

THE COOPERATIVE SOCIETIES ACT, 2013

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SCHEDULES

THE UNITED REPUBLIC OF TANZANIA



NO. 5 OF 2013

I ASSENT,

A handwritten signature in red ink, reading 'Jakaya Kikwete', written over a dotted line.

President

[20 October, 2013]

An Act to provide for the establishment of the Tanzania Cooperative Development Commission; for the formation, constitution, registration and operation of cooperative societies; for promotion of cooperative development and for other matters incidental to or connected thereto.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and
commencement

1. This Act may be cited as the Cooperative Societies Act, 2013 and shall come into operation on such date as the Minister may, by notice published in the *Gazette* appoint.

Interpretation

2. In this Act, unless the context otherwise

requires-

“agricultural inputs” means resources that are used in farm production, such as seeds, fertilizers, pesticides, veterinary drugs, equipment, animal feed, energy and processing plants or machineries;

“agricultural produce” means the produce of farms, gardens, orchards, greenhouses, forests, poultry, beekeeping, dairy and fishing and includes animal and fish products;

“agricultural society” means a society whose principal object is the business of supplying inputs for crop production, purchasing, processing, marketing and distribution of agricultural produce;

“annual net balance” means such portion of the net surplus for any year as remains after deductions have been made from it in respect of the reserve fund, the share transfer fund and such other appropriations as it may be necessary or desirable to make for the proper conduct of the society's business, and after a dividend has been paid on the share capital;

“annual net surplus” means such portion of the total income received or accrued during any year, as remains after deductions have been made from it in respect of all recurrent expenditure incurred during that year and after adequate provisions have been made for bad debts, depreciation, taxation and losses;

“Assistant Registrar” means an Assistant Registrar appointed under section 12 to perform the functions of the Commission;

“bank” means a cooperative bank registered at the secondary or tertiary society level;

“Bank” means the Bank of Tanzania established under the Bank of Tanzania Act;

“basic units” means localities within the area of operation of a society from which delegates to the general meeting can be drawn;

- “Board” means the governing body of a registered society to whom the management of its affairs is entrusted;
- “bonus” means such portion of the annual net balance as may be distributed to members in consideration and on the basis of their patronage of the society's business or their participation in such business;
- “Chairperson” means a chairperson of the Commission appointed under section 7;
- “Commission” means the Tanzania Cooperative Development Commission established under section 6;
- “Commissioner” means a Chairman and other members of the Commission;
- Cap. 212 “company” means a company registered under the Companies Act;
- “cooperative financial institution” means a society registered to render financial and insurance service;
- “cooperative inspector” means a cooperative officer employed by the Commission to perform regulatory functions of the Commission;
- “cooperative officer” means a public officer entrusted with matters pertaining to the development of cooperatives;
- “cooperative promotion officer” means a cooperative officer employed as such to perform promotion functions of the Commission;
- “cooperative society” means a society registered under this Act and includes a primary society, a secondary society, apex and the federation;
- Cap. 185 “Corporation” means the Cooperative Audit and Supervision Corporation established under the Cooperative Audit and Supervision Act;
- “delegate” means:
- (a) in the case of a primary society in which the general meeting of members is substituted by a meeting of delegates, the representative of a specified number of individual members who is

- elected or appointed to attend and vote at a meeting of delegates; and
- (b) in the case of a society which is itself a member of another society, the representative of the former elected or appointed to attend and vote at a meeting of the latter society;
- “Deputy Registrar” means the Deputy Registrar appointed under section 11(1) of this Act;
- “dividend” means the sum paid on the share capital invested in a society;
- “economic viability of a society” means the ability of a society to conduct its affairs as provided for in the by-laws made under this Act;
- “federation” means a cooperative society whose members are primary and secondary cooperative societies;
- “financial cooperative society” means a non bank financial institution whose primary activity is to furnish secured or unsecured loans to households, small holder producers and small and micro-enterprises of rural and urban sectors;
- “fund” means the Inspection Fund established under section 74 of this Act;
- “industrial society” means a registered society whose principal objectives are manufacturing or making or servicing or assembling of industrial goods and whose members are respectively manufacturers, craftsmen, artisans, industrial workers and apprentices;
- “joint enterprise” means an association of two or more societies which join together for a purpose of operating an economic enterprise;
- “member” includes a person or a registered society joining in the application for the registration of a society, and a person or a registered society admitted to membership after registration in accordance with the by-laws and rules made under this Act;

- “Minister” means the Minister responsible for cooperatives;
- “officer” means any officer of a society and includes chairman, vice-chairman, secretary, treasurer, member of the Board, general manager, chief accountant, or any other person empowered under the regulations or by-laws made under this Act to act on behalf of registered society;
- “pre-cooperative societies” means organizations of an economic and social nature set up voluntarily by individuals having common interests and working together as a society;
- “primary society” means a registered society whose members are individual persons or an association of such individual persons and any cooperative body other than a body registered under the Companies Act;
- “probationary societies” means the cooperative society which has not fulfilled the compliance of registration as specified under section 36 of this Act;
- “promotion” means provision of services to the general public and cooperative members that contribute or lead to the formation, growth and prosperity of cooperative societies;
- “prosecutor” means a government officer entrusted with duties of prosecuting cases originating from cooperative societies;
- “register” means the register of cooperative societies established by the Registrar in terms of this Act;
- “registered society” means a cooperative society registered or deemed to have been registered under this Act and includes a probationary society;
- “Registrar” means a person appointed under section 10 to perform functions of the Commission in terms of this Act;
- “regulatory function” means functions geared towards ensuring compliance to the laid down laws,

rules, regulations, guidelines and includes registration, deregistration, inspection and supervision of cooperatives;

“savings and credit cooperative society” or in its acronym “SACCOS” means a registered society whose principal objects are to encourage thrift among its members and to create a source of credit to its members;

“school society” means a society the membership of which is restricted to the pupils of a school;

“secondary society” means a registered society whose membership is open only to primary societies which are its members;

“specialized skills” means an expertise possessed by any person in such particular field as may be described in the regulations.

PART II

THE OBJECTS OF COOPERATIVE SOCIETIES

Objects of
cooperative
societies

3.-(1) The objects of the cooperative societies shall be based in the promotion of the economic and social interests of its members by means of common undertaking, based upon mutual aid and which conforms to the cooperative principles of a society which is established for the purpose of facilitating operations of societies.

(2) Except as otherwise provided for in this Act, cooperative principles and methods used in the operation and administration of a society shall be-

- (a) accept the responsibilities of membership, without gender, social, racial, political or religious discrimination;
- (b) democratic organizations controlled by their members who actively participate in setting their policies and making decisions, men and women serving as elected representatives and accountable to the membership;

- (c) members contribute equitably to, and democratically control the capital of their cooperative;
- (d) autonomous self help organizations controlled by their members, if they enter into agreement with other organizations, including government, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy;
- (e) the organizations which provide education and training for their members, elected representatives, managers and employees so that they can contribute effectively to the development of their cooperatives;
- (f) organizations which inform the general public, particularly young people and opinion leaders about the nature and benefits of cooperation;
- (g) organizations which serve their members most effectively and strengthen the cooperative movement by working through local, national and international structures;
- (h) organizations which work for the sustainable development of their communities through policies approved by their members.

Obligation of Government to cooperative societies

4. The Government shall provide and create conducive social, economic and legal environment for the development and prosperity of cooperative societies.

Minister to encourage cooperative development

5.-(1) The Minister shall, upon consultation with the Commission, take such relevant measures for enhancing development of self-sustaining cooperative movement.

(2) For the purposes of fostering cooperative development, the Minister shall have a duty to-

- (a) facilitate the creation of a conducive environment through the formulation and

- review of policy and regulatory frameworks for cooperative development;
- (b) ensure that the Commission and the Board perform their functions in accordance with the provisions of this Act;
 - (c) encourage educational institutions to teach, conduct research, offer consultancy services and perform other relevant duties pertaining to cooperative development in the country; and
 - (d) perform any other duty necessary for the attainment of the objectives of this Act.

PART III

THE TANZANIA COOPERATIVES DEVELOPMENT COMMISSION

Establishment
of the
Commission

6.-(1) There is established a Commission to be known as the Tanzania Cooperatives Development Commission.

(2) The Commission established under subsection (1), shall be an independent department of the Government under the Ministry responsible for cooperative development.

(3) The Commission shall be a body corporate with perpetual succession and a common seal and shall in its own corporate name, be capable of-

- (a) suing and be sued;
- (b) acquiring and disposing movable or immovable property;
- (c) borrowing money and entering into contracts or other transactions; and
- (d) do all such other things for proper performance of its duties, and discharge its functions under this Act.

4. Notwithstanding the preceding provisions of this section-

- (a) suit or intention to institute a suit or matter for or against the Commission; and

- (b) the Attorney General shall have the right to intervene in any suit or matter instituted by or against the Commission.

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(5) Where the Attorney General intervenes in any suit or matter in pursuance of subsection (4), the provisions of the Government Proceedings Act shall apply in relation to the proceedings of that suit or matter as if it had been instituted by or against the Government.

Composition
of Commission

7.-(1) The Commission shall consist of-

- (a) a Chairperson, who shall be appointed by the President;
- (b) ten other members to be appointed by the Minister from public and private sectors as follows-
 - (i) one member representing higher learning institutions providing cooperative education or training;
 - (ii) one member of the rank of Senior State Attorney or above nominated by the Attorney General amongst state attorneys;
 - (iii) five members of whom, one member shall be nominated from financial cooperative societies and four members from an umbrella organisations of non financial cooperative societies;
 - (iv) one member nominated by the Minister responsible for local government authorities;
 - (v) one member from the Ministry responsible for cooperatives; and
 - (vi) one member who shall be nominated from amongst associations of private sector institutions engaged in cooperative matters.

(2) The appointment made by the Minister under subsection (1) shall take into consideration the names proposed by the umbrella organisation.

(3) A Commissioner shall, at all times, while discharging his duties, act honestly, diligently and in the best interests of the Commission.

(4) The Registrar shall be the secretary to the Commission.

(5) The First Schedule to this Act shall have effect regarding the proceedings and other matters of the Commission.

(6) The Minister may amend or vary the provisions of the First Schedule.

(7) In nominating members of the Commission, the Minister shall-

- (a) ensure that the nominated person has adequate knowledge and competence of his respective profession;
- (b) nominate a principal officer; and
- (c) take into account gender balance.

Functions of the
Commission

8.-(1) The functions of the Commission shall be generally to regulate and promote development of the cooperative sector.

(2) Without prejudice to the generality of subsection (1), the functions of the Commission shall:

(a) for the purposes of regulating cooperative societies -

- (i) register and deregister cooperative societies;
- (ii) inspect and supervise cooperative societies;
- (iii) keep and maintain the register of cooperative societies;
- (iv) ensure publication of the names of registered or de-registered society in the *Gazette*;

- (v) determine disputes and complaints arising from cooperative societies;
 - (vi) collaborate with Regional Administrative Secretaries on the implementation of regulatory functions of cooperative development;
 - (vii) supervise the performance of such other regulatory functions as may be required in accordance with the provisions of this Act;
- (b) for the purposes of promoting development of cooperative sector-
- (i) supervise, coordinate and collaborate with sectoral ministries, Local Government Authorities and such other stakeholders undertaking cooperative promotional responsibilities;
 - (ii) encourage and promote the development of viable and sustainable cooperative societies;
 - (iii) raise awareness to the general public, youth and other groups on the nature and benefits of cooperative societies;
 - (iv) facilitate the formation of cooperative societies which are accountable to their members and communities;
 - (v) provide education and training to members and staff of cooperative societies pertaining to cooperative management;
 - (vi) advise the Minister on all matters relating to cooperative development and management;
 - (vii) provide services designed to assist in the formation, management, organisation and operation of societies;
 - (viii) coordinate the economic plans of cooperative societies for the incorporation in the national plan;
 - (ix) implement or cause to be implemented policies on the cooperative development;

- (x) create conducive environment for the cooperative movement networking in the areas of production, processing, marketing, financing and investment;
- (xi) maintain and disseminate or cause to be disseminated the information relating to cooperatives and cooperative development to stakeholders;
- (xii) conduct research as may be necessary for the development of cooperative societies;
- (xiii) advise primary societies, secondary societies or other categories of cooperative societies on the formation of federation of cooperative societies; and
- (xiv) ensure that the federation formed provides, organizes and supervises effective centralized services for the members.

Powers of the
Commission

9. The Commission shall-

- (a) establish such number of divisions, sections, units and offices as it may consider necessary for proper discharge of its functions; and
- (b) appoint agents or employ such number of staff to manage, administer or perform the functions of the Commission under this Act.

Registrar

10.-(1) There shall be the Registrar of Cooperative Societies who shall be appointed by the President.

(2) A person shall be eligible for appointment as a Registrar if that person-

- (a) has held a senior position in the public service for at least seven years;

- (b) has a proven knowledge and experience in matters relating to cooperatives; and
 - (c) is of high proven integrity and probity.
- (3) The Registrar shall be the Chief Executive Officer of the Commission and shall subject to section 8, be the overall in charge of the operations of the Commission and shall be responsible for-
- (a) administration and management of the affairs of the Commission;
 - (b) management of the funds, property and business of the Commission;
 - (c) keeping custody of the seal of the Commission or such other device as may be approved by the Commission;
 - (d) maintaining records of all activities of the Commission;
 - (e) establishing, keeping and maintaining the register of cooperative societies;
 - (f) implementing all resolutions of the Commission; and
 - (g) performing any other functions as may be directed by the Commission.
- (4) The Registrar shall be the custodian of the seal of the Commission.

Deputy
Registrars

11.-(1) There shall be the Deputy Registrar in charge of regulatory functions and the Deputy Registrar in charge of promotional functions to be appointed by the President.

(2) A person shall be eligible for appointment as Deputy Registrar if that person-

- (a) has held a senior position in the public service for at least five years;
 - (b) has a proven knowledge and experience in matters relating to cooperatives and administration; and
 - (c) is of high integrity and probity.
- (3) A Deputy Registrar appointed under subsection (1) shall-

- (a) in the case of regulatory functions, undertake the functions stipulated under section 8(2)(a); and
 - (b) in the case of promotional functions, undertake the functions stipulated under section 8(2)(b).
- (4) The Deputy Registrars shall, in the performance of his functions under this Act, report to the Registrar.

Appointment of
Assistant
Registrars

12.-(1) The Commission, shall appoint such number of Assistant Registrars from amongst qualified Cooperative Officers as may be necessary for efficient discharge of the functions of the Commission.

(2) An Assistant Registrar appointed in accordance with the requirement of subsection (1), shall carry out such duties as may be assigned to him by the Deputy Registrar in charge of regulatory functions, or as the case may be, the Registrar.

Staff of the
Commission

13.-(1) The Commission may appoint or employ such number of staff in various categories as the Commission considers necessary for the discharge of its functions under this Act.

(2) The staff of the Commission shall, subject to terms and conditions of services, receive such salaries, allowances or benefits as may be prescribed by the Commission from time to time.

Cooperative
development
office under
sectoral
ministries,
regional and
local
government
authorities

14.-(1) Every sectoral ministry, regional secretariat and local government authority shall facilitate the establishment of a cooperative development office in their respective areas and shall ensure that such offices are allocated with resources for the effective discharge of their functions under this Act.

(2) The Commission may, for the purpose of facilitating the performance of functions under subsection (1), issue general or specific directives to the cooperative

officers referred to under this section, and the officers shall comply with such directives.

(3) The cooperative officers employed or appointed as such under sectoral ministries, regional secretariat or local government authorities shall, when executing their functions specified under section 8(2)(b), be deemed to be performing functions of the Commission.

Cooperative
development
plan

15.-(1) For the purpose of the promotion of cooperative societies, every sectoral ministry and local government authority shall formulate cooperative development plan in accordance with the guidelines issued by the Commission.

(2) The Commission shall develop mechanism for monitoring the implementation of the cooperative development plans prepared in accordance with subsection (1).

Commission may
call for
information

16.-(1) The Commission may, in writing, require any person who undertakes or engages in any activity affecting or relating to cooperative matters to furnish to the Commission any information as the Commission may specify.

(2) A person who refuses or fails to furnish information as required under subsection (1) commits an offence under this Act.

Powers of
Minister to give
directives and
require
information

17.-(1) The Minister may issue to the Commission general or specific directives relating to cooperative development.

(2) The Commission shall, upon receipt of directives of the Minister, furnish to him returns, statistics, accounts, documentations or information with respect to the performance of any of its functions or exercising of its duties under this Act.

Commission to
maintain
collaboration

18. For the purposes of better performance of its functions, the Commission shall establish and maintain a system of collaboration, consultation and co-operation with other institutions or persons, who are within or outside the United Republic, as the Commission considers necessary for the effective and efficient discharge of its functions.

PART IV FORMATION AND ORGANIZATION OF COOPERATIVE SOCIETIES

Structure of the
cooperative
societies

19.-(1) The structure of cooperatives shall be made up of primary societies at the grass root level and the federation at the top level.

(2) Subject to the wishes of members constituting a particular society, the structure may be comprised of middle level societies and secondary societies.

Formation of
primary societies

20.-(1) A primary society may be formed by-

- (a) twenty to thirty persons for agricultural societies;
- (b) twenty or more persons for savings and credit cooperative societies;
- (c) ten or more persons for specialized skills societies; or
- (d) ten or more persons for other types of cooperative societies.

(2) A person may not be a member of a primary society unless he has the following qualifications—

- (a) that he has attained the minimum age of eighteen years and is of sound mind;
- (b) that he undertakes a trade or occupation relevant to the society's object as defined in the by-laws;
- (c) that he has a common need which the society seeks to satisfy;
- (d) that he is capable of paying fees and acquiring shares.

(3) Notwithstanding the provisions of sub-section (2), a person who has the minimum age of fifteen years referred to as a minor may become a member of agricultural cooperative society:

Provided that, such a person shall not be eligible to be a member of the Board unless he has attained the age of eighteen.

(4) A person who has not attained the age of fifteen but is attending school may be a member of a school society established for the school.

Societies may
affiliate

21.-(1) Subject to the provisions of this Act, primary societies may form secondary societies and secondary societies may form a federation.

(2) Where a primary society is unable to join into a secondary society due to its nature and desire of its members, it may be allowed to become a member of a federation.

(3) A financial cooperative society may be formed by savings and credit societies and other types of cooperative societies.

Registrar may
advise societies

22. Where the Registrar considers that a secondary society in relation to any area is economically viable, he may advise any primary society or secondary society or category of cooperative societies operating within that area to join the secondary society by notice in writing served on the society or category of cooperative societies as the case may be.

Objects of
primary society

23. The objects of a primary society shall be-

- (a) to strive to raise the standard of living of its members;
- (b) to facilitate the operations of the individual members;

- (c) to provide services to its members, including supplying agricultural inputs, collecting, processing and marketing of the products of its members;
- (d) to provide relevant information of its undertakings; and
- (e) to do any other thing which in its opinion is connected with or is ancillary to the objects set out in paragraphs (a) to (c).

Objects of
secondary
societies

- 24.** The objects of secondary societies shall be-
- (a) to facilitate the operation of member primary societies;
 - (b) to provide services to primary societies as will be provided for in the by-laws of the secondary societies;
 - (c) to collect, process and sell products of member societies;
 - (d) to provide consultancy services to member societies;
 - (e) to provide relevant information of its undertakings; and
 - (f) to do any other thing which in its opinion is connected with or is ancillary to objects set out in paragraphs (c) to (d).

Objects of
federation

25.-(1) Where the federation is formed and registered, shall provide, organize and supervise effective centralized services for the member societies and for cooperative education and training and such other services as may be necessary or expedient for its members.

(2) Without prejudice to the generality of subsection (1), the federation may perform any of the following functions-

- (a) render services designed to ensure efficiency and uniformity in the business of its member societies;

- (b) print, publish and circulate any newspaper or other publication designed to foster or increase interest in cooperative enterprises, principles and practices;
- (c) provide relevant information of its undertakings;
- (d) coordinate the economic plans of the member societies and to forward them to the Commission for the incorporation in the national plan;
- (e) carry on, encourage and assist educational and advisory work relating to cooperative enterprises, and without limiting the generality of the foregoing, to advise the Commission on cooperative education and operating methods, and for that purpose may prepare and provide correspondence courses regarding cooperative principles and operating methods and may disseminate information on cooperative development, principles and practices;
- (f) represent its member societies in national and international *fora* relating to cooperative matters.
- (g) do any other thing which in its opinion is connected with or is ancillary to the above enumerated objects.

Societies may form joint enterprise or enter into joint ventures

26.-(1) Where it is necessary or desirable for the efficient operation of a business or economic enterprise that need to be operated by two or more societies, such societies may form a joint enterprise, subject to the approval and such limitations as the Registrar may generally impose, for the purpose of operating and carrying on such a business and the Registrar may register such a body under this Act.

(2) The societies which form a joint enterprise as provided for under subsection (1), may form a joint Board for the purpose of managing that joint enterprise:

Provided that, such an association shall have no right of separate representation either in the secondary society or the federation.

(3) A cooperative society may join with private or public company to form a joint venture:

Provided that, the Registrar shall, in writing, signify the approval of the joint venture.

Types of societies

27. The Registrar may register the following types of societies-

- (a) agricultural cooperatives which are designed to deal with crop production, collecting, processing, marketing, distribution, and any such activities as may be provided for in the Regulations and by-laws;
- (b) cooperative financial institutions;
- (c) consumer cooperatives designed to deal with wholesale and retail business amongst members;
- (d) industrial cooperatives for production, manufacturing and sale of goods;
- (e) housing cooperatives designed to deal with building, construction and housing programmes for members;
- (f) livestock cooperative societies designed to deal with the needs of members in animal husbandry, livestock keeping and dairy farming;
- (g) fisheries cooperative societies designed to deal with fishing, processing and marketing of fish and other sea products;
- (h) producers' cooperatives for agricultural, forestry or other natural products;
- (i) mining cooperatives designed to deal with mining operations and mineral marketing; and
- (j) such other cooperatives as may be established.

Public education and awareness
in formation of cooperatives

28. For the purpose of facilitating formation of cooperative societies, cooperative officers shall provide public education and awareness on the-

- (a) significance of cooperative societies;
- (b) benefits of cooperative societies to individual members and the community as a whole;
- (c) types of cooperative societies and the procedures for the formation of cooperatives;
- (d) sustainability and management of cooperatives societies;
- (e) operations and the role of cooperative societies in community development; and
- (f) such other matters relevant for the formation and development of cooperative societies.

PART V

REGISTRATION OF COOPERATIVE SOCIETIES

Conditions for registration of
societies

29.-(1) No society shall be registered under this Act unless it consists of at least the minimum number of persons each of whom is qualified for membership as provided for under section 20 of this Act.

(2) A secondary society that intend to deal with agriculture and marketing or financial services shall not be registered under this Act unless it has twenty members as registered societies.

(3) Notwithstanding the provision of subsection (2), secondary society for specialized cooperative society may be registered with five members as registered societies.

(4) A federation shall not be registered under this Act unless it has ten members who are registered societies.

(5) A savings and credit cooperative society shall not be registered under this Act unless its paid-up shares or minimum capital meets the amount prescribed by the Minister in the Regulations.

(6) Notwithstanding the provisions of this Act, the regulations and operation of Savings and Credit

Cooperative Societies shall be subject to the relevant financial laws.

(7) For the purpose of this section, "specialized cooperative society" means a registered society whose membership consists of specialized skills.

Application for registration

30.-(1) Application for registration shall be made to the Registrar in the prescribed form and shall be accompanied by-

- (a) four copies of the proposed by-laws of the society, signed by the applicants;
- (b) a report of a feasibility study or project write-up indicating the viability of the society; and
- (c) such other information in regard to the society as the Registrar may require.

(2) The application form shall-

- (a) if the application is for the primary society, be signed by such number of persons who are qualified in accordance with the requirements of section 20.
- (b) if the application is for registration of secondary society other than secondary society for specialized cooperative society, be signed by authorized persons of at least twenty registered primary societies;
- (c) if the application is for federation registration, be signed by at least ten registered secondary societies or specialized primary societies.

Consideration of application

31.-(1) The Registrar shall after receiving applications under section 30 consider the contents of application for registration within sixty days from the date of the application.

(2) For the purposes of subsection (1), the Registrar may-

- (a) register the society and issue a certificate of registration;
- (b) require further information from applicants prior to registration;

- (c) refuse the application and inform the applicants in writing stating the reasons for refusal; or
- (d) defer registration of the society pending compliance with the directions or requirements.

(3) The Registrar may prior to effecting registration to any society or its by-laws, require the society to amend the by-laws so as to conform with such directions as he may give in that behalf.

(4) The society shall upon registration pay such registration fees as may be prescribed by the Commission.

(5) No society shall be registered unless the Registrar is satisfied that-

- (a) the volume of business from members of the society is sufficient to cover its costs;
- (b) proper provision has been made for the financing of the society.

Refusal of
registration

32.-(1) The Registrar may, if he is satisfied that an applicant has failed to meet the prescribed requirements for registration, refuse to register such applicant.

(2) Any person who is aggrieved by the decision of the Registrar in terms of the provisions under subsection (1) shall, within sixty days from the date of notification of the decision of the Registrar, appeal to the Minister.

(3) The Minister shall, within thirty days from the date of appeal, make a decision.

Certificate of
registration

33. Where the Registrar effects registration, he shall issue a certificate of registration to the society, together, with a copy of the by-laws certified by him as having been approved and registered.

Evidence of
registration

34. A certificate of registration signed by the Registrar shall be conclusive evidence that the society mentioned in that certificate is duly registered unless it is proved that the registration of the society is cancelled.

Societies to be
body corporate

35.-(1) The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to own property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes laid down in its by-laws.

(2) All records or papers of the society, and seal shall not be removed from the premises of the society except in accordance with the provisions of this Act.

(3) The Registrar shall after registration of the societies, prepare and submit reports of registered societies to the Commission.

Probationary
societies

36.-(1) Where the Registrar is unable to register a society by reason of non-compliance with any provision of this Act, Regulations or any direction given by him, but is satisfied that measures can be taken by the applicant to comply with the provision or direction given, he may by notice in writing-

- (a) defer the registration of that society pending compliance with such provision or direction;
- (b) transmit the notice of deferment to the persons by whom or on whose behalf application of registration is made.

(2) A notice of deferment shall, subject to the provisions of this section and any condition specified in that notice, entitle the society in respect of which it is issued to operate as a registered society.

(3) A society entitled to operate as a registered society under sub-section (2), shall be termed as probationary society and shall, while so entitled to operate, be deemed to be a body corporate with perpetual

succession and 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:

Provided that, no probationary society shall be entitled to operate as such society for a period exceeding two years and if after that period the Registrar is satisfied that a society registered under this section has failed to comply with any provision of this Act or any direction given under subsection (1), he shall cancel a notice of deferment of that probationary society.

(4) Where a probationary society is duly registered under Act, its certificate of registration shall supersede its notice of deferment which shall thereafter cease to have effect and the society shall be deemed for all purposes to have been registered from the date on which the notice of deferment in respect thereof was issued by the Registrar.

Cancellation of
notice of
deferment

37.-(1) The Registrar may, cancel a notice of deferment by notice in writing to be addressed to the probationary society concerned and such notice of cancellation shall from the date thereof, operate as a refusal to register the society for the purpose of section 32:

Provided that, such cancellation shall not affect the validity of any transaction entered into by or with the society while notice of deferment was in force.

(2) Where the notice of deferment of a probationary society is cancelled under subsection (1) of this section, the Registrar may appoint a competent person to be a liquidator of the society.

(3) The provisions of sections 27, 30, 33, 41(4), 52(2) and (3), 58, 65, 77, 94, 97, 98 and 100 shall not apply to a probationary Society.

(4) A probationary society shall cause the fact that it is probationary society to be stated in legible

roman letters in all bill heads, letter papers, notices, advertisements and other official publications of the society and on a signboard in a conspicuous position outside any premises in which it operates.

(5) The Registrar may, where there is a reasonable cause to believe that a probationary society has contravened the provision of subsection 4, upon notice to that effect and by order in writing, cancel the registration of that society and such cancellation shall be published in the *Gazette*.

Pre-cooperative
societies

38.-(1) Pre-cooperative societies shall be formed by a declaration in writing during a constituent meeting of at least five persons, which shall be submitted to the Registrar.

(2) Pre-cooperative societies shall be the only representatives to act for and on behalf of their members who shall have exclusive rights to their services.

(3) Pre-cooperative societies shall adopt their respective by-laws, which shall provide for-

- (a) objects, main activities, area of jurisdiction, name, head office and duration of the societies;
- (b) duties of its officials, duration of their term of office and their mode of appointment;
- (c) conditions for the admission and withdrawal of members;
- (d) the organization and functioning of the societies, in particular the appointment of officials, how decisions on loan applications are taken, investment decision, amendment of by-laws, the dissolution of the societies or its change of legal status;
- (e) the extent of members' activities with the societies; and
- (f) the liability of a member in respect of the debts of the societies and the basis on which it is calculated.

Appointment for
pre-cooperative
groups

39.-(1) Each pre-cooperative society shall appoint a delegate in charge to represent it in all civil matters within the limits of the powers conferred on him by the regulations and discussions of the said societies.

(2) Officials of each pre-cooperative society shall keep simplified accounts to permit the periodic assessment of the reserves of the said society and justify any changes, except that the intervals between such assessments shall not exceed two years.

(3) Officials of each pre-cooperative society shall keep a register of the members and accounts of individual contributions to the reserves of the said society.

Recognition and
registration of
pre-cooperative
societies

40.-(1) The Registrar shall upon being satisfied of the fulfillment of conditions under section 39, issue a letter of recognition of the cooperative society formation and register the pre-cooperative society for a term not exceeding three years.

(2) A pre-cooperative society may become a cooperative society after fulfilling conditions of registration of a cooperative society and if the pre-cooperative society fails to fulfill conditions of registration within three years, the letter of recognition shall be cancelled.

(3) For the purpose of this Act, Savings And Credit Associations (SACAS) may be recognized as pre-cooperative society.

PART VI RIGHTS AND LIABILITIES OF MEMBERS

Restriction
regarding members
and societies
liabilities

41.-(1) A person shall not exercise the rights of a member unless he has paid fifty percent or more of the required shares, entrance fees and any other dues.

(2) Without prejudice to the generality of subsection (1), the unpaid up shares shall be paid as may

be prescribed in the by-laws of the society within a period of twenty four months from the date of payment of the initial shares.

(3) No person or a registered society shall be a member of more than one registered society with similar objectives except with the sanction of the Registrar.

(4) The liability of a primary society, joint enterprises, secondary society and federation shall be limited.

Vote of
members

42. Every member of a registered society shall have one vote in the affairs of the society and shall be entitled to attend the general meeting of the society and to record his vote in regard to any matter for decision in such meeting:

Provided that, by-laws of a secondary society or a federation may provide for the attendance at general meetings of delegates from the member societies or other bodies who are members of such societies or federation and the member societies and such other bodies shall each be entitled to such number of votes and to vote in such manner, as may be prescribed by the Regulations and the by-laws of such societies or federation.

Rights of minors

43.-(1) A society may receive money on share account, or on deposit account, from or for the benefit of a minor, and it shall be lawful for the society to pay such minor dividend or interest which may become due on such shares or deposits.

(2) Any payment or deposit made by a minor or on behalf of a minor pursuant to subsection (1), may, together with any interest, be paid to the minor or the guardian of the minor.

(3) The receipt of any minor or guardian for money paid to him under this section shall be sufficient discharge of the liability of the society in respect of that money.

(4) The Minister may make Regulations prescribing the rights that a minor may have in a society.

Contract with
minors

44. Notwithstanding the provisions of this Act or of any other written law to the contrary, any person being a minor who has been admitted as a member of a society shall not be prevented from executing any instrument or giving any acquaintance necessary to be executed or given under this Act or the Regulations, and any contract entered into by such person with the society, whether as principal or as surety, shall be enforceable at law as against such person.

Restriction
regarding
members shares

45.-(1) No member other than a registered society shall hold more than one fifth of the share capital of any cooperative society.

(2) A member of a registered society shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless-

- (a) such a member has held such share or interest for not less than two years;
- (b) the transfer is made to the society or to a member of the society or to a person whose application for membership has been accepted by the Board; and
- (c) such a person has ceased to have the qualifications laid down in section 20(2)(b)-(d).

(3) No transfer of a share or other interest shall be valid and effective unless-

- (a) such transfer and the name of the transferee has been registered on the directions of the Board of the society;
- (b) the valuation thereof has been done.

(4) Notwithstanding the provisions of subsection (2) and (3), transfer of shares in Cooperative Financial Institutions shall be in accordance with the prescribed procedures.

Liability of
member

46.-(1) Except as provided for in subsection (2) of this section, the liability of a member, if any, unpaid on

the shares held by him, and his liability shall be known as liability limited by shares.

(2) Where in the by-laws of the society the amount of liability of a member is expressed to be greater than the nominal value of the share held by him and such amount is expressly stated that the liability of such a member shall extend to such greater amount, and his liability shall be known as liability by guarantee.

(3) Every registered cooperative society shall, after every three years of valuation done pursuant to section 45(3)(b), make re-valuation of its assets and shares, and such re-valuation shall be done by a valuer authorized by the Registrar.

(4) A registered cooperative society which, upon re-valuation, fails to retain value of share capital which is above twenty percent, the Board members of such society shall be held responsible for the fall of the value of share capital and shall automatically cease to be Board members of such society:

Provided that, a Board member shall not be held responsible for the fall of value of share capital caused by natural calamities.

Liability of past member

47. The liabilities of a past member for the debt of a registered society as they existed at the time when he ceased to be a member shall, notwithstanding the provisions of any written law to the contrary, continue for such period as the by-laws of the society shall provide from the date of his ceasing to be a member:

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

Liability of deceased member

48.-(1) The estate of a deceased member shall, notwithstanding the provisions of any written law to the contrary, be liable for a period of one year from the time

of his death for the debt of the registered society as they existed at the time of his death.

(2) Notwithstanding subsection (1), if the society is wound up immediately after a period of two years from the time of the death of a deceased member, no liability of such estate of the deceased or past member shall continue until the liquidation proceedings of the society are completed but such liability shall extend only to the debt of the society as at the time of his death or of his ceasing to be a member.

Membership of
company
Cap. 212

49.-(1) No company incorporated or registered under the Companies Act and no unincorporated or registered body of persons shall be entitled to become a member of a registered society except with the written permission of the Registrar and subject to such Regulations as may be made under this Act.

Cap. 212

(2) A company registered under the Companies Act may, by a special resolution as defined in that Act, and with the prior approval of the Registrar, determine to convert itself into a cooperative society.

Public education
and awareness on
rights and
liabilities of
members

50.-(1) The cooperative promotion officers shall, subject to this Act or any other written law and for the purpose of creating awareness to members, provide public education or awareness to members on their rights, obligations and liabilities as members of cooperative society.

(2) Procedures for providing public education may be prescribed in the Regulations.

PART VII

DUTIES AND PRIVILEGES OF REGISTERED SOCIETIES

(a) Duties of Registered Societies

Duties of
registered
societies

51. Every registered society shall-

(a) have a registered address to which all notices and communications shall be sent, and shall

send to the Registrar a notice of every change thereof;

- (b) keep a copy of this Act, Regulations and its by-laws open for perusal free of charge, at all reasonable times at the registered address of the society; and
- (c) maintain a register of its members in such manner as may be prescribed by the Regulations and shall enter therein any particulars as prescribed by the Regulations.

Power to make
by-laws

52.-(1) Every registered society shall have power to make by-laws for any such things as are necessary or desirable for the purpose for which such a society is established.

(2) Without prejudice to the generality of subsection (1), every registered society may make by-laws prescribing-

- (a) the name and registered address of the society;
- (b) the area of the operation of the society;
- (c) the objects for which the society is established;
- (d) the purpose to which the funds of the society may be applied, and the mode of their custody and investment;
- (e) the qualifications for membership of the society, the terms of admission of members, shares, the entrance fees and the mode of election;
- (f) the nature and extent of the liability of members;
- (g) the withdrawal and expulsion, suspension of members and the payment, if any to be made to such members;
- (h) the transfer of shares or interest of members;
- (i) the manner of conducting meetings of the society and the powers of such meetings;

- (j) the appointment, suspension, removal of members of the Board and officers, the powers and duties of the Board and officers;
- (k) the authorization of an officer to sign documents and to use the seal on behalf of the society.

(3) Where the objects of the registered society include the creation of funds to be lent to the members, additional by-laws shall be made in respect of-

- (a) conditions on which loans may be made to members which shall include-
 - (i) the rate of interest;
 - (ii) the maximum period which can be granted for the repayment of a loan;
 - (iii) the maximum amount which may be lent to a member;
 - (iv) the purpose of loans;
 - (v) security for payment;
 - (vi) the consequences of default in payment of any sum due on account of shares or deposits or loans and the consequences of failure to use a loan for the purpose for which it was granted;
- (b) the disposal of the annual net surplus;
- (c) other matters consonant with regulations pertaining to cooperative financial institutions.

(4) A by-law made under this section may empower a registered society to impose a fine upon a member of the society for the breach of the by-law of which the fine shall be recoverable by the society as a civil debt:

Provided that, no fine may be imposed under the by-laws, on any member unless-

- (a) the member on whom the fine is intended to be imposed has been served with a notice, in writing, of the intention to impose the fine; and

- (b) the member has failed to show cause within the time prescribed in the notice as to why the fine may not be imposed on him.

Amendment of
by-laws of a
registered society

53.-(1) Any registered society may, subject to the provisions of this section, amend its by-laws and submit the amendments to the Registrar for registration.

(2) The Registrar shall-

(a) if he is satisfied that the amendments of the by-laws are not contrary to this Act, register the amendments; or

(b) refuse to register the amendments and notify the society accordingly.

(3) Where the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendments certified and sealed by him, and such copy so certified and sealed shall be conclusive evidence of the fact that the amendments have been duly registered.

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

(5) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered under this Act.

(6) A society may, within two calendar months from the date of notification to it by the Registrar of his refusal to register an amendment of any by-laws, appeal to the Commission against that refusal.

By-laws of a
registered society
to bind members

54.-(1) Every by-laws of a registered society shall upon registration be binding upon the society and the members thereof to the same extent as if the by-laws were signed by each member of the society and contained covenant by each such member to observe the provisions of the by-laws.

(2) Any dispute arising out of the interpretation of a by-law of registered society shall be referred to the Registrar.

Accounts and
Audit

55.-(1) Every registered society shall, with the approval of the general meeting, employ an Internal Auditor or such number of Internal Auditors as are necessary for the efficient checking of the accounts of the society.

(2) Every registered society shall keep proper accounts and other records in relation thereto and shall within three months prepare in respect of every financial year a statement of accounts in a form which conforms to the best accounting standards.

(3) The accounts of every registered society except for cooperative banks shall be audited at least once in a year by the corporation or any such competent and registered auditor appointed by the general meeting and approved by the Registrar.

(4) The accounts of cooperative banks shall be audited at least once a year by registered auditors appointed by the general meeting and approved by the Registrar upon consultation with the Bank.

(5) No auditor shall submit audited accounts of a cooperative society to members at a general meeting unless the audited accounts have been submitted to the Registrar in such form as may be prescribed.

(6) 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 affairs of cooperative society have been conducted-

- (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the cooperative 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 objectives of cooperative society, By-laws and any other resolutions made by the society at a general meeting.

(7) The auditor's report referred to under subsections (3) and(4) shall include an examination of the balance sheet and related income statement and valuation of assets and liabilities of the registered society.

(8) As soon as the annual accounts of a registered society have been audited, the society shall cause to be submitted to the Registrar a copy of the audited balance sheet and statement of income and expenditure prepared in respect of that year together with any report made by the auditors thereon.

(9) Where the accounts of society have been audited and adopted by the general meeting of the society and approved in accordance with subsection (3) and (4), such accounts shall be conclusive, except as regards any error discovered therein within six months following the date of such approval and except as regards any allegation of fraud, and whenever any such error is discovered within that period the accounts shall forthwith be corrected with the approval of the Registrar and thereafter shall be conclusive.

(10) In the event a society fails to prepare a statement of accounts within a period of three months in respect of the business of its previous financial year, the members of the relevant Board of the society shall lose their membership of the Board and shall not be eligible for re-election to the Board for the next six years.

(11) The auditor appointed under this section shall have the right to-

(a) attend a general meeting of the cooperative society and shall present matters of concern in respect of affairs of the cooperative society;

- (b) receive all notices and communications relating to a general meeting of which one of its business is to receive and consider annual financial accounts; and
- (c) access, at all times, any accounting records, books or documents of the cooperative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of audit-
 - (i) summon any officer, agent or member of the cooperative society for the purpose of obtaining information on the transactions of the cooperative society or management of its affairs;
 - (ii) require the production of any book, document, cash or securities relating or belonging to the cooperative society by any officer, agent, trustee or member having custody of such book, document, cash or securities; or
 - (iii) demand such other information or explanation from any officer of the cooperative society as may be necessary for the performance of his duties.

(12) Notwithstanding the provisions of subsections (3) and (4), where the government by way of cash, guarantee or any other form has advanced financial assistance to a cooperative society and if it is in the public interest to do so, the Minister may, in consultation with the Commission, request the Controller and Auditor General to undertake auditing of such cooperative society.

(13) Without prejudice to the generality of subsections (1), (2), (3), (4) (7) and (8), the Board shall be held responsible for any loss occasioned to the society and every officer who is responsible for the loss commits

and offence and shall be liable on conviction to a fine not less than five million shillings and in addition, the court shall order that officer to compensate the loss so occasioned.

Registrar may require bank to produce information

56. Notwithstanding anything in any other written law, the Registrar may, if he considers necessary to do so require any bank-

- (a) to furnish any information regarding the transactions of any registered society with the bank;
- (b) to produce a copy showing the accounts of the society with the bank from the ledger kept by the bank;
- (c) to produce any cheques paid to the credit of the society or endorsed by the society.

Communication of defects in the operations of a registered Society

57.-(1) If any audit, inquiry or inspection made under this Act discloses any defect in the working of a registered society, the Registrar shall bring such defect to the notice of that society and if the society is affiliated to another registered society he shall bring such defect to the notice of that other society as well.

(2) The Registrar may, subject to subsection (1), make an order directing the society or its officers to take such action as shall be specified in the order and within such time as he may direct in that order as will remedy any defect disclosed in the audit, inquiry or inspection and the society shall forthwith comply without delay.

Returns to be made by registered societies

58.-(1) Every registered society shall submit an annual return to the Registrar.

(2) The Registrar may require a registered society to submit to him the returns of that society, and he may prescribe forms in which such returns are to be made.

(b) Privileges of Registered Societies

Defect in the by-laws not to render act of a registered society invalid

59. No act of a registered society or of any persons purporting to act on behalf of the society in good faith, shall be deemed to be invalid by reason only of the existence of any defect in the by-laws of the registered society or of a Board of such registered society or in the appointment or election of an officer of such a society on the ground that such officer was disqualified for his appointment.

Disposal of produce to or through a registered society

60.-(1) A registered society which one of its objectives is the disposal of any article which is the produce of agriculture or animal husbandry, shall provide in its by-laws-

- (a) that every such member who produces any such articles has entered into an implied contract to dispose of the whole or any specified amount, proportion or description thereof to or through the society; and
- (b) that any member who is proved or adjudged to be guilty of breach of by-laws shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the by-laws.

(2) A contract implied in the by-laws of a registered society under subsection (1)(a), shall create in favour of the registered society a first charge upon all articles as referred to under subsection (1) whether these articles have been produced or are about to be produced.

(3) In any legal proceedings arising out of a contract implied in the by-laws of a registered society under subsection (1)(a), it shall not be a defence that the contract is in restraint of trade.

(4) A member of a registered society shall be deemed not to have contravened the by-laws of the society which requires him to deliver any produce to the society if the failure to deliver such produce to the

society was due to the fact that he had, prior to becoming a member of the society, contracted to deliver the produce to some other person.

(5) Every person who applied for membership of a registered society shall, if required so to do, disclose in his application particulars of all contracts made by him for the delivery of any produce to any other person.

Creation of
charge in favour
of registered
societies

61.-(1) Subject to any prior claim of the government on the property of the debtor and to the lien or of claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon-

(a) any rent or outstanding demand payable to a registered society by any member or past member shall be a first charge on all produce of agriculture, animal husbandry, fisheries or any industry and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given to him by the society:

Provided that, nothing herein contained shall affect the claim of any *bona-fide* purchaser or transferee without notice;

(b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be first charge upon his interest in the immovable property of the society.

(2) No person shall transfer any property which is subject to a charge under subsection (1) except with the previous permission in writing of the cooperative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force, any transfer of property made in contravention of the provisions of subsection (2) shall be void.

Charges and set-off in respect of share or interest of members

62. A registered society shall have a charge upon the shares or interest in the capital and on the deposit of a member or past member and upon any dividend, bonus, or accumulated funds payable to or due from such member or past member to the society and may set off any sum credited or payable to a member or past member or towards payment of any such debt.

Shares or interest not liable to attachment

63. Subject to the provisions of section 62, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and the official receiver under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest.

Transfer of Interest on death of a member

64.-(1) On the death or declaration of permanent insanity of a member, a registered society may transfer the share or other interest of the member to the person nominated in accordance with the by-laws of the society or if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the member or may pay to such nominee, heir or legal representative as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the Regulations or by-laws:

Provided that:

- (a) in the case of a registered society with unlimited liability such nominee, heir, or legal representative, may require payment by

the society of the value of the shares or interest of the deceased member ascertained as aforesaid; and

- (b) in the case of a society with limited liability, the society may transfer the share or interest of the member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the Regulations and by-laws for membership of the society, or on his application within six months of the date of the death or declaration of permanent insanity to any person specified in the application who is so qualified.

(2) Any registered society shall pay other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfer and payment made by a registered society in accordance with the provisions of this section shall be valid and effective against any demand made upon the society by any other person.

(4) The Registrar shall be consulted for arbitration in case of misunderstanding between a member and a society under this section.

Proof of entries in societies' books

65.-(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be prescribed in the Regulations, be received in any suit or legal proceedings, civil or criminal as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extent as, the original entry is admissible.

(2) No officer of any registered society shall, in any legal proceedings to which the registered society is not a party be compelled to produce any of the society's

books the contents of which can be proved under subsection (1) or to appear as a witness to prove any matter, transaction or accounts therein recorded unless the court for special reasons so directs.

Exemption from compulsory registration of instruments relating to shares of registered society

66. Subject to the provisions of Part IX, nothing in any written law requiring registration of instruments relating to shares and debentures shall apply to-

- (a) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in relating to shares and whole or any part of immovable property;
- (b) any endorsement upon or transfer of any debentures issued by any such society; or
- (c) any debentures issued by such society and not creating, declaring, assigning, limiting or extinguishing any right, title, or interest to or an immovable property except in so far as instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures.

Exemption from duty or tax

67.-(1) Notwithstanding the provisions of any law to the contrary, the Minister responsible for finance may, by notice in the *Gazette*, in the case of any registered society or class of registered societies reduce or remit-

- (a) the duty, tax or value added tax which under any laws for the time being in force may be payable in respect of the accumulated funds of the society or of the dividends or other payments received by the members of the society on account of the accumulated funds; and

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(b) the stamp duty payable under the Stamp Duty Act, on instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society of any class of such instruments, are respectively chargeable.

(2) Nothing in subsection (1) shall be construed as restricting or limiting any power conferred on any authority to grant exemption from any tax, duty, stamp duty, value added tax or fee under any written law.

Management of
registered society

68.-(1) Management of registered society shall be vested in the Board.

(2) Provisions relating to the management of the registered societies shall be as prescribed in the Third Schedule to this Act.

(3) The Minister may, in consultation with the Commission, amend or vary the provisions of the Third Schedule.

Public education
and awareness on
duties and
privileges of
societies

69.-(1) For the purpose of this Part, a cooperative promotion officer shall-

- (a) provide public education and awareness to members of registered societies on the duties and privileges of registered societies; and
- (b) the manner in which to access such privileges.

PART VIII

REVENUE AND FUNDS OF REGISTERED SOCIETIES

Revenue of
Registered
societies

70.-(1) The source of the funds of a registered society shall include -

- (a) monies derived from fees or charges specified by the by-laws of the society;
- (b) monies derived from payment of membership subscription where this is applicable;
- (c) monies derived from issuance of shares;

- (d) revenues accruing to the registered society from deposits and loans from persons who are not members as provided for under the by-laws;
- (e) revenues accruing to the registered society from savings and deposits made by its members;
- (f) monies derived from the sale of any produce of the registered society;
- (g) monies which a registered society may borrow from lending institutions or any other source under its general powers of raising money by borrowing.
- (h) monies lawfully derived by a registered society from sources not mentioned specifically in subsection (1) shall form part of the revenue and funds of that registered society.

(2) All revenues of a registered society shall be paid into the general fund of the registered society:

Provided that, any receipt derived from any trade, industry, works, service or undertaking carried out or belonging to registered society may be paid either in whole or in part into a separate fund.

Management of
revenues and
funds of
registered
societies

71.-(1) A registered society shall for the purpose of managing its revenues and funds ensure that-

- (a) an admission fee is not refundable except in the case where an application for membership has been rejected;
- (b) a regular obligatory deposit is made in accordance with the by-laws of the society and is not withdrawn except for purposes and in accordance with conditions specified in the Regulations, or on termination of membership,

or for the purposes of securing a loan taken by or a guarantee given by a member, voluntary deposits may be withdrawn, subject to any conditions or restriction specified in the by-laws of the registered society;

- (d) deposit or loans from persons who are not members of the registered society are subject to the provisions of this Act and of the by-laws of the society; and
- (e) a share shall not be redeemed except in accordance with the provisions of by-laws of the society where such by-laws allow such redemption and in which case the said by-laws shall also specify the minimum number of shares a member shall hold while is a member.

(2) A society shall not issue bonds or debentures without the authority of the Registrar and shall in any such issue comply with any conditions prescribed by the general meeting.

(3) A registered society which under this Act is required to maintain a reserve fund shall maintain the fund in accordance with the provisions of this Act and the by-laws of a registered society.

Restriction on
loans

72.-(1) A registered society shall not give a loan to any person other than to its member:

(2) A registered society may, with the approval of the Registrar and in accordance with any conditions which the Registrar may prescribe, allow normal business credit to persons to whom goods have been sold or services rendered by the registered *bona-fide* society.

(3) Except with the permission of the Registrar, a society shall not lend money on the security of any movable property other than produce or goods in which the society is authorized to deal.

(4) The Registrar may, by a general or special order, prohibit or restrict the lending of money by any society or class of societies on the security of immovable property.

(5) A registered society whose main object is to supply commodities to its members shall not make any loan nor allow any credit without the sanction of the Registrar who may impose such limits on loans or credit as he thinks fit.

(6) A registered society which markets agricultural produce or handicrafts or mineral products of its members may make advances only up to a limit not exceeding 75 per centum of the local value as estimated by the committee of agricultural products or handicrafts or mineral products delivered to the society for marketing.

(7) A registered society may with the approval of the general meeting, make loans to another registered body.

Restriction on borrowing from non-members

73. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the Rules, Regulations or by this Act.

Investment of funds

74.-(1) A registered society may invest its funds:

- (a) in interest bearing deposit in a cooperative financial institution, or any financial institution as may be approved by the Commission;
- (b) in the shares of any other registered society;
- (c) in government bonds and other securities; or
- (d) in such other investments as the Registrar may by order with approval of the Commission published in the *Gazette* declare to be authorized investments for the purpose of this section.

(2) The Commission may advise any registered society to invest its funds or any portion of its funds in any one or more of the investments authorized by or under subsection (1).

(3) Where there is any loss occasioned, in respect of the funds invested, every officer who is a part to the loss commits an offence and shall be liable on conviction to a fine of not less than two million shillings and in addition shall be required to compensate the loss so occasioned.

Inspection and supervision of cooperative fund

75.-(1) Every society shall contribute to a fund established by the Government and be administered by the Commission for the purpose of meeting the expenses of inspection and promotion of cooperative.

(2) The Commission shall prescribe in the Regulations the manner in which the society shall contribute to the fund.

Financial provisions

76.-(1) The by-laws of a registered society shall provide for the raising of funds to finance its activities either by the issuance of shares or by imposing cess or levy on agricultural or other produce or handicraft marketed through the society or by other means as may be approved by the Commission.

(2) A registered society shall, where its funds to finance its activities are obtained by the issuance of shares, ensure that-

- (a) the share capital shall not be reduced without the consent of the Commission;
- (b) unless the Commission otherwise in writing directs, a fund which shall be known as the share transfer fund shall be formed and maintained to meet expenditure which may be incurred by the society in purchasing the share of members whose membership has been terminated with the consent of the Board;
- (c) no payment from the share transfer funds shall be made for the purchase of the share of any

- member who has terminated his membership without the consent of the Board;
- (d) no purchase of the shares of a member whose membership has been terminated by reason of any causes other than death shall be made except with monies available in the share transfer fund;
 - (e) the amount standing to the credit of a share transfer fund shall not exceed ten per centum of the subscribed share capital;
 - (f) where the share of a member is purchased by the society under the foregoing provisions, the amount paid therefore shall not exceed the par value of the share, and it shall be lawful for the society to pay such less sum than the par value as it considers reasonable, regard being made to the financial position of the society at the time of purchase; and
 - (g) the shares of members purchased as aforesaid shall be re-issued before any new allocation of shares is made.

Dividend and
bonus

77.-(1) No society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been audited by a duly authorized auditor and approved by the general meeting of a relevant cooperative society.

(2) No society with unlimited liability which advances money or goods to any member in excess of the money or the value of the goods deposited by him shall pay a dividend during the period of ten years from the date of its registration.

Reserve fund

78.-(1) Every society which derives a profit from its transactions shall maintain a reserve fund.

(2) A society with unlimited liability, which advances money or goods to any member in excess of the money or the value of goods deposited by him, shall

contribute one fourth of the annual net surplus to the reserve fund and all other societies shall contribute such portion or annual net surplus as may be prescribed by the Regulations and by-laws.

Distribution of
balances

79. Subject to the provisions of this Act and any Regulations made there under, a registered society may apply the annual net balance together with any sum available for distribution from previous years to payment of bonus and to any staff incentive bonus scheme in such manner and in such proportion as may be prescribed by the Regulations or its by-laws.

Contribution for
charitable
purposes

80.-(1) A registered society may, by resolution in general meeting appropriate from its funds and expend on any charitable, educational or medical purposes or such other objects.

(2) A cooperative society shall for the purpose of subsection (1) establish a special fund to be used in discharging such cooperative social responsibilities as may be determined by the society.

PART IX CREATION AND REGISTRATION OF CHARGES

Registration of
charges

81.-(1) A cooperative 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 approval by the general meeting.

(2) Subject to the provisions of this Part, every charge to which this section applies created by a registered society, shall so far as any security on the society's property is thereby conferred, be void against the liquidator and any creditor of the society unless the prescribed particulars of the charge, together with the instrument if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are delivered to the Registrar for registration within thirty days after the date of the creation of the

charge, but without prejudice to any contract or obligation for payment of the money thereby secured, and when the charge becomes void under this section, the money secured thereby shall immediately become payable.

(3) This section applies to the following charges-

- (a) a charge for the purpose of securing any issues of debentures;
- (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration under the Chattels Transfer Act;
- (c) a charge on immovable property, wherever situated, or any interest therein;
- (d) a charge on book debt of the society;
- (e) a floating charge on the property of the society; or
- (f) any other document which may be used as a security.

(4) Where a negotiable instrument has been given to secure the payment of any book debts of a registered society, the deposit of the instrument for the purpose of securing an advance to the society shall not for the purpose of this section be treated as a charge on those book debts.

(5) The holding of debentures entitling the holder to a charge on immovable property of a registered society shall not for the purposes of this section be deemed to be an interest in immovable property.

(6) Where a series of debentures containing or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of the series are entitled *pari passu* is created by registered society, it shall, for the purposes of this section be sufficient if they are delivered to or received by the Registrar, within forty five days after the execution, of the deed containing the charge, or, if there is no such deed after the execution of any debentures of the series, the following particulars-

- (a) the total amount secured by the whole series;
- (b) the date of any resolution authorizing the issue of the series and the date of the covering deed, if any by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any of the debenture holders together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue and an omission of such entry shall not affect the validity of the debentures issued.

(7) For the purpose of the provisions of this Part-“charge” includes a mortgage and a letter of hypothecation, and references to the property and assets of a registered society include property and assets which the registered society is authorized to charge.

Duty of society to register charges created by society

82.-(1) It shall be the duty of the registered society to submit to the Registrar the particulars of every charge created by the society to which section 81 applies however the registration of any such charge may be effected upon the application of any person interested therein.

(2) Where registration is affected on the application of some person other than the society, that person shall be entitled to recover from the society the amount of any fees properly paid by him to the Registrar on registration.

(3) Where any registered society defaults in submitting to the Registrar the particulars of any charge created by the society for registration to which section 81 applies, unless the registration has been effected by some other person, the society and every officer thereof who knowingly took part in the default shall be liable on conviction to a fine of not less than one hundred thousand shillings for every day during which the default continues.

Duty of a society
to register charges
on property
acquired

83.-(1) Where a registered society acquires any property which is subject to a charge to which section 81 would apply if the charge had been created by the society after the acquisition of the property, the society shall cause, the prescribed particulars of the charge together with a certified copy of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the Registrar for registration within forty-five days after the date of which the acquisition is completed.

(2) Where the default is made in complying with the provisions of this section, the society and every officer thereof who is knowingly a party to the default, commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings for every day during which the default continues.

Register of
charges

84.-(1) The Registrar shall keep, with respect to each registered society, a register in the prescribed form, of all charges requiring registration under the provisions of this Part, and shall on payment of the prescribed fee, enter in the register with respect to any such charge the following particulars-

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (6) of section 81;

- (b) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (6) of section 82;
- (c) in the case of any other charge-
 - (i) if the charge is a charge created by the society, the date of its creation, and if the charge was a charge existing on the property acquired by the society, the date of the acquisition of the property;
 - (ii) the amount secured by the charge;
 - (iii) short particulars of the report charged; and
 - (iv) the persons entitled to the charge.

(2) The Registrar shall issue a certificate of registration of any charge registered in pursuance of the provisions of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, as may be determined by the Registrar.

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

Endorsement of
certificate of
registration of
debentures

85.-(1) Every registered society shall cause a copy of every certificate of registration given under section 84 to be endorsed on every debenture or certificate of debenture stock which is issued by the society, and the payment of which is secured by the charge so registered:

Provided that, nothing in this subsection shall be construed as requiring a society to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the society before the charge was created.

(2) If any person knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have been endorsed on it, a copy of a certificate of registration without the copy being so endorsed on it, commits an offence and shall without prejudice to any other liability, be liable on conviction to a fine of not less than one million shillings.

Entry of
satisfaction and
rectification of
register

86.-(1) Upon his satisfaction that-

- (a) the debt for which any registered charge way given has been paid or satisfied;
- (b) a memorandum of satisfaction be entered on the register,

the Registrar may furnish to the society the copy of the memorandum of satisfaction.

(2) The Registrar, on being satisfied that the omission to register a charge within the time required by this Part, or that the omission or misstatement of any particular matter with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the society or that on other grounds it is just and equitable to grant relief may, on the application of the registered society or any person interested and in such terms and conditions as seen to him just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Enforcement
of security

87.-(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society or appoints such a receiver or manager

under any power contained in any instrument he shall, within seven days from the date of the order or of the appointment under the said powers, give notice or the facts to the Registrar and the Registrar shall, on payment of the prescribed fee, enter the facts in the register of charges.

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

(3) Any person who defaults in complying with any of the requirements of this section commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings for every day during which the default continues.

Copies of
instrument
creating charges
to be kept by
society

88.-(1) Every registered society shall cause to be kept at the registered address of the society a copy of every instrument creating any charge requiring to be registered under the provisions of this part.

(2) Where any registered society fails to comply with the provisions of subsection (1), the society and every officer thereof who is knowingly a party to the default shall be liable on conviction to a fine of not less than one hundred thousand shillings for every day during which the default continues.

Society's register
of charges

89.-(1) Every registered society shall keep at registered address of the society a register of charges and enter therein all charges specifically charges effecting 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 names of the persons entitled thereto.

(2) Where any officer of the society knowingly and willfully authorizes or permits the omission of any entry required to be made in pursuance of this section in any such register he shall be guilty of an offence and shall be liable on conviction to a fine of not less than five million shillings.

Right to inspect
copies of
instruments
creating
mortgage charges
and society
register of charges

90.-(1) The copies of the instrument creating any charge required to be registered with the Registrar under the provisions of this part and the registered society in pursuance of section 84, shall be open during business hours, subject to such reasonable meeting restrictions as the society in general meeting may impose, for the inspection of any creditor or members of the society without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee as may be determined by the general meeting.

(2) Where inspection of the said copies or register is refused, any officer of the society refusing inspection or who knowingly and willfully permits such refusals commits an offence and shall be liable on conviction to a fine of not less than five hundred thousand shillings for every day during which such refusal continues and any court may by order, compel an immediate inspection of the copies or register.

Inquiry by
Registrar officers
as inspectors

91.-(1) The Registrar may, on his own motion or on the application of the majority of the members of the Board of not less than one-third, direct and authorize some persons in writing to hold an inquiry into the by-laws, activities and financial affairs of the registered society.

(2) All officers and members of the society shall produce such books and documents of the society and furnish such information in regard to the affairs of the society, as the person authorized by the Registrar may require.

(3) The general meeting may decide to hold an enquiry into the affairs of their registered society.

Designation of cooperative

92.-(1) The Commission may, by order published in the *Gazette*, designate by name, a cooperative officer who shall perform the function of inspection of cooperative societies.

(2) The cooperative officers designated under subsection (1) shall be accountable to the Registrar.

(3) Every cooperative inspector shall prepare and submit to the Registrar a report of every registered cooperative society inspected and with regard to any other matters as the Registrar may require him to report upon.

Inspection

93.-(1) The Registrar shall make or cause to be made a continuous inspection on the by-laws, activities and financial affairs of a registered society.

(2) Without prejudice to the generality of subsection (1), the Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in his behalf to inspect the books of the society:

Provided that, no inspection under subsection (2) shall be carried out or directed unless-

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

(b) the creditor deposits with the Registrar such sum as security for costs for the purposes of inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any inspection carried out under subsection (2) to the creditor.

Cost of
enquiry

94.-(1) Where an inquiry is held under section 91 or an inspection is made under section 93, the Registrar may, by a certificate under his hand and seal, make an award apportioning the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection and the officer or former officers of the society.

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(2) The Registrar may lodge a certified copy of a certificate issued by him under subsection (1) in a court of a Resident Magistrate or a District Court and upon being so lodged such certificate shall be deemed to be a decree passed by such court for the payment by the person named in the certificate to the Registrar of the sum specified in the certificate and such sum may be recovered in any manner prescribed by the Civil Procedure Code, for the enforcement of decrees and the provisions of that Act relating to executions of decrees shall apply, *mutatis mutandis*, to proceedings for the recovery of costs awarded under this Act.

Surcharge

95.-(1) Where upon an inquiry under section 91 or upon an inspection under section 93 or upon audit under section 55, the Registrar is satisfied that a past or present officer or member has made or authorized an unlawful payment or has by negligence or misconduct caused a deficiency or a loss or failure to bring to account or has by negligence or misconduct caused loss of or damage to any property of a registered society, the Registrar shall surcharge such person with the unlawful payment, deficiency or loss, or the sum which ought to have been brought to account or the value of the property lost or damaged or portion of such unlawful payment, deficiency, loss, sum, value or cost as the Registrar may consider reasonable having regard to all the circumstances of the case.

(2) The Registrar shall give notice in writing to every person surcharged under subsection (1) of the amount surcharged and the ground upon which the surcharge is made, and every such person aggrieved by

the decision of the Registrar may, not later than thirty days from the receipt of such notice, appeal to the Minister.

(3) Where a person surcharged-

(a) fails to pay such amount within thirty days after the service of the notice upon him in accordance with subsection (2); or

(b) has appealed to the Minister and fails to pay the amount of the surcharge, if any, decided upon by the Minister within fifteen days from the date of the decision of the Minister,

the Registrar shall issue a certificate under his hand and seal specifying the name and address of the person who has been surcharged and the amount of the surcharge and such certificate or a certified copy thereof shall be lodged in a court of Resident Magistrate or a District Court.

(4) Where a certificate has been lodged in court in accordance with the provisions of subsection (3), such certificate shall be deemed to be a decree passed by such court for the payment by the person named in the certificate to the Registrar of the sum specified in the certificate, and such sum shall be recovered in any manner prescribed by the Civil Procedure Code, and the enforcement of decree and the provisions of that Act relating to execution of decrees shall apply, *mutatis mutandis* to proceedings for the recovery of such amount specified in the certificate.

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PART XI

AMALGAMATION AND DIVISION OF COOPERATIVE SOCIETIES

Amalgamation

96.-(1) Any two or more registered societies may, resolve, by a resolution approved at a general meeting of each of the societies at which not less than two thirds of the members or delegates of the society are present and held after reasonable notice given of the place and time of the meeting and of the intention to move such resolution thereto, to amalgamate as a single society.

(2) Where the Registrar is satisfied that-

- (a) two or more registered societies have resolved to amalgamate as a single society in accordance with the provisions of subsection (1);
- (b) the proposed by-laws of the proposed amalgamated society are unobjectionable; and
- (c) the proposed amalgamation is not against the interest of the members of the societies proposing to amalgamate or against public interest;

he may, by order published in the *Gazette*, amalgamate the societies.

(3) Every order made under subsection (2), shall specify-

- (a) the date on which the societies shall amalgamate; and
- (b) the names of the amalgamating societies, the name of the amalgamated society, and may contain such directions as the Registrar may consider necessary for the purpose of giving effect to the amalgamation or for safeguarding the interests of any person.

(4) Where an order is made under subsection (2)-

- (a) all the assets and liabilities of the amalgamating societies shall, by virtue of such order and without further assurance, vest in the amalgamated society;
- (b) the Registrar shall cancel the registration of the amalgamating societies and such cancellation shall be effective as from the effective date; and
- (c) the Registrar shall, notwithstanding the provisions of sections 30 and 31, register the amalgamated society and the by-laws of the amalgamated society.

(5) Notwithstanding subsection (1), the Registrar may, by notice in writing, advise two or more societies to amalgamate if he is satisfied that, it is in the interest of the societies or public to do so.

(6) Where the society does not agree with the advice of the Registrar made in accordance with provisions of subsection (5), the Registrar may dissolve that society under section 99.

Defects or
irregularity in
the notice

97. No amalgamation of registered societies or division of a registered society shall be invalid by reason only of defect or irregularity in any notice or order required to be given or made under this Part.

Division of
societies

98.-(1) An existing registered society may, resolve by a resolution approved at a general meeting at which not less than two thirds of the members or delegates of the society are present and held after reasonable notice given of the place and time of the meeting and of the intention to move such resolution thereat, to divide itself into two or more proposed new societies.

(2) A resolution passed under subsection (1) shall contain proposals for the division of the assets and liabilities of the society among the proposed new societies, and may prescribe the area of operation of, and specify the members who shall constitute each of the proposed new societies.

(3) The Registrar may by notice in writing advise on voluntary division if is satisfied that-

- (a) an existing society has resolved to divide itself into two or more new societies in accordance with subsection (1);
- (b) such resolution complies with the provisions of subsection (2);
- (c) the proposed new societies shall be economically viable when registered;
- (d) the proposed division is not against the interests of the members of the existing society or against the public interest.

(4) The Registrar may, by Order published in the *Gazette* divide the existing society which has voluntarily passed the resolution for division under subsection (1).

(5) Every order made under subsection (4) shall specify-

- (a) the date on which the existing society shall be divided into the new societies;
 - (b) the name of the existing society and the names of the new societies into which it is divided;
 - (c) the manner in which the assets and liabilities of the existing society shall be divided among the new societies;
 - (d) where necessary, the area of operation of each of the new societies; and
 - (e) such other directions as the Registrar may consider necessary for the purpose of giving effect to the division or for safeguarding the interests of any person.
- (6) Where an order is made under subsection (4)-
- (a) the assets and liabilities of the existing society subsisting on the effective date shall, by virtue of such order and without further assurance, vest in the new societies in the manner specified in such order;
 - (b) the Registrar shall cancel the registration of the existing society and such cancellation shall be effective as from the effective date; and
 - (c) the Registrar shall, notwithstanding the provisions of sections 30 and 31, register the new societies and their respective by-laws:

Provided that, where the society does not agree with the advice of the Registrar on division, he may dissolve that society under section 99.

PART XII
DISSOLUTION OF COOPERATIVE SOCIETIES

Dissolution

99. Where the Registrar after an inquiry has been held under section 91 or after an inspection has been made under section 93 or on receipt of an application made by three-fourths of the members of a registered society or failure to comply with the provisions of sections 96 and 98, is of the opinion that, the society ought to be dissolved he may, by order in writing and after notifying the general meeting of the federation if any, cancel the registration of the society.

Cancellation of registration of society

100.-(1) Where it is a condition of the registration of a society that it should consist of at least a required minimum members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that, the number of the members has been reduced to less than the required minimum as per section 20 of this Act.

(2) Where the Registrar has reasonable cause to believe that a registered society has not commenced its business within six months of registration, or has ceased to carry on business, he may, after the expiry of three months from the date of publishing a notice to that effect in the *Gazette*, by order in writing, cancel the registration of such society and such cancellation shall be *Gazetted*.

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(3) The Registrar shall cancel the registration of any savings and credit societies that fail to comply with the requirement to present audited accounts as required by section 47 of the Bank of Tanzania Act, unless sufficient evidence is given to the effect that, any such savings and credit societies have established a technical and financial assistance linkage with a professionally managed financial services institution or program.

Appeal against
cancellation of
registration

101.-(1) Where the registration of a society is cancelled under the provisions of section 100, any member of the society the registration of which is cancelled may, within thirty days from the date of the order canceling the registration, appeal against such order to the Minister.

(2) Where no appeal is presented within thirty days from the making of an order canceling the registration of a society, the order shall take effect on the expiry of that period.

(3) Where an appeal is presented within thirty days, the order shall not take effect until it is confirmed by the Minister.

(4) Where an appeal has been presented within thirty days, the Minister may proceed to consider the same and confirm the order notwithstanding that thirty days have not elapsed, and where an order is so confirmed, no further appeal shall be allowed against such order.

Effect of
Cancellation of
registration

102.-(1) Where the registration of a society is cancelled, the cancellation shall take effect and the society shall, except for the purposes of the winding-up of its affairs, cease to exist as a corporate body from the date when the order of cancellation takes effect.

(2) Where the Registrar cancels the registration of a society under any of the provisions of this Act, he shall make such order as he may deem fit respecting the custody of the books and documents and for the protection of the assets of the society until the order canceling the registration of the society takes effect.

Winding up

103.-(1) Where the registration of a society is cancelled under section 100 or the registered society is dissolved under section 99 of this Act, the Registrar shall-

- (a) appoint by order in writing a custodian of assets and liabilities of the society immediately after cancellation is effected; and

- (b) within forty days, appoint a competent person or persons to be liquidator of the society's assets and liabilities.
- (2) The names of the persons appointed under subsection (1) shall be published in the *Gazette*.
- (3) The Registrar shall specify the period limit within which the liquidation process shall be finalized.

Power of the liquidator

104.-(1) A liquidator appointed under section 104 shall have the power, subject to the guidance and control of the Registrar, and to any limitations imposed by the Registrar-

- (a) to institute and defend suits and other legal proceedings by his name or office, and to appear in Court as a litigant in person on behalf of the society;
- (b) to refer disputes to arbitration;
- (c) to determine the contribution to be made by the members and past members and by the estates of deceased members of the society respectively to the assets of the society;
- (d) to investigate all claims against the society, and subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (e) to determine by what persons and in what proportion the costs of the liquidation are to be borne;
- (f) to examine and investigate any claim which the society may have against any person;
- (g) to take possession of the books, documents and assets of the society; and
- (h) to give such directions in regard to the collection and distribution of the assets of the society and 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.

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(2) Subject to any Regulations made under section 141, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purpose of this section, have power to summon the attendance of witnesses and to compel the production of documents by the same means and in the same manner as is provided in the case of a Court under the Civil Procedure Code.

(3) The Regulations may provide for an appeal to a court of a resident magistrate having jurisdiction over the area in which the headquarters of the society are situated from any decision made by a liquidator under this section and may provide for further appeal to the High Court.

Power of
Registrar to
control
liquidation

105.-(1) A liquidator shall exercise his powers subject to control and the revision by the Registrar, who may-

- (a) rescind or vary any order made by a liquidator and make new order as may be required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) by order in writing, limit the powers of the liquidator under the provisions of the foregoing section;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society;
- (g) make or order for the remuneration of the liquidator;
- (h) refer any subject of dispute between a liquidator and any third party to settlement if that party shall have assented in writing to be bound by the decision to be given on the dispute.

(2) Decisions made under this section may be enforced as follows-

- (a) when made by a liquidator, by any Court of Resident Magistrate having jurisdiction in the same manner as the decree of such court;
- (b) when made by High Court or a Court of Appeal, in the manner of any such appeal as aforesaid in the same manner as a decree of such Court in any suit pending therein.

Power to stay or restrain proceedings against society

106. At any time after the cancellation of a registered society takes effect, the liquidator, or any creditor member of the society, may, where any suit or proceedings against the society is pending in any court, apply to the court in which the suit or proceedings is pending for a stay of proceedings therein and the court to which such application is made may stay the proceedings accordingly on such terms as it thinks fit.

Avoidance of disposition of property after cancellation

107. Any disposition of the property including things in action of a registered society and any transfer of shares or alteration in the status of the members of the society made after the cancellation of the registered society takes effect shall, unless such disposition, transfer or alteration after is made by the liquidator, be void.

Avoidance of attachment

108. Where the registration of a society is cancelled, any attachment, distress or execution put in force against the assets of the society after such cancellation takes effect, shall be void.

Power of Registrar to assess damage

109.-(1) Where, in the case of the winding-up of a society, it appears that any person who has taken part in the organization or management of the society or any past or present chairman, secretary, member of the Board or other officer of the society has disappplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeance or

breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributor, investigate the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof as the case may be with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeance or breach of trust as the Registrar thinks just.

(2) Subject to subsection (1), the aggrieved person may appeal to the Commission within twenty one days.

(3) Where the Registrar has ordered payment of any money or delivery of any property under subsection (1), such money or property may be recovered on production of such order to the District Court or the Court of a Resident Magistrate having jurisdiction over the person from whom the money or property is claimable in the same manner as if such order were the decree of that Court.

Power to arrest
absconding
promoter

110.-(1) Any Court of a Resident Magistrate may, on the application of the Registrar or of the liquidator and on proof of probable cause of the absconding of a promoter and upon believing that such promoter is about to quit the United Republic of Tanzania or otherwise to abscond or remove any of his property for the purpose of evading calls or of avoiding investigation of his conduct or of avoiding examination by the liquidator or by the Registrar respecting the affairs of the society or of avoiding compliance with any order made by the Registrar under subsection (1) of section 109, cause him to be arrested, and his books and papers and movable or immovable property to be detained until such time as the court may order.

(2) For the purpose of this section:
“promoter” means a founder member of a cooperative society.

Debts of all
description may
be proved

111. In every winding-up of a registered society, all debts payable on a contingency, and all claims against the society, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the society, a just estimate being made so far as possible of the value of such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

Where society is
insolvent
Cap. 25

112. In the winding-up of a registered society which is insolvent, the procedure under the Bankruptcy Act with regard to the respective insolvent rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities shall apply with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and realize dividends out of the assets of the society, may come in under the winding upon and make such claims against the society as they respectively are entitled to by virtue of this section.

Preferable
payments

113.-(1) In the winding-up of a registered society, there shall be paid payments in priority to all other debts-

- (a) all government taxes and local rates due from the society at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment;
- (b) all government rents not more than one year in arrears;
- (c) all wages or salary of services rendered to the society during four months next before the relevant date and all wages of any workman or labourer in respect of services so rendered; and
- (d) all amounts due in respect of any compensation under any law for the time being in force in Tanzania relating to compensation

of workman, being amounts which have accrued before the relevant date, unless the society has, immediately prior to the relevant date, under any contract with insurers, rights capable of being transferred to and vested in the workman.

(2) Notwithstanding anything in paragraph (c) of subsection (1), the sum to which priority is to be given under that paragraph shall not, in the case of one claimant, exceed one hundred thousand shillings.

(3) Where a claimant under paragraph (c) of subsection (1), is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, a part thereof, as the liquidator may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(4) Where any compensation under any law for the time being in force in Tanzania relating to compensation of workmen is a weekly payment, the amount due in respect thereof shall, for the purpose of paragraph (d) of subsection (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under such law.

(5) Where any payment has been made to any clerk, servant, workman or labourer in the employment of the society, on account of wages or salary out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, would have been entitled to priority if the winding-up has been diminished by a reason of the payment having been made.

(5) Where any payment has been made to any clerk, servant, workman or labourer in the employment of the society, on account of wages or salary out of

money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, would have been entitled to priority if the winding-up has been diminished by a reason of the payment having been made.

- (6) The debts referred to in subsection (1) shall-
- (a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and
 - (b) so far as the assets of the society available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by society, and be paid accordingly out of any property comprised in or subject to that charge.
- (7) For the purposes of this section-
- (a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the society during the period;
 - (b) the expression "relevant date" means the date on which the cancellation of the registration of the society takes effects.

Fraudulent
preference

114.-(1) Any transfer, conveyance, mortgage, charge, delivery of good, payment, execution or other act relating to property made or done by or against a registered society within six months

before the date on which the cancellation of its registration takes effect which had it been made or done by or against an individual within six months before presentation of bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the event of the society being wound-up be deemed fraudulent preference of its creditors and be void accordingly.

(2) Any transfer, conveyance or assignment by a society of all its property to trustees for the benefit of all its creditors shall, if done under the circumstance stipulated under subsection (1), be void to all intents.

Liabilities and
obligation of
fraudulent
preference

115.-(1) Where anything made or done is void under section 114 as a fraudulent preference of a person interested in property mortgaged or charged to secure the society's debt then without prejudice to any rights or liabilities arising apart from this provision the preferred persons shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the mortgage or charge on the property or the value of his interest, whichever is the less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the society's debt was then subject.

(3) On any application made to the liquidator with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the liquidator shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purpose of the winding-up.

(4) The provisions of subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to such payments.

Effecting of
floating charge

116. Where a registered society is being wound-up, a floating charge on the undertaking or property of the society created within six months of the cancellation of the registration of the society taking effect shall, unless it is proved that the society, immediately after the creation of the charge, was solvent, be invalid, except to the amount of any cash paid to the society at the time of or subsequently the creation of, and in consideration, for the charge, together with interest on that amount at the rate of six percent per annum or such other rate as may be prescribed.

Disclaimer of
property in case
of society wound
up

117.-(1) Where any part of the property of a registered society which is being wound up consists of land of any tenure burdened with onerous case of covenants, of shares or stock in companies of profitable contracts or of any property that is un saleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to payment of any sum of money, the liquidator, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Registrar and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the cancellation of the registration of the society taking effect or such extended period as may be allowed by the Registrar, disclaim the property.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the society in or in respect of the property disclaimed but shall not, except so far as is necessary for the purpose, of releasing the society and the property of

the society from liabilities of any other person affect the rights or the liabilities of any person.

(3) The Registrar, before or on granting leave, to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as he thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty eight days after the receipt of the application or such further period as may be allowed by the Registrar, given notice to the applicant that he intends to apply for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application or such further period as may be allowed by the Registrar, given notice to the applicant that he intends to apply for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, he shall be deemed to have adopted it.

(5) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the society to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

Restriction of
rights of creditor
in case of society
being wound up

118.-(1) Where a creditor has issued execution against the movable or immovable property of registered society or has attached any debt creditor as due to the society, and the society is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the society unless he has completed the execution or attachment before the date on which the cancellation of the registration of the society take effect:

Restriction of rights of creditor in case of society being wound up

118.-(1) Where a creditor has issued execution against the movable or immovable property of registered society or has attached any debt creditor as due to the society, and the society is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the society unless he has completed the execution or attachment before the date on which the cancellation of the registration of the society take effect:

Provided that-

- (a) a person who purchases in good faith under a sale by bailiff on an order of a court any movable property of a society of which an execution has been levied shall in all cases acquire a good title thereto against the liquidator; and
- (b) the rights conferred by this subsection on the liquidator may be set aside by the Registrar in favour of the creditor to such extent and subject to such terms as the Registrar may think fit.

(2) For the purpose of this section, the execution against movable property shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against immovable property shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) The right conferred upon the liquidator by this section may be enforced by him by a civil suit in any court of competent jurisdiction.

(4) In this Part, the expression "movable property" includes all chattels personal, and the expression "bailiff" includes any officer charged with the execution of a writ or other process.

Duties of court in execution

119.-(1) Where any movable property of a registered society is taken in execution and, before the sale thereof or the completion of the execution by receipt

of recovery of the full amount of the levy, notice is served taken in execution upon the court which issued the execution that the registration of the society has been cancelled, the court shall require the bailiff to deliver the movable property including any money seized or received in part satisfaction of the execution to the liquidator and the bailiff shall forth-with comply with such requirement.

(2) Where the bailiff on being required by the court under subsection (1) delivers the movable property including the money, if any, seized or received by him, the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

Preservation of
books and records

120. On the completion of the duties under section 119, the liquidator shall hand over to the Registrar all the books and records of the society, and the Registrar may after the period of two years from the date of removal of the name of the society from the register cause such books and records to be preserved in an archive.

Court not to have
jurisdiction in
dissolution
societies

121. Save so far as is expressly provided for in this Act, no court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society.

PART XIII FINANCIAL PROVISIONS

Funds of the
Commission

122. The sources and funds of the Commission shall include-

- (a) such amounts as may be appropriated by Parliament;
- (b) such sums as may be payable to the Commission by way of donations, gifts or grants;

- (c) such sums as may be payable to the Commission by way of donations, gifts or grants;
- (d) such sums as may in any manner become payable to or vested in the Commission or acquired in the course of performing its functions under the Act; and
- (e) any other lawful source of funding.

Annual
budget

123.-(1) The Commission shall prepare its income and expenditure estimates for the succeeding financial year and submit them to the Minister for scrutiny and submission to the National Assembly for approval.

(2) The annual estimates shall make provision for all estimates for expenditure of the Commission for the financial year that shall include the cost of administration of the Commission, payment of salaries, allowances, pensions, gratuities and other charges payable to the officers, staff and members of the Commission.

Accounting
and audit

124.-(1) The Commission shall cause to be kept and maintained in accordance with the International Accounting Standards, proper books of accounts with respect to-

- (a) all sums of moneys received and expended;
- (b) all the assets and liabilities of the Commission; and
- (c) all the income and expenditure statement of the Commission.

(2) Within six months of the close of every financial year, the Controller and Auditor General in accordance with the Public Audit Act shall audit the accounts including the balance sheet of the Commission.

(3) Every income and expenditure accounts and audited balance sheet shall be placed before a meeting of the Commission and, if adopted, it shall be endorsed with a certificate to that effect.

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(4) As soon as the accounts of the Commission have been audited, and in any case not later than six months after the close of the financial year, the Commission shall submit to the Minister a copy of the audited statement of accounts together with a copy of the report on that statement made by the auditors.

(5) The Minister shall, as soon as practicable after receiving the report, lay before the National Assembly the audited accounts.

Financial year

125. The financial year of the Commission shall be the period of twelve months beginning from 1st day of July and ending at 30th day of June of the following year.

PART XIV OFFENCES

Offences

- 126.**-(1) Any registered society, an officer, a member or any other person who-
- (a) willfully neglects or refuses to do any act or furnish any information required for the purposes of this Act;
 - (b) willfully makes a false return or furnishes false information; or
 - (c) willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Act; or
 - (d) without proper authority obstructs, assaults, interferes or hinders any officer or agent of the Commission from performing his duties;
 - (e) acts or purports to act as a Board member when not entitled to do so;
 - (f) willfully performs any act which requires the consent or approval of the Registrar without first having obtained such consent or approval;

- (h) willfully omits to do or to cause to be done an act or thing which is required by or under this Act to be done; or
- (i) willfully does or causes to be done any act or thing prohibited by or under this Act,

commits an offence and upon conviction shall be liable to a fine of not less than five million shillings and, where such offence has been committed by an individual, to imprisonment for a term of not less than two years in addition to or in lieu of such fine.

(2) In additional to any sanction or penalty which may be imposed under this Act, the court may order the offender to compensate any loss occasioned or confiscate the properties of such offender.

Offences by body
corporate firm

127.-(1) Any act which if done by an individual would be an offence against this Act or regulations or orders made under this Act shall, if done by a body corporate, be an offence by a Director and Secretary thereof unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as the ought to have been exercised having regard to the nature of his functions in that capacity and to all circumstances.

(2) Where an offence against this Act or any regulations or orders made under this Act has been committed by a partner in a firm, any person who at the time of the commission of the offence was a partner in that firm, or was purporting to act in that capacity, shall be deemed to have committed that offence, unless he proves that the offence was committed without his consent or connivance and he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Offences by
agents

128. Where an offence under this Act or any subsidiary legislation made under it is committed by a person as an agent or employee, such agent or employee, the principal or employer commits an offence and is liable to be proceeded against and punished accordingly unless he proves to the satisfaction of the court that he had no knowledge and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence.

Penalty for
soliciting
violation of
contracts

129.-(1) Any person, firm or company having knowledge or notice of the existence of a registered society which has one of its objects the disposal of any article as part of its business, who solicits or persuades or contracts any person to sell or deliver goods as service in violation of the by-laws of that cooperative society, shall be liable to a fine of not less than five million shillings for a person and not less than ten million shillings for a firm or company for each offence, and shall in addition pay to the society concerned the market price of such goods or service as the case may be at the date of the commission of such offence.

(2) Any person, firm or company, as aforesaid, shall be deemed to have knowledge or notice of the existence of such cooperative society if the said society has notified the existence of such cooperative society and the relevant by-laws thereof in the *Gazette* or a registered society which has one of its objects the disposal of any article which is the product of agriculture or animal husbandry, in any newspaper circulating in Tanzania.

Offences by
officers of
societies being
wound up

130. Where any person, being a past or present officer or member of a registered society the registration of which has been cancelled and in respect of which a liquidator has been appointed-

- (a) does not, to the best of his knowledge and belief, fully and truly disclose to the liquidator all the property, movable and immovable, of the society;
- (b) does not deliver to the liquidator, or as he directs all such part of the movable or immovable property of the society as is in his custody or under his control;
- (c) does not deliver up to the liquidator or as he directs, all books and papers belonging to the society; or
- (d) fraudulently, parts with, conceals, destroys, falsifies, mutilates or alter or is privy to the fraudulent parting with, concealment, destruction, falsification, mutilation or alteration, any book or paper relating to or affecting the property or affairs of the society,

commits an offence and shall be liable on conviction to imprisonment for a term of not less than five years.

Prohibition of use
of the word
"Cooperative"

131.-(1) No person other than a registered society shall trade or carry on business under any name or title of which the word "Cooperative" or the word "Co-operative" its equivalent in any other language is part without the sanction of the Commission.

(2) No person other than a *bona-fide* savings and credit society shall trade or carry on business under any name or title of which the words "Saving and Credit Society" or their equivalent in any other language is part without the sanction of the Commission.

(3) Every person who contravenes any of the provisions of this section commits an offence and shall on conviction be liable to a fine of not less than two million shillings and in the case of a continuing offence to further fine of one hundred thousand shillings for each day on which the offence is continued after conviction thereof.

Prohibition for interfering with management of Cooperative Societies

132.-(1) A member of a registered society who holds an appointed or elected political post or public office shall be deemed to have conflict of interest and shall not be eligible for being elected as a leader of a cooperative society or appointed as a member of the Board or any committee of the cooperative society.

(2) The provision of subsection (1), shall not apply to-

- (a) a public officer who serves in the management of a Cooperative Society which situates in the public officer's organization; or
- (b) a political leader of a cooperative society established within a political party.

(3) Any person who through his position or title, willfully and unreasonably interferes with the management or affairs of the cooperative society and as result thereof such society suffers loss or fails to properly perform its functions, commits an offence shall upon conviction, be liable to imprisonment for a term of not less than two years and the court may order such person to compensate any loss or damages occasioned to the society.

(4) For the purpose of this section:

“appointed or elected political post” means a position of Village Chairman, Village Council, Village Executive Officer, Ward Executive Officer, Councilor, District Commissioner, Regional Commissioner, a member of the parliament and any other person serving as a leader in a political party;

“interfere” means an act of interfering, hindering, obstructing, disturbing, blocking or impeding a cooperative society from proper performing its duties under this Act or as prescribed in its by-laws;

“public service office” shall carry the same meaning as ascribed to it under the Public Services Act.

PART XV MISCELLANEOUS PROVISIONS

Appointment of
prosecutors

133. The Director of Public Prosecutions may, by notice published in the *Gazette* appoint Prosecutors who shall be responsible for the prosecution of cases involving cooperative societies.

Code of conduct

134.-(1) There shall be a code of conduct for management of cooperative societies as provided for in the Second Schedule to this Act.

(2) The Minister may, in consultation with the Commission amend or vary the provisions of the Third Schedule.

(3) The appointment and performance of duties by society executive staff and Board members shall be subject to the code of conduct.

Immunity
Cap.16

135. Without prejudice to the provisions of section 28A of the Penal Code no matter done by any person exercising or purporting to exercise any function under this Act or under any subsidiary legislation made under this Act shall, if done in good faith subject that person to any action, liability, claim or demand.

Power to exempt
societies from
conditions of
registration

136. Notwithstanding anything contained in this Act, the Minister may, in the interest of members, by order published in the *Gazette* and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Act as to registration.

Appointment of
special member to
the Board

137.-(1) Notwithstanding any other provisions of this Act, the Registrar may, subject to the provisions of this section, appoint special members to the Board of any

registered society in receipt of financial assistance from the government or if the Registrar considers such appointments to be necessary in the public interest or in the interest of the society.

(2) The number of special members appointed to a Board under this section shall not exceed one third of the number of ordinary members, including the Chairman and Vice-Chairman of the Board.

(3) Special members appointed to the Board of a cooperative bank shall not exceed fifty percent of the number of ordinary members.

(4) For the purposes of this section-

(a) a society shall be deemed to be in receipt of financial assistance from the Government:

(i) if within the preceding two years the society has received any grant of money from the Government;

(ii) if any money has been lent to the society by the Government and the loan has not been repaid; or

(iii) if any loan made to the society has been guaranteed by the Government and either the guarantee is still outstanding or the guarantee has been honoured by the Government and the society has not paid to the Government all sums including interests, if any, thereon paid by the Government under the terms of the guarantee; and

(b) the expression "one-third" shall mean, where the number of members is not three or a multiple of three, the nearest whole number below one-third.

Terms of
appointment and
powers of special
members

138.-(1) A special member of a Board appointed under section 137 shall remain a member of the Board until his appointment is determined by the Registrar.

(2) Where the Registrar has appointed special members to a Board any such special member may require that any decision taken by such Board shall not have effect until the approval of the Registrar has been obtained and, where any such requirement is made in respect of any such decisions, the decision shall be of no force or effect and shall not in any way be acted upon until the Registrar has signified approval thereof.

(3) In exercising powers conferred by subsection (2), a special member appointed to a Board shall, unless the Registrar otherwise directs, have all the powers of an ordinary member of that Board.

Fees

139.-(1) Fees as may be prescribed under the Regulations shall be charged in respect of the following matters-

- (a) issue of registration certificate and by-laws;
- (b) the registration of amendments to by-laws;
- (c) a search in the registration register;
- (d) inspection of documents;
- (e) certified or uncertified copies of documents;
- (f) the registration of charges;
- (g) the inspection of register of charges; and
- (h) any other matter in respect of which a fee is chargeable under the provisions of this Act:

Provided that, the Registrar may, on the direction or approval of the Commission vary or waive any of the said fees in the case of a primary society.

(2) Different fees may be prescribed for different types or kind of societies.

(3) The fee provided for under subsection (1) may be used by the Commission for regulatory purposes under the law for the time being in force.

Recovery of sums
due to
Government

140. All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government due to and other recognized financial organization may be recovered in the manner provided for the recovery for debts due to the Government under the law for the time being in force.

Regulations

141.-(1) The Minister may, after consultation with the Commission, make Regulations for better carrying on of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make Regulations-

- (a) prescribing the maximum number of shares or portion of the capital of a society which may be held by a member;
- (b) prescribing the various forms to be used under this Act, and the conditions to be complied with in the making of applications for the registration of society and the procedure in the matter of such applications;
- (c) prescribing the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the payment and interest to be made and the interest to be acquired before the exercise of the right of membership and to provide for the termination of membership;
- (d) prescribing the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members;
- (e) prescribing various fees payable under this Act;

- (f) providing for the appointment, remuneration and terms of service of employees of a society;
- (g) prescribing disciplinary procedures and other matters for employees and staff of the Commission;
- (h) providing for the suspension and removal of members of society, Board members and supervisory committee and other relevant officers, and describe procedure of meetings of the Board and supervisory committee, and define the powers to be exercised and the duties to be performed by the Board and supervisory committee and other relevant officers, and provide for the delegation of the powers of the Board and supervisory committee;
- (i) providing for procedures for dispute settlement;
- (j) providing for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;
- (k) providing for the mode in which the value of the interest of a deceased members shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
- (l) prescribing the payments to be made and the conditions to be complied with by members applying for loans, the period for loans, and amount which may be lent, to an individual member and the manner in which such loans shall be repaid;

- (m) providing for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;
- (n) prescribing the extent to which a society may limit the number of its members;
- (o) prescribing the conditions under which accumulated funds may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies;
- (p) prescribing the conditions under which accumulated funds may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies;
- (q) providing for the powers to be exercised, the duties to be performed, the remunerations entitlement and other terms of service of a supervising manager;
- (r) providing for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and prescribe for the administration for such a fund; and
- (s) prescribing anything that may be, or is required to be prescribed under this Act.

(3) The Regulations made by the Minister, in accordance, with this Act for savings and credit societies and banks incorporated under section 27(b) shall as much as possible be similar to Regulations pertaining to Microfinance Institutions and Financial Cooperatives.

Power of
Commission to
make rules

- 142.** The Commission may make Rules prescribing-
- (a) the accounts and books to be kept by a society;
 - (b) the returns to be submitted by a society to the Registrar and the persons by whom, the form and language in which such returns shall be submitted;
 - (c) the maximum amount which a society may without the prior consent of the Registrar borrow either from members or from non-members;
 - (d) the procedure for amalgamation and division of societies and conditions subject to which such amalgamation or division may be affected;
 - (e) the submission of annual estimates for the approval of the Registrar;
 - (f) the periodical publication, of a balance sheet showing the assets and liabilities of a society;
 - (g) the persons by whom and the form in which copies of entries in books of societies may be certified;
 - (h) the form of the register of members and for the particulars to be entered therein;
 - (i) the manner in which funds may be raised by means of shares or debentures or otherwise and the form in which any application for financial assistance from Government, any bank or any financial institutions shall be made;
 - (j) the procedure for general meetings of the members, powers to be exercised by such meetings, methods of summoning members to such meetings and giving notice to members for such meeting; and

- (k) anything for ensuring the proper administration of the affairs of registered societies.

Certain laws not to apply
Caps 212 and 208

143. The provisions of the Companies Act and the Business Names Registration Act, shall not apply to societies registered under this Act.

Repeal and transitional
provisional Act
No. 20 of 2003

144.-(1) The Cooperatives Societies Act, 2003 is hereby repealed.

(2) Notwithstanding the repealing of the Cooperatives Societies Act, 2003-

- (a) every society, registered under the repealed Act shall be deemed to have been registered under this Act;
- (b) every board of a registered society lawfully constituted under the provisions of the repealed Act shall be deemed to have been constituted under this Act;
- (c) any document referring to the provisions of the repealed Act shall be construed as referring to the corresponding provisions of this Act;
- (d) any document referring to the provisions of the repealed Act shall be construed as referring to the corresponding provisions of this Act;
- (e) all orders, directions, appointments and other acts and things lawfully made or done under any of the provisions of the repealed Act and are in force immediately before the commencement of this Act, shall be deemed to have been made or done under the corresponding provisions of this Act and shall continue to have effect accordingly; and
- (f) all Rules and Regulations made under the repealed Act and which are in force immediately prior to the date upon which this Act comes into operation;

shall remain in force as if they had been made under this Act.

(3) Subject to this Act, where the registration of any society was cancelled, any immovable property which prior to the cancellation of that society vested in that society, and where subsequent to the cancellation of that society another society with similar objects is formed in the area of operation of the society which is so cancelled; then such immovable property as has not been disposed off as at the time when that other society is formed, shall vest in that other society.

(4) Where any property so vested in that other society is subject of any mortgage, charge liability or any encumbrance whatsoever, then the liability to satisfy the mortgage, charge, liability or the encumbrance as the case may be, shall vest in that other society, and the name of that other society shall be substituted for that of the former society or for that of the liquidator in any contract or instrument where the property is the subject matter and such contract shall continue as if it has been entered into between that other society and the other party to the contract:

Provided that, any vesting of property under this paragraph shall be subject to any directions that the Minister may give under this Act.

(5) The Minister may, by notice published in the *Gazette*, at any time before the expiry of twelve months from the commencement of this Act, make such consequential, transitional or supplementary provisions as he may consider necessary consequent upon the enactment of this Act.

 FIRST SCHEDULE

 PROVISIONS RELATING TO THE PROCEEDINGS OF THE COMMISSION

Made under section 8(4)

Meetings and
procedure at
meetings of the
Commission

1. -(1) The Commission shall meet quarterly in a calendar year and it may also convene an extra-ordinary meeting when the need arises.

(2) The Chairman or in his absence, the Vice- Chairman may, upon application in writing signed by not less than half of the members, convene a special meeting of the Commission within twenty one days upon receiving the written applications.

(3) The Secretary of the Commission shall give to each member adequate notice of the matters to be discussed, time and place of meeting.

(4) The Commission may invite any person who is not a member to participate in the deliberations of its meetings, but such person shall not be entitled to vote.

(5) At any meeting of the Commission, in the absence of both the Chairman and the Vice-Chairman, the members present shall elect one member from amongst themselves to preside at that meeting.

(6) Voting in all elections shall be by secret ballot.

(7) The Chairman, Vice-Chairman or a person presiding at any meeting of the Commission shall, in the event of equality of votes, have a casting vote.

Vice Chairman

2.-(1) There shall be Vice Chairman who shall be elected by the members of the Commission from amongst themselves in the first meeting.

(2) The tenure of Vice Chairman shall be one year and may be re-elected.

Quorum

3. At any meeting of the Commission, the quorum shall be not less than one half of the members.

Decisions of the
Commission

4.-(1) Subject to the provisions relating to vote cast, all matters at a meeting of the Commission shall be determined by a majority of the votes of the members present.

(2) Notwithstanding subparagraph (1), a decision may be made by the Commission without a meeting by circulation of the relevant papers among the members, and the expression in writing of the views of the majority of the members shall be a decision of the Commission.

Minutes of meetings

5.-(1) The Commission shall cause to be recorded and kept minutes of all business conducted or transacted at its meeting and the minutes of each meeting of the Commission signed by the Secretary shall be read and confirmed at the next meeting of the Commission and signed by the person presiding at the meeting.

(2) Any minutes purporting to be signed by the person presiding the meeting of the Commission shall in the absence of proof or error, be deemed to be a correct record of the meeting.

Establishment of the Committees

6. The Commission may establish Committees as it may consider necessary or expedient to assist it in the performance of its functions.

Vacancies, etc. not to invalidate acts

7. The validity of any act or proceeding of the Commission shall not be affected by any vacancy among its members or by any defect in the appointment of any of them.

Orders and directions

8. All orders, directions, notices or other documents made or issued on behalf of the Commission shall be signed by-

- (a) the Chairman of the Commission; or
- (b) the Secretary or any officer of the Commission authorised in writing in that behalf by the Secretary.

Seal of the Commission

9. The seal of the Commission shall not be affixed to any instrument except in the presence of the Chairman or the Secretary and at least one member of the Commission.

Commission may regulate its own proceedings

10. Subject to the provisions of this Schedule, the Commission may regulate its own proceedings.

Tenure and conditions of service of Commissioners

11.-(1) A member of the Commission shall hold office for a period of three years from the date of his appointment and shall be eligible for re-appointment.

(2) A member may resign from office by giving notice in writing to the appointing authority and the resignation shall take effect from the date specified in the notice, or if no date is specified, from the date of the receipt of the notice by the appointing authority.

- Replacement of members 12. Where any member ceases to be a member for any reason before the expiration of his term of office, the appointing authority may appoint another person in his place, and the person so appointed shall hold office for the remainder of the term of office of his predecessor.
- Remuneration of commissioners 13. The Commission shall pay to its members an allowance to be determined by the Minister responsible for finance.

SECOND SCHEDULE

(Made under section (134))

CODE OF CONDUCT

PART I PRELIMINARY PROVISIONS

- Title 1. This Code shall be known as "A Code of Conduct for Management of "Cooperative Societies".
- Interpretation 2. In this Code of Conduct, unless the context otherwise requires:
 "Act" means the Cooperative Societies Act;
 "active member" means a member of the cooperative society who is fulfilling his or her obligations as a member as provided for in the Act, Regulations, Rules, By-laws and other cooperative guidelines as they may be issued, from time to time, by the cooperative general meeting;
 "Board" means the governing body of a registered society, elected by members at the General Meeting to whom the management of its affairs is entrusted;
 "election supervising officer" means a cooperative officer or any other officer designated by the Registrar under paragraph 21 of this Code;
 "executive Staff" means officers of a society appointed by the Board and vested with powers to manage and supervise the day to day affairs of the society and shall include the general manager or secretary, accountant or treasurer, heads of departments and cashier;

“ICA” means International Cooperative Alliance;
 “Regulations” mean regulations made under the Act;
 “vetting” means conducting an investigation with a view of scrutinizing the integrity of applicants to a post in the management of Cooperative Societies in accordance to paragraph 16(3) of this Code of Conduct.

PART II
 GENERAL PROVISIONS

Cooperative
 society
 principles

3. Subject to the provisions of this Act cooperative societies shall be managed according to the ICA cooperative principles which are-

- (a) voluntary and open membership;
- (b) democratic member control;
- (c) member economic participation;
- (d) autonomy and independence;
- (e) education training and information;
- (f) cooperation among cooperatives; and
- (g) concern for community.

Member of the
 Board

4. A cooperative society member aspiring to become a member of the Board or a person applying for a post in the executive staff shall have to prove to the satisfaction of the appointing or the electing body or authority, as the case may be, that, he understands and is prepared to enforce the Act and the rules.

Cooperative
 Society
 leadership

5.-(1) Any person applying for a post in the management of cooperative society shall be a person of high integrity, probity and good conduct, and the appointing authority shall ensure that-

- (a) has attained at least secondary education sufficient to enable him to handle the relevant responsibilities;
- (b) has ability to manage the affairs of the society;
- (c) has a proven record of honesty;
- (d) is active in the affairs of the society;
- (e) has never been convicted of an offence related to dishonest and sentenced to imprisonment for a term of not exceeding six months.

(2) Notwithstanding sub-paragraph (1) (a), member to be elected in the Board of a Cooperative Bank shall have qualification as may be prescribed by the Bank.

Board to ensure members attendance to the general meeting

6.-(1) The general meeting, being the highest decision making body of a cooperative society, shall be respected and given its appropriate importance.

(2) The cooperative Board shall make efforts to ensure that all members are informed of the General Meeting, as required by the Act, Regulations or by-laws and shall facilitate attendance of members to that meeting.

PART III

BOARD OF COOPERATIVE SOCIETY

Board to be accountable to the general meeting

7.-(1) All members of the Board shall be elected by the members at the general meeting.

Election to the Board

8.-(1) Subject to the provisions of this Act, and rules, the election of members to the Board shall be free and democratic and no member shall be elected to the Board through illegal means.

(2) Every election of the Board, shall be made in the presence of the Election Supervising Officer.

(3) The Election Supervising Officer shall immediately report to the Registrar any irregularity or suspicion thereof in the manner of which members to the Board were elected.

(4) For the purpose of this section words- "illegal means" means acts of corruption, coercion, intimidation or nepotism.

Condition for members to fill forms

9. Every member aspiring to be elected to the Board shall have to fill a relevant form disclosing the following information-

- (a) personal details or personal history and experience in cooperative leadership;
- (b) cooperative membership records indicating performance, records in fulfilling membership obligations provided in the Act, Regulations and by-laws;
- (c) anticipated contribution to the development of the cooperative society after becoming a cooperative leader;
- (d) level of education;
- (e) cooperative education already acquired;
- (f) type of business or activities being undertaken by that member;
- (g) any other information deemed relevant for being elected as a Board member and shall submit forms to the Election Supervising Officer.

Forms to indicate property owned

10.-(1) Every member of the Board shall, for each year fill relevant forms to be submitted to Registrar declaring property or business property he or she owns or controls.

(2) The forms filled under sub-paragraph (1) of this paragraph shall be read at the annual general meeting by the Registrar or his representative.

Conflict of interest by members

11. Subject to the relevant provisions in this Act and Regulations, no member shall be elected as a member to the Board if he owns, controls or influences businesses or activities like that of the cooperative society.

No duplicity of roles

12. Board members shall observe their roles and responsibilities provided in this rules and by-laws and no Board member shall interfere with responsibilities reserved for the executive staff of the cooperative society.

Board members to attend seminar

13. Before assuming the responsibilities of a Board, every elected Board member shall attend a seminar on cooperative management, which shall be organized by the cooperative society concerned.

PART IV COOPERATIVE EXECUTIVE STAFF

Executive staff to be appointed by the Board

14. Cooperative executive staff shall be appointed by the Board, and shall discharge their duties in accordance with the Act, Regulations and by-laws.

Executive staff to be appointed on competence basis

15.-(1). Executive staff of cooperatives shall be appointed on the basis of their competence in Executive running day to day activities of the cooperative society and no executive staff shall be appointed staff to be for other reasons-appointed on competence.

(2) The following reasons or grounds shall not be considered when appointing an executive staff.

- (a) relation with some of the members of the Board (nepotism);
- (b) colour or tribe;
- (c) wealth;
- (d) illegal means to induce a decision for appointment;
- (e) any other reason which under the provisions of the Act, regulations or by-laws warrant such an appointment to be null and void.

Executive staff to be interviewed and vetted

16.-(1) Subject to provisions of paragraph 15(1), Regulations and by-laws, the vacancy for the executive staff shall be made known to the public thirty days before holding on interview.

(2) Every appointment for filling any vacancy for executive staff, shall be done on the basis of highest points or marks scored in any interview conducted for such purposes.

(3) In addition to an interview, officers seeking for appointments in management positions in cooperatives shall be vetted by the Registrar or any other person appointed on that behalf.

No conflict of interest

17. Subject to the relevant provisions in the Act, Regulations or by-laws, no person shall be appointed as a member to the executive staff position if he or she owns, controls or commands influence of businesses or activities like that of the cooperative society.

Application forms

18. Application for an executive staff position shall be accompanied by relevant forms which shall indicate the following details forms.

A: Executive staff of the Primary Society-

- (i) level of education;
- (ii) understanding of both Kiswahili and English languages;
- (iii) capacity to be trained (trainability);
- (iv) names and addresses of at least two referees;
- (v) names and addresses of at least two guarantors;
- (vi) type of business or activities being undertaken by the applicant;
- (vii) any other information deemed relevant.

B: Executive Staff of the Secondary and Upper Level Societies:

- (i) academic qualification relevant for the position applied for;
- (ii) knowledge and experience of cooperative society movement and its relevance to the members;
- (iii) knowledge and understanding of the culture and norms of the society or community of the members of the relevant cooperative society;
- (iv) names and addresses of at least two referees;
- (v) names and addresses of at least two guarantors;
- (vi) type of business or activities being undertaken by the applicant;
- (vii) any other information deemed relevant.

Additional requirements to Executive staff of upper level societies

19.-(1) In addition to the information disclosed under paragraph 18, persons applying for an executive staff position at the secondary and Upper Level Societies shall, for each year of which they are in the executive staff position, fill relevant forms to declare property and business they own or control.

(2) The forms filled under sub-paragraph (1) of this paragraph

shall be read at the Board meeting by the Registrar or his representative.

(3) The honorarium or bonus rewarded under this paragraph shall be approved by the General meeting and sanctioned by the Registrar.

PART V

MISCELLANEOUS PROVISIONS

Honorarium or
bonus

20.-(1) Subject to the relevant provisions in the Act, or Regulations and in recognition of outstanding performance, cooperative society shall establish a system of reward, by way of honorarium or bonus, to members of the cooperative Board or executive staff whose performance in the cooperative management is of outstanding quality.

(2) The honorarium or bonus may be given on a group or individual basis.

(3) The honorarium or bonus rewarded under this paragraph shall be approved by the General meeting and sanctioned by the Registrar.

Registrar to
designate
election supervi-
sing officers

21. The Registrar shall appoint officer from the civil service or cooperative movement and designate them as election supervising officers.

Cease to hold
leadership

22.-(1) A person may voluntarily cease to hold a leadership position of cooperative society.

(2) If before ceasing to hold a relevant position as provided for under the provision of subparagraph (1) of this paragraph, the person concerned, due to negligence or fraudulent behaviors, performed acts which as a result of his acts, the cooperative society suffered loss, that person together with his or her guarantors shall be liable and shall, in respect of cooperative societies, compensate full the cooperative society for the loss occasioned.

Automatic loss
of positions in
the cooperative
systems as a
result of breach
of Code

23. In addition to the penalties provided for under section 126 of this Act, any person who contravenes the provisions of this Code, shall automatically loose all leadership positions he is holding in the cooperative system before that contravention.

Automatic loss
of positions in
the cooperative
systems as a
result of breach
of Code

23. In addition to the penalties provided for under section 126 of this Act, any person who contravenes the provisions of this Code, shall automatically loose all leadership positions he is holding in the cooperative system before that contravention.

THIRD SCHEDULE

(Under section 69(2))

PROVISIONS RELATING TO THE MANAGEMENT
OF REGISTERED SOCIETIES

General
meeting

- 1.-(1) The general meeting shall have the following functions-
- (a) the election, suspension or removal of members of the Board
 - (b) the consideration and adoption of the annual balance sheet;
 - (c) the disposal of sums available for distribution;
 - (d) determining the amount of honoraria, if any, for unsalaried officers and Board members;
 - (e) receiving the report from the Board Committee; and
 - (f) the acquisition or disposal by the society of all immovable property and of movable property of such value as provided for in the regulations.
- (2) Every society shall hold a general meeting at least once in a year.
- (3) The Registrar, or any other person authorized by him may-
- (a) summon a special general meeting of the society in such a manner and at such time and place as he may direct;
 - (b) direct what matters shall be discussed at the meeting;
 - (4) The meeting of the society under subparagraph (4) shall have all the powers and subject to the same regulations as meeting called in accordance with the by-laws of the society.
 - (5) A special general meeting shall be held by a society where-
 - (a) at least one third of members signify in writing their intention to hold such meeting;
 - (b) the Board may cause to be convened a Special General Meeting:

Provided that, where the procedure to hold a special general meeting under item (b) fails, an application to hold such a meeting shall be lodged to the Registrar.

(6) Notwithstanding the provisions of this Act, a registered society may owing to its size and scope provide in its by-laws for a constitution of a meeting of delegates in place of general meeting through the creation of basic units to attend general meeting of that society for and on behalf of members.

(7) Where for the purpose of this Act any question arises as to whether-

- (a) a person is following a relevant trade to the society;
- (b) a person is a resident in the area of operation;
- (c) two or more societies be considered to form a joint venture;
- (d) a person has attained the age of eighteen years; shall be decided by the members at a general meeting.

(8) Any person aggrieved by a decision of the members at a general meeting as given under subparagraph (7), may in writing appeal to the Registrar.

(9) If the party is not satisfied with the decision of the Registrar, he shall in writing appeal to the Commission, and the decision of the Commission shall be final.

Establishment
of Board

2. Every registered society shall establish a Board to manage its day to day activities.

Constitution of
the Board

3.-(1) Every Board of a registered society shall consist of not less than five members and not more than nine members including the Board Chairman and Vice Chairman.

(2) Members of the Board shall be elected by the general meeting of the society and shall hold office for a period of up to three years but subject to re-election for another one term.

(3) Where any person is selected to the Board to fill a vacancy caused by death, resignation or removal of a member of the Board, such person shall hold office for the remainder of the term of office of his predecessor.

Powers of the
Board

4.-(1) The Board shall exercise all powers necessary to ensure the proper administration of the society subject to the by-laws of the society, the regulations and any resolutions passed at the general meeting.

(2) The Board may, appoint a suitable person to administer and manage affairs of the society and may employ such number of persons as the Board may think fit to assist such person in the discharge of his functions:

Provided that, such person shall not have a record of previous conviction on a criminal charge involving dishonesty or by a person who has in the past been dismissed from public service on ground of mismanagement or on any disciplinary ground.

(3) Where a person employed under subparagraph (2) is not performing his functions satisfactorily, the Board shall terminate the employment of that person subject to any law for the time being regulating termination of employment.

Restriction relating to members of the Board

5.-(1) No member of the Board of a registered society shall hold any office of profit under the society.

(2) A member of the Board of a registered society may receive an honorarium from the society as determined and authorized by the general meeting, subject to the provision of subparagraph (4).

(3) A member of the Board who is in the employment of a registered society other than the society to which he is a member and is in receipt of emoluments for such employment shall not be entitled to receive any honorarium as a member of the Board.

(4) The honorarium if any may be paid only by Primary and Secondary societies.

(5) No member shall be elected as a member to the Board if he owns, controls or influences businesses or activities like that of the Cooperative society.

Suspension and election of the new Board

6.-(1) Where the Registrar after giving consideration to the inspection and audit report or after giving an order under section 57 is of the opinion that the Board of a registered society is not performing its duties properly he shall cause to be held a special general meeting by notice in writing and advise it as appropriate.

(2) Where the special general meeting resolves to suspend members of the Board, it shall-

(a) elect a caretaker Board from amongst the delegates to administer the affairs of the society;

(b) require the suspended members to state their objections if any in writing jointly and severally in the next general meeting.

(3) Where after giving an opportunity to the Board to state its objections, if any, of its suspension in the general meeting and the latter disapproves the objections, then a new Board shall be elected to that effect by the general meeting.

(4) Subject to subparagraph (1), where the special general meeting resolves to disagree with the advise of the Registrar on financial malpractices the effects of which the society is rendered unable to settle its liabilities, the members shall be liable for the payment of the debts.

Power of the Registrar

7.-(1) Subject to the provisions of paragraph 6, where the Registrar is satisfied that it is in the interest of the members, he shall remove the Board and appoint a care taker Board which shall have the duty to manage the affairs of a registered society and to comply with the directions which the special general meeting may give and the appointed caretaker Board shall serve for the period of not exceeding one year.

(2) Where the Registrar removes the Board under subparagraph (1), the member of the Board so removed may appeal to the Commission and the decision of the Commission shall be final.

Powers of
persons
appointed
under
paragraph 7

8. Subject to the general direction and control of the special general meeting, any person or persons appointed under paragraph 7 to assume the functions of the Board of any registered society shall have all the powers, rights and privileges of a duly constituted Board of the Society.

Passed in the National Assembly on the 3rd September, 2013.



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Clerk of the National Assembly