the purpose of paragraph 15(6) the extent of any loss or damage sustained by a person in consequence of the disclaimer.

(6) It is not necessary for an order under this paragraph vesting property in a person to be completed by transfer.

**19.** Powers of the High Court in respect of leaseholds held by co-operative society in liquidation

(1) The High Court may not make an order under paragraph 18 vesting a leasehold interest in a person claiming under the society as underlessee or mortgagee except on terms making the person—

- (a) subject to the same liabilities and obligations as the society was subject to under the lease at the time of the liquidator's appointment; or
- (b) if that Court considers appropriate subject to the same liabilities and obligations as the person would be subject to if the lease had been assigned to the person at that time.

(2) For the purposes of an order under paragraph 18 relating only to the part of the property comprising a lease, the requirements of subparagraph (1) apply as if the lease was the only property to which the order relates.

(3) If subparagraph (1) applies and no person claiming under the society as underlessee or mortgagee is willing to accept an order under paragraph 18 on the terms required under that subparagraph, the High Court may make an order vesting the society's interest in the lease in any person who is liable (whether personally or in a representative capacity, and whether alone or jointly with the society) to perform the lessee's covenants under the lease.

(4) The High Court may vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the society.

(5) If subparagraph (1) applies and a person claiming under the society as underlessee or mortgagee declines to accept an order under paragraph 18, that person is excluded from all interest in the property.

**20.** Creditor not entitled to retain benefit of execution or attachment against liquidator unless creditor completes execution or attachment before commencement of liquidation

(1) If—

(a) a creditor—

(i) has issued execution against the property of a co-operative society; or

(ii) has attached any debt due to it; and

(b) a liquidator is subsequently appointed in respect of the society,

the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator unless the creditor has completed the execution or attachment before the commencement of the liquidation.

(2) However

(a) a person who, under a sale conducted by the enforcement officer or other officer charged with the execution of the writ goods of a co-operative society on which execution has been levied, purchases the goods in good faith acquires a good title to them as against the liquidator; and

(b) the High Court may set aside the rights conferred on the liquidator by subparagraph (1) in favour of the creditor to such extent and subject to such terms as it considers just.

(3) For purposes of this Act—

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt; and

(c) an execution against land is completed by its seizure or by any other event prescribed by the regulations for the purposes of this paragraph.

**21.** Duties of judicial enforcement officers charged with execution of writs and other processes involving co-operative societies in liquidation

(1) This paragraph applies if—

(a) a co-operative society's goods are taken in execution; and

(b) before their sale or the completion of the execution (whether by the receipt or recovery of the full amount of the levy) notice is served on the judicial enforcement officer charged with execution of the writ or other process that a liquidator has been appointed in respect of the society.

(2) If so required, the judicial enforcement officer concerned shall deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator.

(3) However, the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge.

(4) If, under an execution in respect of a judgement for an amount exceeding fifty thousand shillings, a co-operative society's goods are sold or money is paid in order to avoid sale, the judicial enforcement shall—

(a) deduct the costs of the execution from the proceeds of sale or the money paid; and

(b) retain the balance for not less than fourteen days.

(5) If, within that fourteen-day period—

- (a) notice is served on the judicial enforcement officer to the effect that—
  - (i) an application for the liquidation of the society has been made; or
  - (ii) a meeting has been convened at which there is to be proposed a resolution for voluntary liquidation; and
- (b) an order is made or a resolution passed, that officer shall pay the balance to the liquidator, who is entitled to retain, it as against the execution creditor.

(6) The rights conferred by this paragraph on the liquidator may be set aside by the High Court in favour of the creditor to such extent and subject to such terms as that Court considers appropriate.

(7) The regulations may provide for the amount specified in subparagraph (4) to be increased or reduced.

**22.** Power of the High Court to rescind contracts entered into by co-operative society in respect of which liquidator is appointed

(1) A person who is, as against the liquidator of a co-operative society, entitled to the benefit or subject to the burden of a contract made with the society, may make an application for an order under subparagraph (2).

(2) On the hearing of an application made under subparagraph (1), the High Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as that Court considers appropriate.

(3) Damages payable to a person under the order are provable by the person as a debt in the liquidation.

**23.** Co-operative society in liquidation required to state that it is in liquidation in all invoices, letters and other communications

(1) A co-operative society in respect of which a liquidator is appointed shall ensure that—

- (a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the society, or a liquidator, of the society or a receiver or manager of the society's property; and
- (b) each of the society's websites, states that the society is in liquidation.

(2) If the society fails to comply with a requirement under subparagraph (1), the society, and each officer of the society who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a co-operative society or any of its officers is convicted of an offence under subparagraph (2), the society continues to fail to comply with the relevant requirement, the society, and each officer of the society who is in default, commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

**24.** Interest on debts to be paid if surplus permits

(1) When a liquidator is appointed in respect of a co-operative society, interest is payable in accordance with this paragraph on any debt proved in the liquidation of the society's assets, including so much of any such debt as represents interest on the remainder.

(2) The liquidator shall, before applying any surplus remaining after the payment of the debts proved in the liquidation for any other purpose, apply the surplus in paying interest on those debts in respect of the periods during which they have been outstanding since the liquidator was appointed.

(3) All interest under this paragraph ranks equally (whether or not the debts on which it is payable rank equally).

(4) The rate of interest payable under this paragraph in respect of a debt is the rate for the time being prescribed by the regulations for the purposes of this paragraph.

**25.** Certain documents relating to co-operative society in liquidation to be exempt from stamp duty

When a liquidator is appointed in respect of a co-operative society, the following documents are exempt from stamp duty:

- (a) every transfer relating solely to freehold or leasehold property, or to any interest in, any real or personal property, that forms part of the society's assets and that, after the execution of the transfer, either at law or in equity, is or remains part of those assets; and
- (b) every writ, order or other document relating solely to the property of the society, or to any proceeding relating to its liquidation.

**26.** Records of co-operative society in liquidation to be evidence

When a co-operative society is in liquidation, all records of the society and of the liquidator are evidence of the truth of all matters purporting to be recorded in them, until the contrary is proved.

**27.** Liquidator to lodge periodic statements with Commissioner of Co-operative societies with respect to current position of liquidation

(1) If the liquidation of a co-operative society is not completed within twelve months after its commencement, the liquidator shall, at such intervals as may be prescribed by the regulations and until the liquidation is completed, lodge with the Commissioner a statement containing the particulars so prescribed with respect to the proceedings in, and position of, the liquidation.

(2) A liquidator who fails to lodge a statement as required by subparagraph (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subparagraph (2), a liquidator continues to fail to lodge a statement as required by subparagraph (1), the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

**28.** Court may order meetings to be held to ascertain wishes of creditors or contributories

(1) The High Court may—

- (a) as to all matters relating to the liquidation of a co-operative society, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence); and
- (b) if it considers appropriate, for the purpose of ascertaining those wishes—

- (i) direct meetings of the creditors or contributories to be convened, held and conducted in such manner as that Court directs; and
- (ii) appoint a person to act as chairperson of any such meeting and report the result of it to that Court.

(2) In the case of creditors, the High Court shall take into account the value of each creditor's debt.

(3) In the case of contributories, the High Court shall take into account the number of votes conferred on each contributory.

**29. Judicial notice to be taken of documents of the High Court**

In all proceedings under this Schedule, all courts and tribunals, all judges and persons acting judicially, and all officers of a court or tribunal, or employed in enforcing the process of a court or tribunal, are required to take judicial notice of—

- (a) the signature of an officer of the High Court; and
- (b) the official seal or stamp of that Court affixed to or impressed on any document made, issued or signed under a provision of this Act, or any official copy of such a document.

**30. Affidavits required to be sworn for purposes of this Schedule**

(1) An affidavit required to be sworn under or for the purposes of this Schedule may be sworn in Kenya—

- (a) before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; or
- (b) before any of any diplomat representing the Government of Kenya in any place outside Kenya.

(2) All courts, tribunals, judges and other persons acting judicially are required to take judicial notice of the seal or stamp or signature of any such court, tribunal, judge, person or diplomat affixed to, impressed on, or subscribed to any such affidavit, or to any other document to be used for the purposes of this Schedule.

**31. Realising property of co-operative society in respect of which a liquidator is appointed**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a person has control over money, documents or other property to which the society appears to be entitled, the High Court may require that person immediately, or within such period as that Court may direct, to pay the money or deliver the documents or other property documents to the liquidator.

(3) Subparagraph (4) applies if the liquidator—

- (a) seizes or disposes of property that is not property of the society; and
- (b) at the time of seizure or disposal believes on reasonable grounds that the liquidator is entitled (whether under an order of that Court or otherwise) to seize or dispose of that property.

(4) When this subparagraph applies, the liquidator—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the liquidator's own negligence; and

- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

**32. Duty of certain persons to co-operate with liquidator**

(1) When a liquidator is appointed in respect of a co-operative society, this paragraph applies to the following persons—

- (a) those who are or have at any time been officers of the society;
- (b) those who have taken part in the formation of the society at any time within the twelve months immediately preceding the effective date;
- (c) those who are in the employment of the society, or have been in its employment (including employment under a contract for services) within that period, and are in the liquidator's opinion capable of giving the required information;
- (d) those who are, or have within that period been, officers of, or in the employment of, another co-operative society that is, or within period was, an officer of the relevant co-operative society.

(2) A person to whom this paragraph applies shall—

- (a) give to the liquidator such information concerning the society and its promotion, formation, affairs or property as the liquidator may reasonably require; and
- (b) appear before the liquidator at such times as the liquidator may reasonably require.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) If, after being convicted of an offence under subparagraph (3), the person continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is to fine not exceeding fifty thousand shilling for each such offence.

(5) In this paragraph, "employment" includes employment under a contract for services.

**33. Lien in respect of co-operative society's documents unenforceable if it would deny their possession to Commissioner**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) A lien or other right to retain possession of any of the documents of the society is unenforceable to the extent that its enforcement would deny possession of any of the documents to the liquidator.

(3) Subparagraph (2) does not apply to a lien on documents that confer a title to property and are held as such.

**34. Supply of utility services to companies in liquidation or under administration, etc.**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a request is made by or with the consent of the liquidator for the giving, after the date on which liquidator is appointed, of any of the supplies specified in subparagraph (3), the supplier—

- (a) may make it a condition of the giving of the supply that the liquidator personally guarantees the payment of any charges in respect of the supply; but
  - (b) may not make it a condition for providing the supply, or take any action that has the effect of making it a condition for providing the supply, that any outstanding charges are to be paid in respect of a supply provided to the society before the effective date.
- (3) The supplies referred to in subparagraph (2) are—
- (a) a supply of gas by a gas supplier;
  - (b) a supply of electricity by an electricity supplier;
  - (c) a supply of water by a water supplier; and
  - (d) a supply of communications services by a provider of a public telecommunication or electronic communications service.

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## SECOND SCHEDULE

[para 12(1) 1st Sch.]

### PREFERENTIAL DEBTS

[Act No. 19 of 2015, s. 121]

#### 1. Priority of payments to preferential creditors

The debts of a co-operative society in respect of which a liquidator is appointed are payable in the order of priority in which they are listed in paragraphs 2, 3 and 4.

#### 2. First priority claims

(1) The expenses of the liquidation have first priority and are payable in the order in which they are listed in subparagraph (2)(a) and (b).

(2) For the purposes of subparagraph (1), those expenses are as follows:

- (a) the remuneration of the liquidator, and the fees and expenses properly incurred by the liquidator in performing out the duties imposed, and exercising the powers conferred, by or under this Act;
- (b) to any creditor who protects or preserves assets of the society for the benefit of the creditors of the society by the payment of money or the giving of an indemnity—
  - (i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and
  - (ii) the amount of the costs incurred by that creditor in protecting or preserving those assets.

#### 3. Second priority claims

(1) After the claims referred to in paragraph 2 have been paid, claims in respect of the following debts have second priority to the extent that they remain unpaid:

- (a) all wages or salaries payable to employees in respect of services provided to the society during the four months before the date of appointment of the liquidator;
- (b) any holiday pay payable to employees on the termination of their employment before that appointment or during the liquidation;

- (c) any compensation for redundancy owed to employees that accrues before that appointment or during the liquidation;
- (d) amounts deducted by the society from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act (Cap. 470));
- (e) any reimbursement or payment provided for, or ordered by the Employment and Labour Relations Court under the Labour Institutions Act (Cap. 234) to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act (Cap. 233) in respect of wages or other money or remuneration lost during the four months before that appointment or during the liquidation;
- (f) all amounts that are by any other written law required to be paid in accordance with the priority established by this subclause paid by the buyer to a seller on account of the purchase price of goods.

(2) The total amount to which priority is to be given under any, or all, of subparagraphs (1)(a) to (e) may not, in the case of any one employee, exceed two hundred thousand shillings as at the commencement of the liquidation.

(3) The amount specified in subparagraph (2) is subject to adjustment as follows:

- (a) subject to subclause (d)—the Cabinet Secretary shall, by order published in the *Gazette*, make an adjustment that has effect for the three-year period from and including 1 July 2015 and for each subsequent three-year period;
- (b) subject to subclause (d)—the Cabinet Secretary shall make such an order within three months after the end of an adjustment period;
- (c) each adjustment is required to reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to the last Employment Survey or similar employment index published by Kenya Bureau of Statistics (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period;
- (d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector, as so calculated, the Cabinet Secretary may not make an adjustment for that adjustment period;
- (e) if, in accordance with subclause (d), no adjustment is made, the Cabinet Secretary shall ensure that the next adjustment made for any later adjustment period reflects any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the adjustment period for which the subsequent adjustment is to be made;
- (f) all adjustments are cumulative and are to be rounded to the nearest shilling (with fifty cents being rounded to one shilling); and
- (g) any correction to the Quarterly Employment Survey on which an adjustment is based is to be disregarded until the adjustment that takes effect in the subsequent adjustment period, which must reflect

the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subparagraph.

(4) The amount specified in subparagraph (2), or that amount as adjusted under subparagraph (3), on the date of commencement of the liquidation, continues to apply to that liquidation regardless of any change to that amount that is prescribed after the date of commencement of the liquidation.

(5) In this paragraph—

"adjustment period" means the three-year period beginning on 1 July 2012 and each subsequent three-year period.

"employee" means a person employed by an employer for wages or a salary under a contract of service; and includes a home worker specified in of the Employment Act (Cap. 226), but does not include a person who is, or was at any time during the twelve months before the appointment of the liquidator of the society, a member of the committee of the society, or a nominee or relative of, or a trustee for, such a member;

"wages or salaries", in relation to an employee, includes—

- (a) remuneration in the form of commission or payable for time or for piece work; and
- (b) remuneration payable to an employee as holiday or sickness pay or in respect of absence from work for any other good reason.

#### 4. Third priority claims

After the claims referred to in paragraphs 2 and 3 have been paid, the claims in respect of the following debts have third priority to the extent that they remain unpaid:

- (a) tax deductions made by the society under the pay as you earn rules of the Income Tax Act (Cap. 470);
- (b) non-resident withholding tax deducted by the society under the Income Tax Act (Cap. 470);
- (c) resident withholding tax deducted by the society under the Income Tax Act (Cap. 470);
- (d) duty payable within the meaning of the customs laws.

#### 5. Unsatisfied claims of the same priority to abate equally

Claims having the same priority rank equally among themselves and, subject to any maximum payment level prescribed by or under any written law, are payable in full, unless the property of the society is insufficient to meet them, in which case they abate in equal proportions.

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### THIRD SCHEDULE

[s. 71]

#### OFFENCES RELATING TO CONDUCT BEFORE AND DURING LIQUIDATION AND CRIMINAL PROCEEDINGS RELATING TO THOSE OFFENCES

##### 1. Offence involving commission of fraudulent acts in anticipation of liquidation

(1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if, within the twelve months immediately preceding the appointment of the liquidator, the officer or past officer—

- (a) concealed any part of the society's property to the value of fifty thousand shillings or more; or concealed any debt due to or from the society;
- (b) fraudulently removed any part of the society's property to the value of fifty thousand shillings or more;
- (c) concealed, destroyed, mutilated or falsified any document affecting or relating to the society's affairs or property;
- (d) made any false entry in any document affecting or relating to the society's affairs or property;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the society's affairs or property; or
- (f) pawned, pledged or disposed of any property of the society that has been obtained on credit and has not been paid for.

(3) Subparagraph (3)(f) does not apply if the pawning, pledging or disposal was done in the ordinary course of the society's business.

(4) An officer or past officer of the society also commits offence—

- (a) if, within the twelve months period referred to in subparagraph (2), the officer or past officer has been privy to the doing by others of any of the acts referred to in clauses (c), (d) and (e) of that subparagraph; or
- (b) if, at any time after the commencement of the liquidation, the officer or past officer—
  - (i) does any of the acts referred to in clauses (a) to (f) of that subparagraph; or
  - (ii) is privy to the doing by others of any of the acts referred to in clauses (c) to (e) of that subparagraph.

(4) In a prosecution for an offence under—

- (a) clause (a) or (f) of subparagraph (2); or
- (b) subparagraph (4) in respect of an act referred to in either of those two clauses,

it is a defence to prove that the officer or past officer had no intention to defraud.

(5) In a prosecution for an offence under—

- (a) clause (c) or (d) of subparagraph (2); or
- (b) subparagraph (4) in respect of an act referred to in either of those two clauses,

it is a defence to prove that the officer or past officer had no intention to conceal the state of affairs of the society or to defeat the law.

(6) If property is pawned, pledged or disposed of in circumstances that constitute an offence under subparagraph (2)(f), a person who takes in pawn or pledge, or otherwise receives, the property knowing it to have been pawned, pledged or disposed of in such circumstances, commits an offence.

(7) A person found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(8) The regulations may increase or reduce the amounts specified in subparagraph (2)(a) and (b).

**2. Offences involving transactions to defraud creditors of co-operative society in respect of which a liquidator is appointed**

(1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if the officer or past officer—

- (a) has made or caused to be made a gift or transfer of, or charge on, or has caused or connived at the levying of execution against, the society's property; or
- (b) has concealed or removed any part of the society's property since, or within the two months preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the society.

(3) A person is not liable to be charged with an offence under subparagraph (2) if the conduct alleged to constitute the offence occurred more than five years before the commencement of the liquidation.

(4) In a prosecution for an offence under subparagraph (2)(a), it is a defence to prove that the officer or past officer did not, at the time of the alleged offence, have any intent to defraud the society's creditors.

(5) An officer or past officer of cooperative society who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment or a fine not exceeding two years, or to both.

**3. Offence involving misconduct committed in course of liquidation of co-operative society**

(1) This paragraph applies in relation to a co-operative society for which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if the officer or past officer—

- (a) does not to the best of the officer's or past officer's knowledge and belief fully and truly disclose to the liquidator all of the society's property, and how and to whom and for what consideration and when the society disposed of any part of that property (except such part as has been disposed of in the ordinary course of the society's business);
- (b) does not deliver up to the liquidator, or in accordance with the directions of the liquidator, all such part of the society's property as is under the control of the officer or past officer, and that the liquidator is required by law to deliver up;
- (c) fails to deliver up to the liquidator (or as the liquidator directs) all documents under the control of the officer or past officer that belong to the society and that the officer or past officer is required by law to deliver up;
- (d) knowing or believing that a false debt has been proved by any person liquidator of that knowledge or belief as soon as practicable; or

(e) after the appointment of the liquidator—prevents the production of any document affecting or relating to the society's affairs or property.

(3) An officer or past officer also commits an offence if, after the liquidator is appointed, the officer or past officer attempts to account for any part of the society's property by means of fictitious losses or expenses.

(4) An officer or past officer is presumed, in the absence of evidence to the contrary, to have committed an offence under subparagraph (3) if the officer or past officer has made an attempt of the kind referred to in that subparagraph at a meeting of the society's creditors held within the twelve months immediately preceding the appointment of the liquidator.

(5) In a prosecution for an offence under subparagraph (2)(a), (b) or (c), it is a defence to prove that the officer or past officer had no intention to defraud.

(6) In a prosecution for an offence under subparagraph (2)(e), it is a defence to

**4. Offence to falsify documents in relation to co-operative society in respect of which liquidator is appointed**

(1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or contributory of the society commits an offence if, during the liquidation, the officer or contributory, with intent to defraud or deceive the society or any other person—

(a) destroys, damages, alters or falsifies a security or other document of the society; or

(b) makes or is privy to the making of a false or fraudulent entry in any record or other document of the society.

(3) A person who is found guilty of an offence under subparagraph (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, to both.

**5. Offence to make material omission from statement relating to affairs of co-operative society in respect which liquidator is appointed**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if, while the liquidator is appointed, the officer or past officer makes a material omission from a statement relating to the society's affairs.

(3) An officer or past officer of the society is also taken to have committed an offence under subparagraph (2) if, before the appointment of the liquidator, the officer or past officer has made any material omission from a statement relating to the society's affairs.

(4) In a prosecution for an offence under this paragraph, it is a defence to prove that the officer or past officer had no intention to defraud.

(5) A person who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment for twelve months, or to both.

**6. Offence to make false representations to creditors of co-operative society in respect of which a liquidator is appointed**

(1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

- (2) An officer or past officer of the society commits an offence if—
- (a) the officer or past officer makes a false representation; or
  - (b) does any other fraudulent act,

for the purpose of obtaining the consent of the society's creditors or any of them to an agreement relating to the society's -affairs or to its liquidation.

(3) An officer or past officer of the society is also to be taken to have committed an offence under subparagraph (2) if, before the commencement of the liquidation, the officer or past officer—

- (a) made any false representation; or
- (b) did any other fraudulent act, for the purpose of obtaining that consent.

(4) An officer or past officer person who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years, or to both.

**7. Power of the High Court to make orders against delinquent committee members, liquidators, etc.**

(1) This paragraph applies to the following persons:

- (a) an officer or past officer of a cooperative society that is in liquidation (whether by the High Court or voluntarily);
- (b) a person who is or has acted as the liquidator of such a co-operative society;
- (c) not being a person referred to in paragraph (a) or (b)—a person who has been concerned in the promotion, formation or management of such a co-operative society.

(2) If, during the course of the liquidation of a co-operative society, it appears that a person to whom this paragraph applies has or may have—

- (a) misapplied or retained, or become accountable for, money or property of the society; or
- (b) committed misfeasance or a breach of any fiduciary or other duty in relation to the society,

the Commissioner, the liquidator of the society or a creditor or contributory of the society may make an application to that Court to conduct an examination under subparagraph (6).

(3) The reference in subparagraph (2) to misfeasance or a breach of any fiduciary or other duty in relation to the society includes, in the case of a person who has acted as liquidator of the society, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of the liquidator's functions as liquidator of the society.

(4) An application under subparagraph (2) may be made in relation to a person who has acted as liquidator of the society only with the leave of the High Court given after the person has been released from the responsibilities of liquidator.

(5) A contributory may make an application under subparagraph (2) only with the leave of the High Court.

(6) On the hearing of an application made under subparagraph (2), the High Court may undertake an examination into the conduct of the person in relation to whom the application was made.

(7) If, at the conclusion of the examination, the High Court finds that the person examined has engaged in conduct of a kind referred to in subparagraph (2), it may make an order compelling the person—

- (a) to repay, restore or account for the money or property or any part of it, with interest at such rate as that Court considers appropriate; or
- (b) to contribute such amount to the society's assets as compensation for the misfeasance, breach of fiduciary or other duty as the High Court considers fair and reasonable.

**8. Power of the High Court to make orders against officers of co-operative society and others found to have participated in fraudulent trading by co-operative society**

(1) A liquidator of a co-operative society may make an application to the High Court for an order under subparagraph (2) if—

- (a) in the course of the liquidation of the society, the liquidator forms the view that a business of the society has been carried on with intent to defraud creditors of the society or creditors of any other person, or for any fraudulent purpose; and
- (b) the liquidator believes that specified persons participated (directly or indirectly) in the business with the knowledge that the business was being carried on in that manner.

(2) If, on hearing an application made under subparagraph (1), the High Court finds that the persons specified in the application did in fact participate (directly or indirectly) in a business of the society with the knowledge that it was being carried on in the manner referred to in subparagraph (1)(a), it may order those persons (or any of them) to make such contributions to the society's assets as the High Court considers fair and reasonable.

(3) The persons specified in an application made under subparagraph (2) are entitled to be served with a copy of the application and to appear and be heard as respondents at the hearing of the application,

(4) If the High Court makes an order against a person under subparagraph (2), it may also make an order disqualifying the person from—

- (a) being or acting as a member of the committee of a co-operative society;
- (b) being or acting as a liquidator, provisional liquidator or administrator of a co-operative society;
- (c) being or acting as a supervisor of a voluntary arrangement approved by the society; or
- (d) in any way (whether directly or indirectly) being concerned in the promotion, formation or management of a co-operative society,

for such period, not exceeding fifteen years, as may be specified in the order.

**9. Power of the High Court to make orders against officers of co-operative society engaging in wrongful trading**

(1) This paragraph applies

- (a) to a co-operative society in respect of which a liquidator is appointed; and
- (b) to a person who, at a time before the liquidator was appointed, was an officer of the society.

(2) For the purposes of this paragraph—

- (a) a co-operative society is in insolvent liquidation if, at the time the liquidation commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation; and
- (b) the person in respect of whom an application is made under subparagraph (3) is the respondent to the application.

(3) If, in the course of the liquidation of a co-operative society, it appears to the liquidator that a person to whom this paragraph applies knew or ought to have known that there was no reasonable prospect that the society would avoid being placed in insolvent liquidation, the liquidator may make an application to the High Court for an order under subparagraph (5).

(4) The High Court may hear an application made under subparagraph (2) only if the person in respect of whom the application was made has been served with a copy of the application.

(5) If, on the hearing of an application made under subparagraph (3), the High Court may, if satisfied that, at the relevant time, the respondent knew or ought to have known that there was no reasonable prospect that the society would avoid being placed in insolvent liquidation, make an order declaring the respondent to be liable to make such contribution (if any) to the society's assets as that Court considers appropriate.

(6) However, the High Court may not make such an order if satisfied that the respondent took such steps to avoid potential loss to the society's creditors as (assuming the respondent to have known that there was no reasonable prospect that the society would avoid going into solvent liquidation) the respondent ought reasonably to have taken.

(7) Nothing in this paragraph affects the operation of paragraph 8 (fraudulent trading by co-operative society in liquidation).

(8) If the High Court makes an order against a person under subparagraph (5), it may also make an order disqualifying the

person from—

- (a) being or acting as a member of the committee of a co-operative society or a director of a company;
- (b) being or acting as a liquidator, provisional liquidator or administrator of a co-operative society;
- (c) being or acting as a supervisor of a voluntary arrangement approved by the society; or
- (d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a co-operative society or a company,

for such period, not exceeding fifteen years, as may be specified in the order.

**10.** Supplementary provisions relating to proceedings under paragraphs 8 and 9

(1) On the hearing of an application under paragraph 8 (fraudulent trading by co-operative society in liquidation) or paragraph 9 (wrongful trading), the liquidator may personally give evidence or call witnesses.

(2) If the High Court makes an order under paragraph 8 or 9, it may make such further orders as it considers appropriate for giving effect to the order.

(3) In particular, the High Court may—

- (a) provide for the liability of any person under the order to be a charge—
  - (i) on any debt or obligation due from the society to the person; or
  - (ii) on any mortgage or charge or any interest in a mortgage or charge on assets of the society held by or vested in the person, or any other person on the person's behalf, or any other person who claims as an assignee from or through the person liable or any person acting on that person's behalf; and
- (b) from time to time make such further order as may be necessary for enforcing a charge imposed under paragraph (a).

(4) For the purposes of subparagraph (3)(a) (ii),

"assignee"—

- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but
- (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the order is made.

(5) If the High Court makes an order under paragraph 8 or 9 in relation to a person who is a creditor of the society, it may direct that the whole or any part of any debt owed by the society to that person, and any interest on the debt, ranks in priority after all other debts owed by the society and after any interest on those debts.

(6) The High Court can make an order under paragraph 8 or 9 even if the person concerned may be criminally liable in respect of matters giving rise to the making of the order.

**11.** Member of the committee of co-operative society in insolvent liquidation prohibited from being member of the committee of, or being involved with, any other co-operative society that is known by a prohibited name

(1) This paragraph applies to a person if—

- (a) a co-operative society is in insolvent liquidation on or after the commencement of this paragraph; and
- (b) the person was a member of the committee of the society at any time during the twelve months immediately preceding the date on which the liquidation of the society commenced.

(2) For the purposes of this paragraph, a name is a prohibited name in relation to such a person if—

- (a) it is a name by which the society was known at any time during that period of twelve months; or
- (b) it is a name that is so similar to a name of the kind referred to in paragraph (a) as to suggest an association with the society.

(3) Except with leave of the High Court, or in such circumstances as may be prescribed by the regulations, a person to whom this paragraph applies shall not at any time during the five years from and including the date on which the liquidation of the society commenced—

- (a) be a member of the committee of any other co-operative society that is known by a prohibited name;
- (b) in any way (directly or indirectly) be concerned or take part in the promotion, formation or management of any such society; or
- (c) in any way (directly or indirectly) be concerned or take part in the carrying on of a business carried on (otherwise than by a co-operative society) under a prohibited name.

(4) A person who contravenes this paragraph commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(5) A reference in this paragraph, in relation to a time, to a name by which a cooperative society is known is a reference to the name of the society at that time or to any name under which the society carried on business at that time.

(6) For the purposes of this paragraph, a co-operative society is in insolvent liquidation if, at the time the liquidation commences, the society's assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation.

## **12. Circumstances in which persons are personally liable for debts of co-operative society**

(1) A person is personally responsible for all the relevant debts of a co-operative society if at any time the person—

- (a) is involved in the management of the society in contravention of paragraph 11; or
- (b) while is involved in the management of the society-acts or is willing to act on instructions given (without the leave of the High Court) by a person whom the person knows to be subject to a person to whom subparagraph (2) applies.

(2) This subparagraph (1) applies to the following persons:

- (a) a person who is involved in the management of the company in contravention of paragraph 11;
- (b) a person who is subject to a disqualification order or disqualification undertaking, or to foreign restrictions, under Part X of the Companies Act (Cap. 486), or
- (c) a person who is subject to any other restriction or disability of a kind prescribed by regulations made for the purpose of this section.

(3) If, because of subparagraph (1), a person is personally responsible for the relevant debts of a co-operative society, the person is jointly and severally liable for those debts with the society and any other person who, whether under this paragraph or otherwise, is so liable.

(4) For the purposes of this paragraph, the relevant debts of a co-operative society are—

- (a) in relation to a person who is personally responsible under clause (a) of subparagraph (1)—such debts and other liabilities of the society

as are incurred at a time when the person was involved in the management of the society; and

- (b) in relation to a person who is personally responsible under clause (b) of that subparagraph—such debts and other liabilities of the society as are incurred at a time when the person was acting or was willing to act on instructions given as referred to in that paragraph.

(5) For the purposes of this paragraph, a person is involved in the management of a co-operative society if the person—

- (a) is a member of the committee of the society; or
- (b) is concerned, whether directly or indirectly, or takes part, in the management of the society.

(6) For the purposes of this paragraph, a person who, as a person involved in the management of a co-operative society, has at any time acted on instructions given (without the leave of the High Court) by another person whom the person knew at that time to be a person to whom subparagraph (2) applies is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

### **13. Prosecution of delinquent officers and members of co-operative society in liquidation by the High Court**

(1) This paragraph applies to a co-operative society that is being liquidated by the High Court.

(2) If the High Court concludes that a person who was at the relevant time an officer or past officer, or member, of the society may have committed an offence in relation to the society for which the person is criminally liable, the High Court may (either on the application of a person interested in the liquidation or on its own initiative) direct the liquidator to report the matter to the Commissioner.

(3) If, while the society is being liquidated by the High Court, it appears to the liquidator that a person who, at the relevant time was an officer or past officer, or a member, of the society, may have committed an offence in relation to the society for which the person is criminally liable, the liquidator shall report the matter to the Commissioner.

(4) In making a report under subparagraph (2) or (3), the liquidator shall provide the Commissioner with—

- (a) such information; and
- (b) such access to and facilities for inspecting and taking copies of documents,

as the Commissioner reasonably requires and the liquidator is able to reasonably give or provide.

(5) As soon as practicable after receiving a report under subparagraph (2) or (3), the Commissioner shall forward the report to the Attorney-General for further investigation, together with —

- (a) the information and documents (if any) given or provided in accordance with subparagraph (4); and
- (b) such observations on the report, information and documents as the Official Receiver considers relevant.

(6) On receiving a report under subparagraph (5), the Attorney-General shall investigate the matter concerned and such other matters relating to the affairs of the society as appear to the Attorney-General to require investigation.

(7) For the purpose of an investigation under subparagraph (6), the Attorney-General may exercise any of the powers conferred on inspectors by Part XXX of the Companies Act (Cap. 486) as if the society were a company.

#### 14. Obligations arising under paragraph 13

(1) For the purpose of an investigation by the Attorney-General under paragraph 13(6), a person has the same obligation to produce documents or give information, or otherwise assist the Attorney-General, as the person would have in relation to an inspector appointed under Part XXX of the Companies Act (Cap. 486).

(2) An answer given by a person to a question put to the person in exercise of the powers conferred by paragraph 13(7) may be used in evidence against the person.

(3) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

- (a) evidence relating to the answer may not be adduced; and
- (b) questions relating to it may not be asked, by or on behalf of the prosecution,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(4) This paragraph applies to all offences other than an offence under sections 107 and 114 of the Penal Code (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(5) If criminal proceedings are begun by the Director of Public Prosecutions following an investigation under paragraph 13(6), the liquidator and every officer and agent, and past officer and agent, of the society (other than the defendant) shall provide the Director of Public Prosecutions and the Attorney-General with such assistance in connection with the prosecution as the liquidator, officer or agent or past officer or agent is reasonably able to give.

(6) In subparagraph (5), "agent" includes any bank or advocate of the society and any person employed by the society as auditor, whether that person is or is not an officer of the society.

(7) If a person fails to provide assistance as required by subparagraph (5), the High Court may, on the application of the Director of Public Prosecutions or the Attorney-General, make an order directing the person to comply with that subparagraph.

(8) If the application is made with respect to a liquidator, the High Court may also make an order directing the costs to be home by the liquidator personally.

(9) However, the High Court may not make such an order if it is established that the failure to comply was due to the liquidator having insufficient assets of the society to enable the liquidator to provide the required assistance.

