

THE KILIFI COUNTY COOPERATIVES BILL, 2023

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KILIFI COUNTY COOPERATIVES BILL, 2023

[Date of assent:]

[Date of commencement:]

A Bill for

AN ACT of County Assembly of KILIFI County to give effect to section 7 (e) of Part II of the Fourth Schedule of the Constitution; to make provisions relating to the formation, registration and regulation of Cooperative and purposes incidental thereto.

ENACTED by the County Assembly of Kilifi as follows;

| PART 1- PRELIMINARY | | |
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| Short title | 1 | This Act may be cited as the Kilifi County Cooperatives Bill, 2023 and shall come into operation upon publication in the Kenya Gazette |
| Interpretation | 2 | <p>In this Act unless where the context otherwise requires –</p> <p>“By-laws” means the by-laws made by a Cooperative and approved under this Act and includes any amendment of such by-laws.</p> <p>“Agriculture produce” means any produce or article produced or obtained by the work or industry of members of a Cooperative or marketed by a Cooperative whether the produce be of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise.</p> <p>“Bonus” in relation to a member of a Cooperative means the member’s share of the surplus of the cooperative which is divided amongst its members, calculated by reference to the proportion of the member’s volume of business with the Cooperative to the total volume of business done by the Cooperative.</p> <p>“Capital” means the permanent members equity in the form of common stock and includes all disclosed reserves, retained earnings, grants or donations.</p> <p>“Committee” means the governing body of cooperatives to whom the management of its affairs is entrusted, and includes a board of directors.</p> <p>“Commissioner” means the Commissioner for Cooperative development and includes any person on whom any of the powers of the Commissioner</p> <p>“Contributor” means a person liable to contribute to the assets of a Cooperative in the event of it being wound up and for the purpose of any proceedings for determining and before the final determination of the</p> |

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| | | <p>persons who are to be deemed contributors, includes any person alleged to be a contributor.</p> <p>“Cooperative” means a Cooperative registered under section 26 of this of this Act and includes a Cooperative society registered in another county and licensed to operate within the county;</p> <p>“Cooperative union” means a Cooperative whose membership is restricted to primary Cooperatives.</p> <p>“County” means the County Government of Kilifi.</p> <p>“Executive Committee Member” means the Executive Committee Member for the time being in charge of Cooperatives.</p> <p>“Deposit” means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the Cooperative to receive it at the risk of the Cooperative receiving it.</p> <p>“Director” means the County Director for Cooperatives appointed under this Act and includes any person on whom the powers of the Director have been conferred in accordance with this Act.</p> <p>“Dividend” in relation to a member of cooperative, means that member’s share of the surplus of the Cooperative which is divided amongst its members, calculated by reference to the proportion which that member’s share capital bears to the total share capital of the Cooperative.</p> <p>“International Accounting Standards” and “International Financial Reporting Standards” means the standards adopted by the institute of certified public accountants of Kenya.</p> <p>“Limited liability” means limited by shares or limited by guarantee, according to the nature of the liability prescribed by the by-laws of the Cooperative.</p> <p>“Malfeasance” means wrongful conduct by a public official.</p> <p>“Member” includes a person or a Cooperative joining in the application for the registration of a Cooperative, and a person or a Cooperative admitted to membership after registration in accordance with the by-laws.</p> <p>“Misfeasance” means doing a proper act in a wrongful or injurious manner.</p> <p>“Officer” includes a chairman, vice-chairman, secretary, treasurer, Board member, employee or any other person empowered under any rules made under this Act or by-laws of a Cooperative, to give directions in regard to the business of the Cooperative.</p> <p>“Personal representative” means any person who, under law or custom, is responsible for administering the estate of a deceased person.</p> |
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| | | <p>“Share” means the amount represented by a member’s portion in the equity of a cooperative as a co-owner.</p> <p>“Special resolution” means a resolution passed by two thirds of the members present and voting at a general meeting of a Cooperative.</p> <p>“Supervisory board” means an oversight committee elected at a general meeting.</p> <p>“Tribunal” means the Cooperative Tribunal established under the Cooperative Act.</p> <p>“Winding up” means all proceedings subsequent to the dissolution of Cooperative.</p> |
| Objects and purpose of the Act | 3 | <p>The object and purpose of this Act is to provide the legislative and institutional framework to facilitate the-</p> <ol style="list-style-type: none"> (1) effective implementation of the Constitution of Kenya, 2010, in particular Section 7(e) of Part II of the Fourth Schedule; (2) promotion, registration, regulation, licensing, and supervision of Cooperatives; (3) establishment of county institutions for Cooperative development, their responsibilities, powers, and functions; (4) promotion of good governance and ethical conduct of Cooperatives. (5) use of alternative mechanisms for resolving conflicts and disputes in the county’s cooperative sector, and (6) promotion of cooperation, consultation and coordination, between the national and county government, and other counties on matters relating growth and development cooperatives. |
| Principles and Values of Cooperatives | 4 | <ol style="list-style-type: none"> (1) A cooperative operating under this Act shall ascribe to the Guiding Cooperative Principles and values in (2) and (3) below. (2) The cooperatives principle are -: <ol style="list-style-type: none"> (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; (g) Concern for the community in general. (2) The cooperative values include self-help, self-responsibility, democracy, equality, equity and solidarity (3) Pursuant to Subsection (1) and (2) above Cooperatives shall adhere to the National values and principles of governance provided under Article 10 of the Constitution. |

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| | | (4) The Directorate shall ensure that a cooperative operating under this Act adheres to the principles of Cooperatives |
| Application | 5 | (1) This Act shall apply to all cooperatives registered within Kilifi County. (2) Subject to sub-section (1) above a cooperative registered outside the county and intending to operate within the county. |
| | | PART II – ADMINISTRATION AND OFFICES |
| Responsibilities of the Executive Committee Member | 6 | (1) The Executive Committee Member shall be responsible for the growth and development of cooperatives in the County, and in particular – (a) Develop and oversee the implementation of policies and strategies on cooperatives; (b) Promote good governance in cooperative; (c) Provide liaison with the national government on matters relating to cooperatives; (d) Advise the County on matters relating to the cooperatives; (e) Mobilize resources for cooperative development including strategic special funding for cooperative education and training; (f) Maintain effective relationship with partners; (g) Submit quarterly and annual reports on the state of cooperatives in the County to the County Assembly; (h) Prescribe regulations on dispute resolution in the County’s Cooperative movement; (i) Establish a county cooperative information center; (j) Issue guidelines and regulations to facilitate growth of Cooperatives and regulations of Cooperative; (k) Undertake any other function for the effective realization of the objectives of the policies and strategies relating to cooperatives. |
| Responsibilities of the Chief Officer | 7 | (1) Subject to Section 45 of the County Governments Act the Chief Officer shall; (a) Develop and oversee the implementation of the directorate’s strategic plan; (b) Formulate and ensure the effective implementation of cooperative development programs; (c) Assist the Member of the Executive Committee in formulating policies for the growth and development of the Cooperative sector; (d) Oversee the performance of the Cooperative sector; (e) Submit quarterly and annual reports to the Member of the Executive Committee; (2) The Chief Officer in the Department shall be responsible to the County Executive Member responsible for cooperatives and shall undertake any other function that may be assigned by the CEC Member. |

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| <p>Establishment of the Directorate for Cooperative Development.</p> | <p>8</p> | <p>(1) There is established County Directorate for Cooperative Development headed by County Director for Cooperatives, which is an office within the County Public Service</p> <p>(2) The Directorate shall comprise of;</p> <p>(a) The Director;</p> <p>(b) Deputy Directors; and</p> <p>(c) Such technical officers as may be necessary, to support the functions of the Directorate.</p> <p>(3) The directorate shall be responsible for promotion and development, supervision and regulation of cooperatives in the County.</p> |
| <p>Appointment of the Director for Cooperative Development</p> | <p>9</p> | <p>(1) The County Public Service Board shall appoint the Director for Cooperative Development and such number of officers, as may be necessary to assist the Director in the administration of this Act.</p> <p>(2) Pursuant to the provisions of subsection (1), a person shall not be qualified for appointment as a County Director for Cooperative or Cooperative technical officer, unless such person has necessary and sufficient academic qualifications, competencies and experience in cooperative management and practice, as shall be provided for in the county HR policies and schemes of service.</p> <p>(3) The Director shall be responsible to the Chief officer where the cooperative development function is domiciled.</p> |
| <p>Functions of the County Director for Cooperative Development</p> | <p>10</p> | <p>(1) The Director shall; —</p> <p>(a) implement strategies, guidelines, and measures in line with the county, and national policy framework and standards for a sustainable cooperatives movement in the county;</p> <p>(b) promote and facilitate registration of primary and secondary cooperatives in the county;</p> <p>(c) promote and facilitate value addition, adoption of appropriate technology and facilitate market information sharing in the cooperatives sector;</p> <p>(d) maintain a county cooperative innovation, research and information center;</p> <p>(e) carry out inspections into the affairs of cooperatives in the County;</p> <p>(f) promote and enforce good governance in the management of the cooperatives in the county;</p> <p>(g) collect, collate, analyze, and disseminate data on the activities of cooperatives in the county;</p> <p>(h) preside over elections of cooperatives within the county;</p> |

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| | | <ul style="list-style-type: none"> (i) monitor, evaluate and recommend to the Chief Officer actions necessary for the improvement of governance and growth of cooperatives in the county; (j) provide external auditing services to cooperatives; (k) facilitate cooperative education, training, and research; (l) oversee the dissolution, division or amalgamation of cooperatives; (m) oversee the implementation of inquiry recommendations in primary and secondary cooperatives; (n) enforce declaration of assets, incomes and liabilities, indemnities in primary and secondary cooperatives and forward to the Commissioner for central depository; (o) enforce surcharges against cooperative leaders in primary and secondary cooperatives; (p) supervising staff of the directorate; (q) perform such other functions as may be assigned to the office under this Act; |
| Powers of the Director | 11 | <ul style="list-style-type: none"> (1) The Director shall have powers to perform the functions assigned to the directorate in furtherance of the purpose of this Act. (2) The Director may delegate in writing any of his powers under this Act generally or specially to officers appointed under section 9 or to any person. |
| Protection from personal liability | 12 | <ul style="list-style-type: none"> (1) Any member of the Directorate or any officer, employee, agent of the Directorate shall not be personally held liable for any act or omission done in good faith in the lawful exercise of functions of the Directorate under this Act. |
| Funds of the Directorate | 13 | <ul style="list-style-type: none"> (1) The Funds of the Directorate shall consist of; <ul style="list-style-type: none"> (a) Such monies appropriated by the County Assembly for the purposes of the Cooperative Development. (b) Such monies, fees and assets that may accrue to or vest in the Directorate in course of performance of its functions under this Act or any other law. (c) Monies provided to the Directorate for Cooperative Development from the Cooperative Education Fund. (d) Grants and gifts made to the Directorate for Cooperative Development. (e) Any monies from any other lawful source provided, donated to the Cooperative Development. |

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| Annual Report of the Directorate | 14 | <p>(1) The County Director for Cooperative Development shall prepare and submit to the Chief Officer within three months after the end of the financial year, an annual report on the operations of the Directorate and of the Cooperatives to which this Act applies.</p> <p>(2) The Chief Officer must within one month of receiving the Annual report submit it to the Executive Committee Member for consideration.</p> <p>(3) the Executive Committee Member shall submit the Annual report to the County Executive Committee for its consideration.</p> <p>(4) The County Assembly may after considering the report make recommendation to the Executive Committee Member.</p> |
| PART III- COUNTY AND SUB COUNTY COOPERATIVE DEVELOPMENT FORUMS | | |
| Establishment of County Cooperative Development Forum and Committee | 15 | <p>(1) There is established a County Cooperative Development Forum consisting of;</p> <p>(a) The Director;</p> <p>(b) Sub-county Cooperative officers;</p> <p>(c) Two persons nominated from each Cooperative within Kilifi County;</p> <p>(d) A representative from a Federation operating within the County;</p> <p>(2) The Director may co-opt to the Forum, key partner institutions in the County with interest in cooperative development issues;</p> <p>(3) Pursuant to subsection (1) above the Directorate shall provide secretarial services to the forum including designating an officer to serve as a Secretary;</p> <p>(4) The Member of the Executive Committee shall;</p> <p style="padding-left: 40px;">(a) appoint the County Co-operative Development Committee to coordinate activities of the forum.</p> <p style="padding-left: 40px;">(b) provide adequate annual budgetary estimates for the funding of operations of the forum and implementation of its recommendations;</p> |
| Responsibilities of the County Cooperative Development Forum | 16 | <p>(1) The County Cooperative Development Forum shall be responsible for the following;</p> <p>(a) providing a platform for consultation and dialogue among Cooperatives in the County;</p> <p>(b) reviewing and monitoring the growth and development of Cooperatives;</p> <p>(c) identifying and proposing policies, programs and plans to be adopted for promoting and supporting growth and development of cooperatives; and</p> <p>(d) facilitating coordination of the implementation of this Act.</p> |

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| <p>Establishment of the Sub County Cooperative Development Forum</p> | <p>17</p> | <p>(1) There is established a Sub County Cooperative Development Forum consisting of;</p> <p>(a) Sub-county Cooperative officer</p> <p>(b) Two persons nominated from each Cooperative within the sub county;</p> <p>(c) A representative from a Federation operating within the Sub County; that shall elect among themselves a Sub County development committee.</p> <p>(2) Pursuant to subsection (1) above the Sub County Cooperative office shall provide secretarial services to the forum including designating an officer to serve as a Secretary;</p> <p>(3) The Sub-County Cooperative Development Forum shall be responsible for the following;</p> <p>(a) providing a platform for consultation and dialogue among Cooperatives in the Sub-County;</p> <p>(b) reviewing and monitoring the growth and development of Cooperatives;</p> <p>(c) identifying and proposing policies, programs and plans to be adopted for promoting and supporting growth and development of cooperatives;</p> <p>(d) facilitating coordination of the implementation of this Act; and</p> <p>(e) elect representatives to the County Cooperative Development Committee</p> |
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PART IV- STRUCTURE, FORMATION AND REGISTRATION OF COOPERATIVES

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| <p>Structure of Cooperatives</p> | <p>18</p> | <p>(1) The County Cooperative movement shall adopt a four tier structure of the Cooperatives made up of:-</p> <p>(a) Primary cooperatives formed by ten (10) or more individuals;</p> <p>(b) Secondary cooperatives which may also be referred to as cooperative unions are formed by two or more primary cooperatives and shall have its objects and purposes as;</p> <p>(i) aggregation and warehousing of produce;</p> <p>(ii) provision of specialized services;</p> <p>(iii) processing and value addition;</p> <p>(iv) provision of wholesale credit to members;</p> <p>(v) lobbying and advocacy;</p> <p>(vi) information and publicity; and</p> <p>(vii) education, training and capacity building;</p> <p>(c) provided however, a secondary cooperative shall not operate in direct competition with its affiliates;</p> <p>(d) Federations formed by affiliation of many secondary cooperatives in a particular sector or subsector or service; and</p> |
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| | | (e) Apex cooperative which shall be one and formed at national level; |
| Registration of Cooperatives | 19 | <p>(1) A cooperative may be registered under this Act either as –</p> <ul style="list-style-type: none"> (a) A limited liability cooperative limited by shares; or (b) Unlimited liability cooperative limited to the extent set out by their By-laws. <p>(2) Subject to the provisions of this Act, a cooperative society which has as its objects—</p> <ul style="list-style-type: none"> (a) the promotion of the social welfare and economic interests of its members; and (b) as incorporated in its by-laws the cooperative values and principles prescribed in Section 4 of this Act; <p>may be registered by the Commissioner on recommendation by the director as a Cooperative society under this Act with limited liability</p> <p>(3) Two or more cooperatives may apply to amalgamate and form one cooperative subject to compliance with the provisions on amalgamation prescribed in accordance with this Act.</p> <p>(4) A cooperative may apply for division subject to compliance with the prescribed provisions under this Act.</p> <p>(5) An application under Section 16 this Act shall clearly specify the kind of cooperative intended to be incorporated.</p> <p>(6) The Director for Cooperatives Development may recommend registration of the following types of Cooperatives-</p> <ul style="list-style-type: none"> (a) Producer Cooperatives including; <ul style="list-style-type: none"> (i) Fisheries cooperatives (ii) Mining Cooperatives (iii) Handicraft (iv) Dairy (v) Poultry (vi) Apiculture (vii) Cassava (viii) Horticulture (ix) Coconut (x) Cashew (b) Consumer cooperatives; (c) Housing cooperatives; (d) Savings and Investment cooperatives (e) Transport cooperatives; (f) Savings and Credit Cooperatives; (g) Worker-owned Cooperatives; and |

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| | | <p>(h) Such other cooperatives as may be established from time to time ;</p> <p>(7) For purposes of this Act-</p> <p>(a) A producer Cooperative is a Cooperative registered under the national law for cooperatives with the objects and purposes of production, processing, and marketing of members’ produce.</p> <p>(b) A housing Cooperative is a Cooperative registered under the national law for cooperatives with the objects and purposes of facilitating its members to acquire housing for the benefit of members;</p> <p>(c) A savings and credit Cooperative is a Cooperative registered under the national law for cooperatives with the principal objects and purposes of mobilization of savings and granting of loans and advances to their members and connected purposes;</p> <p>(d) A savings and investment Cooperative is a Cooperative registered under the national law for cooperatives with the objects and purposes of receiving funds from members strictly for making common investment of the funds on behalf of the members or a section of the members;</p> <p>(e) A transport Cooperative is a Cooperative registered under the national law for cooperatives with the objects and purposes of organizing its members to operate public transport services and connected purposes;</p> <p>(f) A worker-owned Cooperative is Cooperative registered under the national law for cooperatives with the objects and purposes of organizing workers or professionals to offer a specialized service or group of services;</p> <p>(g) A consumer Cooperative is a Cooperative registered under the national law for cooperatives with the objects and purposes of organizing consumers to acquire consumer goods and services in bulk or wholesale for sale to members at competitive costs and achieve economy of scale</p> <p>(8) Subject to the provisions of this Act and the regulations made under this Act, a primary Cooperative may admit to its membership an incorporated or unincorporated person.</p> <p>(9) Unless otherwise expressly permitted, the Director shall not recommend for registration, primary cooperative with multiple objects.</p> |
| <p>Eligibility for registration of Cooperative</p> | <p>20</p> | <p>(1) For a Cooperative to make an application for registration under this Act, it shall consist of at least ten persons in the case of registration of a primary Cooperative;</p> |

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| | | <p>(2) Notwithstanding subsection (1), any two or more cooperative may form a cooperative and be registered as a secondary cooperative.</p> <p>(3) A Cooperative formed under subsection (2) may use the name Cooperative Union;</p> |
| <p>Procedure for registration</p> | <p>21</p> | <p>(1) Where practical, an application shall be processed and endorsed by the officer in charge of the sub-county, before the same is presented to the Director in the prescribed form and shall be signed;</p> <p>(a) by at least ten persons representing prospective members in the case of registration of a primary Cooperative;</p> <p>(b) by a person duly authorized on behalf by each; by at least two primary Cooperatives in the case of the of registration of a secondary Cooperative</p> <p>(2) The application shall be accompanied by four copies of the proposed by-laws of the Cooperative in English and the persons on whose behalf the application is made shall furnish such information with regard to the Cooperative as the Director may require.</p> <p>(3) The proposed bylaws shall be made in conformity with the bylaws in the Regulations. Provided that where the proposed bylaw has omitted to provide for an issue, the provisions of the bylaw shall apply as if they were provided for in the proposed bylaw</p> <p>(4) Director shall assess the application to confirm that persons who have applied for registration under this Act;</p> <p>(a) Meet the pre-requisite requirements set out in the rules</p> <p>(b) Have paid the requisite fees</p> <p>(5) Upon receipt of an application, the County Director or the appointed representative shall;</p> <p>(a) within fourteen days from the date of receipt of an application and in collaboration with the Commissioner, conduct a name search and reservation which shall be valid for thirty days from the date of reservation;</p> <p>(b) hold and preside over a pre-cooperative meeting within twenty-one days from the date of receipt of an application, prepare and duly certify minutes of the pre-cooperative meeting providing amongst others, names, identification numbers, addresses, telephone numbers and signatures of all the prospective members;</p> <p>(c) During the pre-Cooperative meeting, the prospective members shall be sensitized on:</p> <p>(i) the Cooperative principles, values and ethical beliefs; members’ rights and obligations; requirements for registration; and compliance upon registration; and</p> |

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| | | <p>(ii) The common bond or field of membership of prospective members is determined.;</p> <p>(d) receive or prepare an economic viability appraisal of the prospective Cooperative to determine feasibility of such a Cooperative taking into account the target catchment area, activities, existence of similar Cooperatives and common bond;</p> <p>(e) duly approve and signed copies of the proposed by-laws of the Cooperative, signed by the promoters;</p> <p>(f) receive in the case of an employer-based savings and credit Cooperatives, a letter from the employer indicating his/her commitment for check off remittances of the Cooperative deductions;</p> <p>(g) issue a letter of no objection, forward the application to the Commissioner and recommend for registration and issuance of a registration certificate upon receipt of proof of payment of the requisite fee; or</p> <p>(h) reject the application and in writing, state the reasons for such rejection including the provisions of the Act not complied with and where applicable, guide the applicants on areas of review and re-submission</p> <p>(i) subject to (h) above where the applicants seek re-submission, shall require a duly corrected application for registration to be re-submitted within twenty-one days from the date such rejection is communicated.</p> <p>(j) An application made under subsection (6) (g) shall be processed within twenty-one days from the date it is made</p> <p>(6) An applicant may appeal the decision of the Director made under section 5(g) to the Executive Committee Member, if dissatisfied with the decision.</p> |
| <p>Cooperative to be body corporate</p> | <p>22</p> | <p>(1) Upon registration, every Cooperative shall be a body corporate and shall be capable in its corporate name of—</p> <p>(a) suing and being sued;</p> <p>(b) purchasing, acquiring, or otherwise holding, and or disposing of movable and immovable property;</p> <p>(c) entering into contract; and,</p> <p>(d) borrowing money.</p> |

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| County register of co-operatives | 23 | <p>There shall be a county register into which shall be entered particulars of all registered Cooperatives including—</p> <ul style="list-style-type: none"> (a) the name of Cooperative; (b) physical address of its offices; (c) nature of business; (d) number of members; and (e) such other particulars as the Director may determine. |
| Establishment of branches | 24 | <ul style="list-style-type: none"> (1) A Cooperative registered under this Act may establish a branch or other offices other than its registered headquarters and file a notification of such establishment with the Director subject to payment of requisite fees. (2) a cooperative registered outside the county and intending to operate within the county, shall in writing notify the Director of its intention, pursuant to which the Director shall confirm its registration and good standing, prior to issuing a letter of no objection, and notifying the Commissioner. |
| Evidence of registration | 25 | <ul style="list-style-type: none"> (1) A certificate of registration signed by the Commissioner of Cooperatives shall be conclusive evidence that the Cooperative therein mentioned is duly registered or provisionally registered, unless it is proved that such registration of the Cooperative has been cancelled or has been terminated. |
| Display of Certification of Registration | 26 | <ul style="list-style-type: none"> (1) A cooperative or Branch of a cooperative shall display the Certificate of Registration granted under this Act at strategic positions at its registered office and at its branch offices or places that it carries on its business; (2) A cooperative that fails to display the Certificate of Registration and shall be guilty of an offence and liable to a fine not exceeding One Hundred Thousand Shillings or imprisonment for a term not exceeding three years or both ; |
| Change of name or loss of certificate | 27 | <ul style="list-style-type: none"> (1) Where a cooperative change its name, the Commissioner shall issue the cooperative with a certificate of change of name bearing the new name of the cooperative and the date of change of name, by an approval from the Director notifying such changes; (2) Where a certificate of registration of a cooperative is lost or destroyed, the cooperative shall apply to the Commissioner, through the Director, in writing for the issuance of a replacement duplicate certificate of registration, and the Commissioner shall issue a replacement duplicate |

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| | | certificate in such form and manner, and on such terms as conditions as may be prescribed. |
| Protection of the name of a registered Cooperative | 28 | <p>(1) No Cooperative shall be registered under a name identical with that under which any other existing Cooperative is registered, or under any name likely, in the opinion of the Director, to mislead the members of the public of its identity.</p> <p>(2) Except as provided in this Act or any other written law, the word “Cooperative” shall form part of the name of every cooperative, and the word “limited” shall be the last word in the name of every cooperative.</p> <p>(3) No person shall use the word “Cooperative” or any of its derivatives or any other words indicating the transaction of cooperative business or the equivalent, in the name, description or title under which it transacts business in Kenya or make any representation that the person transacts cooperative business unless such person is duly registered under this Act.</p> <p>(4) Any person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.</p> |
| Protection and restriction on the use of the name “SACCO” | 29 | <p>(1) Despite provisions of Section 24 of this Act, where a cooperative is registered as a savings and credit cooperative, the word “SACCO” shall form part of the name of every such cooperative instead of the word “cooperative”, and the word “Limited” shall be the last word in the name of such cooperative.</p> <p>(2) No person shall use the word “SACCO” or any of its derivatives or any other words indicating the transaction of Sacco business or the equivalent, in the name, description or title under which it transacts business in Kenya or make any representation that the person transacts Sacco business unless such person is duly registered under as a savings and credit cooperative under this Act.</p> <p>(3) For purposes of this section, “Sacco business” has the meaning assigned to it under the Sacco Act, 2008.</p> <p>(4)) In addition to any penalty provided under the Sacco Act, 2008, any person who contravenes the provisions of this section commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.</p> |
| Membership to apex | 30 | <p>(1) A Cooperative registered under this Act shall by virtue of that registration become a member of the apex Cooperative and upon</p> |

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| Cooperative and annual subscriptions | | becoming a member of the apex Cooperative, shall participate in the affairs of the apex Cooperative including paying annual subscriptions. |
| By-laws to bind Cooperative and members | 31 | (1) The by-laws of a Cooperative, shall, when registered, bind the Cooperative and the members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for the member and the member’s personal representatives to observe all the provisions of the by-laws. |
| Amendment of by-laws | 32 | <p>(1) A Cooperative may, subject to this Act, amend its by-laws.</p> <p>(2) No amendment of the by-laws of a Cooperative shall be valid until the amendment has been registered by the Commissioner.</p> <p>(3) The Director may reject an amendment if after an inquiry or inspection and it is discovered that an amendment was affected and registered through misrepresentation or concealment of a material fact.</p> <p>(4) An amendment which changes the name of a Cooperative shall not affect any right or obligation of that Cooperative or its members.</p> <p>(5) The Director shall register and certify an amendment of the by-laws of a Cooperative, and forward it to the Commissioner and issue to the Cooperative a copy of the certified and registered amendment by him, which shall be conclusive evidence of the fact that the amendment has been duly registered</p> <p>(6) In this section, “amendment” includes the making of a new by-law and the variation or revocation of a by-law, but excludes the variation of the registered address of a Cooperative where this forms a part of the by-laws of such a Cooperative.</p> |
| PART V- RIGHTS AND LIABILITIES OF MEMBERS | | |
| Qualification for membership | 33 | <p>(1) A person other than a Cooperative shall not be qualified for membership of a Cooperative unless the person —</p> <p>(a) has attained the age of eighteen years; and</p> <p>(b) has employment, occupation or profession falling within the category or description of those for which the Cooperative is formed; or</p> <p>(c) is resident within, or occupies land within, the Cooperative’s area of operation as described in the Cooperative’s by-law.</p> <p>An unincorporated or corporate body may become a member of a Cooperative, only with the approval of the members at a general meeting or the board of directors’ subject to ratification by the members at a general meeting.</p> |

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| Rights to hold shares and Limitation of holding share capital. | 34 | (1) A member of a cooperative may hold such shares, transfer shares or such other manner invest with the cooperative provided that no member other than a cooperative may hold more than one fifth of the issued and paid-up share capital of a cooperative. |
| Limitation of Membership to one Cooperative | 35 | <p>(1) A person shall not be a member of more than one Cooperative having the same or similar object where such membership presents significant conflict of interest provided that the Director may exempt a person upon application;</p> <p>(2) The Director shall determine what amounts to significant conflict of interest on a case-to-case basis. Where a person is not satisfied with the decision of the Director, they may appeal to the County Executive Committee Member and may further appeal to the Cooperative Tribunal</p> |
| Exercise of members' rights | 36 | (1) No member of a Cooperative shall exercise any of the rights of a member unless the member has made such payment to the Cooperative in respect of membership, or has acquired such interest in the Cooperative as may be prescribed under this Act or under the by-laws of the Cooperative. |
| Voting rights of members | 37 | <p>(1) Each member of a Cooperative shall have one vote only in the affairs of the Cooperative, irrespective of the number of shares the member holds</p> <p>(2) A Cooperative shall not classify or categorize its members into clusters or groups in such a manner as to restrict the members' rights of voting as provided in sub-section (1).</p> <p>(3) Despite subsection (1), a Cooperative which is a member of a secondary Cooperative, a Cooperative federation or the apex Cooperative –</p> <p>(a) shall have as many votes as may be prescribed by the by-laws of the secondary Cooperative, Cooperative federation or apex Cooperative of which it is a member; and</p> <p>(b) may appoint any such number of its representatives to the secondary Cooperative, Cooperative federation or apex Cooperative, as may be allotted by the by-laws of the secondary Cooperative, Cooperative federation or apex Cooperative as the case may be.</p> |
| Transfer of Shares | 38 | <p>(1) The transfer or charge of the share or interest of a member in the capital of a cooperative shall be subject to such conditions as to maximum holding prescribed in Section 34 of this act.</p> <p>(2) Subject to the approval of the Board of Directors, a member may transfer his share or her shares in a cooperative to any other member of the cooperative or to any person whose membership of the cooperative has been approved by the Board of Directors .</p> |

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| | | <p>(3) In the case of a cooperative registered with unlimited liability, a member shall not transfer or charge any share held by the member or the member’s interest in the capital of the cooperative or any part thereof, unless-</p> <ul style="list-style-type: none"> (a) the member has held such share or interest for at least one year; and (b) the transfer or charge is in favor of the cooperative or a member of the cooperative. <p>(4) No transfer of a share in a cooperative shall be valid and effective until such transfer has been recorded in the register of the cooperative.</p> <p>No transfer of a share or shares in a cooperative shall be valid and effective if made by a member indebted to a cooperative whether such debt is due for payment or not.</p> |
| <p>Rights of members</p> | <p>39</p> | <p>(1) A member of a Cooperative shall have the right to—</p> <ul style="list-style-type: none"> (a) attend and participate in decisions taken at all general meetings of the Cooperative and vote; (b) Elect and be eligible to be elected to organs of the Cooperative, subject to its by-laws; (c) enjoy the use of all the facilities and services of the Cooperative subject to its by-laws; (d) to access information relating to the Cooperative and its subsidiaries, including bylaws, internal regulations, registers, minutes of general meetings, reports of supervisory boards , financial statements, statutory reports, and any other information as may be prescribed by law; (e) all legitimate information relating to the Cooperative, including: internal regulations, registers, minutes of general meetings, supervisory committees, reports, annual accounts and inventories, investigation reports, at the Cooperative’s head office; (f) have the books and registers inspected by the supervisory council, if the books have not so been inspected in the year. (g) ask for education and training by the Cooperative according to the bylaws or the decisions of the general meeting; |

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| | | <p>(h) jointly with other members forming a third of the total membership of the cooperative convene a general meeting;</p> <p>(i) have a question inscribed on the agenda of a general meeting; and</p> <p>(j) ask for an additional audit.</p> |
| Member's obligations | 40 | <p>(1) A member of a Cooperative shall have the obligation to—</p> <p>(a) observe and comply with all the Cooperative by-laws and decisions taken by the relevant organs of the Cooperative in accordance with the by-laws of that Cooperative;</p> <p>(b) buy and pay up for shares or make any other payments provided for in the by-laws of the Cooperative; and</p> <p>(c) meet the debts of the Cooperative in case of bankruptcy in accordance with this Act and the by-laws of the Cooperative.</p> |
| PART V- DUTIES OF COOPERATIVES | | |
| Registered Address of Cooperatives | 41 | <p>(1) Every cooperative shall have a registered address to which notices and communications may be sent and shall send to the Directorate every change of address within one month of the change.</p> |
| By-laws and policies of a cooperative | 42 | <p>(1) A cooperative shall be governed by the provisions of its By-laws developed as prescribed by this Act.</p> <p>(2) A cooperative may develop policies and guidelines for better carrying out of the functions set out in the by-laws subject to approval by the Annual general meeting and the Director.</p> |
| Records of Cooperatives | 43 | <p>(1) A cooperative shall keep at its registered office and at its branch offices;</p> <p>(a) A copy of its by-laws and policies;</p> <p>(b) A copy of this Act and Regulations;</p> <p>(c) Books of accounts including the audited accounts in the last five years;</p> <p>(d) Records of members including the members profiles (excluding details of nominees and shareholdings) open for inspection by any person, free of charge, at all reasonable times during business hours;</p> <p>(e) Minutes of the meetings;</p> <p>(f) Any other documents as may be prescribed by the Director.</p> |

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| | | (2) Any member of the cooperative or the Director or a person authorized by the Director shall have unlimited access to the records of the cooperative at all reasonable times during business hours. |
| Estimates of income and expenditure for Cooperatives | 44 | <p>(1) the Board of Directors shall cause to be prepared annual estimates of the cooperative’s income and expenditure including recurrent and capital estimates for approval at the general meeting at least three months before the end of the preceding financial year.</p> <p>(2) Estimates of income and expenditure shall be provided to members fifteen days prior to the date of the general meeting through physical copies, posting in notice boards placed and conspicuous places or through other means including electronic;</p> <p>(3) No Cooperative shall operate without an approved budget.</p> <p>(4) The director may impose no debit instructions to bankers of a Cooperative that fails to comply with sub section (2) until the Cooperative complies.</p> |
| Accounts and audit | 45 | <p>(1) Every cooperative shall keep proper accounts which shall;</p> <p>(a) be prepared in accordance with International Accounting Standards;</p> <p>(b) reflect the true and fair state of the cooperative’s affairs; and</p> <p>(c) explain the cooperative’s transactions including-</p> <p>(i) all sums of money received and paid by the cooperative and the reasons thereto;</p> <p>(ii) all sales and purchases of goods and services by the Cooperative; and</p> <p>(iii) all assets and liabilities of the Cooperative;</p> <p>(2) The books of accounts shall be kept at the registered office and shall at all times be available for inspection by members of its supervisory board and the auditor;</p> <p>(3) A member of the cooperative or the Director or such other person as may be authorized by the Director may have access to the books of account of a Cooperative.</p> <p>(4) It shall be the duty of every cooperative to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4);</p> <p>(5) The auditor shall be appointed at the annual general meeting from a list of auditors qualified and licensed under the Institute of Certified Public Accountants of Kenya and appearing in the list approved by the Commissioner;</p> |

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| | <p>(6) Where at an annual general meeting no auditor is appointed, the Director may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the cooperative;</p> <p>(7) The accounts referred to subsection (3) shall;</p> <p>(a) conform with International Financial Reporting Standards;</p> <p>(b) include the following records—</p> <ul style="list-style-type: none">(i) statement of financial position;(ii) statement of comprehensive income;(iii) statement of changes in equity;(iv) a cash flow statement;(v) notes to the accounts; and(vi) be authenticated by at least three members of the Board of Directors including the chairperson of the Cooperative; and(vii) be approved by the Board of Directors <p>(8) No auditor shall present the audited accounts of a cooperative to the members at a general meeting unless the accounts have been previously submitted, approved and registered by the Commissioner in such form as may be prescribed;</p> <p>(9) The auditor shall present 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 cooperative’s business has been conducted—</p> <p>(a) in accordance with the provisions of this Act and, whether the books of accounts kept by the cooperative are in agreement therewith and give a true and fair view of the state of the affairs of the cooperative; and</p> <p>(b) in accordance with the cooperative’s objectives, by-laws and any other resolutions made by the cooperative at a general meeting.</p> <p>(10) The auditor shall have the right to-</p> <p>(a) attend any general meeting of the cooperative and be heard on any matter which concerns him as an auditor;</p> <p>(b) receive all notices and other communications relating to any general meeting which a member of the cooperative is entitled to receive;</p> |
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| | | <p>(c) access, at all times, any accounting records, books or documents of the cooperative as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit—</p> <p>(i) summon any officer, agent or member of the cooperative for the purpose of obtaining information on the transactions of the Cooperative or management of its affairs;</p> <p>(ii) require the production of any book, document, cash or securities relating or belonging to the cooperative by any officer, agent, trustee or member having custody of such book, document, cash or securities;</p> <p>(iii) demand such other information or explanation from any officer of the Cooperative as may be necessary for the performance of his duties as an auditor.</p> <p>(11) Every Cooperative shall, at such time and in such form as may be prescribed, file with the director an annual return together with a certified true copy of the audited accounts and balance sheet of the cooperative for each period of twelve months.</p> <p>(12) Where a cooperative fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, the Board of Directors shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Director is satisfied that the failure was due to circumstances beyond their control.</p> <p>(13) Each Board of Directors shall be personally liable for failure to ensure that the books of accounts of a cooperative are audited and submitted to the Director within the timelines set out in this Act and shall be liable to a fine not exceeding one hundred thousand shillings for every month of the delay.</p> <p>(i) Notwithstanding the generality of the foregoing, the members of the Board of Directors shall not be liable if the delay in auditing is due to an act of God or act beyond the control of the members as certified by the Director</p> <p>(14) For the purposes of this section, “International Accounting Standards” and “International Financial Reporting Standards” means the standards established by the Institute of Certified Public Accountants of Kenya.</p> |
| Production of Books of | 46 | (1) Any officer, agent, servant or member of a cooperative who is required by Director, or by a person authorized in writing by him to do so shall, |

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| <p>accounts and Other Documents</p> | | <p>at such place and time as the Director may direct, produce all moneys, securities, books, accounts and documents belonging to or relating to the affairs of such cooperative which are in the custody of such officer, agent, servant or member</p> |
| <p>PART VII – GOVERNANCE OF COOPERATIVES</p> | | |
| <p>General Meetings</p> | <p>47</p> | <p>(1) The supreme authority of a cooperative shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters;</p> <p>(2) Subject to subsection (1) a cooperative shall hold an annual general meeting within four months after the end of each financial year.</p> <p>(3) In the first year after registration of a cooperative, the general meeting shall be held not later than one month after receipt of the certificate of registration of the cooperative and during such meeting, the members shall—</p> <ul style="list-style-type: none"> (a) elect the cooperative’s office bearers for the ensuing year; (b) determine the maximum borrowing powers of the cooperative; (c) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof; (d) appoint the cooperative’s bankers and auditors; and (e) receive reports and decide upon such other matters as may be necessary for the conduct of the cooperative’s business. <p>(4) A general meeting of a cooperative shall be convened by giving at least fifteen days written notice to the members;</p> <p>(5) At the annual general meeting of a cooperative, the members shall—</p> <ul style="list-style-type: none"> (a) consider and confirm the minutes of the last general meeting; (b) consider any reports of the Committee or the County Cooperative Director; (c) consider and adopt audited accounts; (d) determine the manner in which any available surplus is to be distributed or invested; and (e) transact any other general business of the cooperative of which notice has been given to members in the manner prescribed in the by-laws of the Cooperative. |
| <p>Special general meeting</p> | <p>48</p> | <p>(1) A special general meeting of a cooperative may be convened-</p> <ul style="list-style-type: none"> (a) by the Committee for the purpose of approving annual estimates or discussing any urgent matter which in the Committee’s opinion is in the interest of the cooperative; or |

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| | | <p>(b) on receipt of a written notice for such meeting signed by such number of the members of the cooperative as may be prescribed in the by-laws and stating the objects and reasons for calling the meeting.</p> <p>(2) If the Committee fails to convene a meeting within fifteen days of receiving the notice under subsection (6)(b), the members demanding the meeting may themselves convene the meeting by giving notice to the other members of the cooperative, stating the objects and reasons for the meeting and the fact that the Board has failed to convene the meeting</p> <p>(3) The Director may convene a special general meeting of a cooperative at which he/she may direct the matters to be discussed at the meeting.</p> |
| Presiding at general meetings | 49 | <p>(1) The Chairperson or in his/her absence the vice Chairperson or such other person as may be prescribed in the by-laws of the cooperative shall preside at a general meeting of a cooperative.</p> <p>(2) The Director may preside at any meeting convened under subsection (1)</p> |
| General meeting may be held physically or virtual or both | 50 | <p>(1) Except as provided herein, a Cooperative shall hold its general meetings physically</p> <p>(2) Despite sub-section (1), a Cooperative may, hold its general meeting virtually or a hybrid of virtual and physical meeting in exceptional circumstances and subject to compliance with such requirements as may be prescribed in the regulations or by any other written law</p> |
| Delegate system of representation as the general meetings | 51 | <p>(1) Despite the provisions of the cooperative principle of democratic member control, and the rights of members of a primary cooperative to attend and vote at a general meeting in person; a cooperative may in its by-laws provide for delegated or proxy representation at its general meeting, in such manner and to such extent as may be prescribed in the regulations.</p> <p>(2) Despite the generality of subsection (1), decisions relating to the following matters in respect to a primary cooperative shall be exclusively discussed at a physical general meeting of the entire membership:</p> <p>(a) dissolution of the cooperative;</p> <p>(b) amalgamation or division of a cooperative;</p> <p>(c) formation of subsidiary companies;</p> |

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| | | <ul style="list-style-type: none"> (d) acquisition of a majority shareholding of a company or any other entity or a takeover of a company in which the cooperative is a shareholder; (e) liquidation or winding-up of a subsidiary company of the cooperative; (f) proposed change in the core business in respect of which the cooperative was incorporated; and (g) any other matter as the County Executive Committee Member may prescribe. |
| Membership and Powers of the Board | 52 | <ul style="list-style-type: none"> (1) Every cooperative shall have a Board of Directors consisting of not less than five and not more than nine members, provided that composition of the board shall have a representation of not less than a third of either gender serving as members of the board where applicable. (2) The members of the Board shall elect a Chairperson and a vice- Chairperson from among their members; (3) The Board shall be the governing body of the cooperative and shall, subject to any direction from a general meeting or the by-laws of the cooperative, direct the affairs of the cooperative with powers to— <ul style="list-style-type: none"> (a) enter into contracts; (b) institute and defend suits and other legal proceedings brought in the name of or against the cooperative; and (c) do all other things necessary to achieve the objects of the cooperative in accordance with its by-laws |
| Eligibility to the board of directors | 53 | <ul style="list-style-type: none"> (1) No person shall be a member of a Board if the person; <ul style="list-style-type: none"> (a) is not a member of the cooperative; (b) is under eighteen years of age; (c) is unable to read and write; (d) does not have a minimum of secondary level of education certificate unless exempted by the County Executive Committee Member. (e) receives any remuneration, salary or other payment from the cooperative save in accordance with this Act; (f) has not, within thirty days of being elected, submitted a wealth declaration to the Commissioner in the prescribed manner; (g) has not within fourteen days of being elected filed indemnity in the prescribed manner; (h) is a Board member in two other primary Cooperatives, registered with the same objects and purposes; (i) has not met the requirement ethical requirement prescribed by the Ethics Commission for Cooperatives; (j) is an undischarged bankrupt; |

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| | <p>(k) is of unsound mind;</p> <p>(l) being a member of a Cooperative, which trades in goods, or produce, trades either on the person's own account or some other person's account in the same type of goods or produce;</p> <p>(m) being a member of a Cooperative that lends money to its members, lends money on his own account;</p> <p>(n) has been adversely named by the commissioner in an inquiry report or any inspection report by the director adopted by a general meeting for mismanagement or corrupt practices while a member of the Board of Directors;</p> <p>(o) has been convicted of any offence involving dishonesty or is sentenced to imprisonment for a term exceeding three months;</p> <p>(p) has any uncleared debt owing to a cooperative at the end of its financial year other than in respect of a loan under the provision of any rules made under this Act;</p> <p>(q) is a person against whom any amount of money is due under a decree, decision or order or is pending recovery under this Act.</p> <p>(r) has been convicted of any offence under this Act or regulations, the national law for cooperatives, or the Public Officers Ethics Act, the Anti-Corruption and Proceeds of Crime Act and any regulations made thereunder; and</p> <p>(s) does not satisfy the provisions of Chapter Six of the Constitution.</p> <p>(2) The provisions of this section relating to qualifications and disqualification of appointment of persons to the board of directors, shall apply to the qualifications and disqualifications of members of the supervisory board with such modifications as may be necessary.</p> <p>(3) The Board may delegate any of its duties under this Act to an officer or officers of the cooperative provided nothing in this subsection shall absolve the Board of Directors from its responsibility to run the affairs of the cooperative in a proper and businesslike manner;</p> <p>(4) In the conduct of the affairs of a cooperative the Board shall exercise prudence and diligence of ordinary men of business and the members shall be held, jointly and severally liable for any losses sustained through any of their acts which are contrary to the Act, rules, by-laws or the directions of any general meeting of the cooperative.</p> <p>(5) The Director may suspend from duty any member of the Board of Directors charged in a court of law with an offence involving fraud or dishonesty pending the determination of the matter</p> |
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| <p>Responsibilities of the Board of Directors</p> | <p>54</p> | <p>(1) The Board of Directors shall be responsible for strategy, risk management, internal controls, policy formulation and oversight of the Cooperative and more specifically the board of directors-</p> <ul style="list-style-type: none"> (a) may appoint a chief executive officer or manager of the Cooperative who shall be responsible for the day to day running of the affairs of the Cooperative; and (b) constitute such committees of the board, as may be necessary to perform its functions; (c) may delegate any of its duties under this Act, the regulations and the by-laws of the Cooperative to the chief executive officer, any officer of the Cooperative, any of the committees but, nothing in this subsection shall absolve the board of directors from its responsibility to provide oversight over the affairs of the Cooperative. <p>(2) Pursuant to sub-section (1 b) above the –</p> <ul style="list-style-type: none"> (a) number of committees of the board shall not exceed three; (b) terms of reference of each committee shall be prescribed in the by- laws of the Cooperative. |
| <p>Establishment of a Supervisory Board</p> | <p>55</p> | <p>(1) There is established in every Cooperative a supervisory board consisting of three members elected at a general meeting for a period of three years and one member of the supervisory board shall retire annually and eligible for re-election.</p> |
| <p>Duties of the Supervisory Board</p> | <p>56</p> | <p>(1) The duties of the Supervisory board shall include—</p> <ul style="list-style-type: none"> (a) verification of all transactions of the Cooperative; (b) writing periodic reports of its findings to be tabled at meetings of the board of director; (c) presenting its reports to the general meeting; (d) review internal controls including the scope of the internal audit program, the internal audit findings, and recommend action to be taken by the Board of Directors and management; (e) review internal audit reports and their overall effectiveness, the scope and depth of audit coverage, reports on internal control and any recommendations and confirm that appropriate action has been taken; (f) ensure that accounting records and financial reports are promptly prepared to accurately reflect operations and results; (g) review management reports, and reports from the internal and external auditors concerning deviations and weaknesses in accounting and operational controls; (h) monitor the ethical conduct of the Cooperative and recommend the development of ethical standards and requirements, including – |

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| | | <ul style="list-style-type: none"> (i) effectiveness of procedures for handling and reporting complaints; (ii) reviewing any related party transactions that may arise within the Cooperative; (iii) verifying that relevant plans, policies, and control procedures are established and properly administered; (iv) investigating members' complaints and making recommendations for redress; and (v) considering any matter of significance raised by members during the annual general meeting or by the Commissioner, Director, or Authority, as the case may be. <p>(2) The supervisory board shall prepare and submit quarterly reports to be presented to a joint meeting with the board of directors within thirty days after the end of each quarter.</p> <p>(3) The supervisory board shall submit or cause to be submitted all quarterly reports of the supervisory board, together with comments and actions made by the board of directors, within thirty days, after presentation to the board of directors to the -</p> <ul style="list-style-type: none"> (a) Director in case of primary and secondary Cooperatives within the county: and (b) to the Authority in case of Cooperatives in respect of which the Sacco Societies Act, 2008 apply. <p>(4) The board of directors shall provide sufficient resources in the annual budgetary estimates to the supervisory board to enable it perform its functions including secretarial services.</p> <p>(5) The internal auditor of the Cooperative shall provide technical support to the supervisory board.</p> |
| <p>Nomination Committee</p> | <p>57</p> | <p>(1) There shall be a Nomination Committee consisting of not less than three and not more than five persons in every cooperative whose responsibility shall be to vet and clear potential persons for professional or moral suitability to be elected to the board of directors, supervisory board or any other elective position of a cooperative.</p> <p>(2) The Nomination Committee of a cooperative shall be elected by the board in accordance to the provisions of by-laws and electoral policy</p> <p>(3) Despite the generality of this section, a Cooperative shall in constituting the nomination committee in its by-laws and electoral policy, ensure that at least the following persons are represented –</p> <ul style="list-style-type: none"> (i) The Director, or his representative who shall be the chairperson; (ii) chief executive officer of the Cooperative who shall provide secretarial services; |

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| | | (iii) not more than three (3) other persons who may be drawn from professional bodies in Kenya, federations, government officials, and religious community within the areas of operation of the Cooperative. |
| Term of the Board | 58 | <p>(1) The term of a board shall be three years with one third of the members of the committee retiring at the end of each year on a rotational basis:</p> <p>(2) Provided that, a member of the board retiring on a rotational basis may offer oneself for re-election.</p> <p>(3) A serving member of the Board wishing to compete in any elective office either at the County or National level during the general elections shall resign within the time limit provided in the election law</p> |
| PART VIII PROPERTY AND FUNDS OF COOPERATIVES | | |
| Funds of a Cooperative | 59 | <p>(1) A cooperative may receive funds from-</p> <p>(a) Members contributions</p> <p>(b) Members deposits</p> <p>(c) Donations</p> <p>(d) Loans and other borrowings</p> <p>(e) Grants from government</p> <p>(f) Investments</p> <p>(g) Any other source approved by the members</p> <p>(2) The funds and property of the cooperative shall only be utilized for the benefit of the cooperative and its members in accordance with the by-laws.</p> |
| Restriction on giving loans to non-members | 60 | (1) A Cooperative shall not give a loan nor allow any credit, to a person other than a member, unless the by-laws of the Cooperative provide for giving a loan subject to a resolution passed at the general meeting of a Cooperative to that effect |
| Restriction on borrowing | 61 | (1) A Cooperative may receive loans from persons who are not members only to such extent and under such conditions as may be prescribed by its by-laws or by rules under this Act, and for the purposes of this section a deposit of money under a hire-purchase agreement shall be deemed to be a loan. |
| Limitation of powers to borrow | 62 | (1) A cooperative with powers to borrow under its by-laws shall from time to time at general meeting fix the maximum liability which it may incur in loans or deposits from non-members subject to approval by the Commissioner upon recommendation by the Director. |

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| <p>Investment of funds of a cooperative</p> | <p>63</p> | <p>(1) A cooperative may invest or deposit its funds –</p> <p>(a) in and upon such investments and securities as are for the time being authorized for the investment of trust funds under the Capital Markets Act (Cap. 485a);</p> <p>(b) in the shares of any other Cooperative;</p> <p>(c) with any bank licensed under the Banking Act (Cap. 488);</p> <p>(d) in government securities;</p> <p>(e) in the stock of any statutory body established in Kenya or in any limited liability company licensed and regulated under the Capital Markets Act; or</p> <p>(f) any other investment as may be authorized by the County Executive Committee Member on recommendation by the Director.</p> |
| <p>Investment in non-core activity</p> | <p>64</p> | <p>(1) A Cooperative may not invest in non-core activities unless; -</p> <p>(a) A special resolution of members in a general meeting is passed to authorize such an investment</p> <p>(b) The acquisition or the investment is approved by the Commissioner on recommendation by the Director</p> |
| <p>Declaration and payment of bonus, dividend and interest on deposits</p> | <p>65</p> | <p>(1) A cooperative shall in each year declare bonus, dividend and interest on deposits due to its members and pay at such rate as shall be approved by the annual general meeting.</p> <p>(2) Where a cooperative requires to re-invest the bonuses declared for capital development, the cooperative shall issue bonus certificates to its members in lieu of cash payments which may be redeemed from a revolving fund established by the Cooperative for that purpose.</p> <p>(3) No Cooperative shall pay a dividend, bonus; or distribute any part of its accumulated funds without registered audited account and report disclosing the surplus funds out of which the dividend, bonus or distribution is to be made.</p> <p>(4) A Cooperative shall pay a dividend at such rate as may be recommended by the Board of Directors and approved by the annual general meeting of the Cooperative</p> |
| <p>Maintenance of Reserve Fund</p> | <p>67</p> | <p>(1) A cooperative which accrues surplus from its transactions shall maintain a reserve fund.</p> <p>(2) A Cooperative may carry to the reserve fund such portion of the net surplus in each year as may be prescribed by rules made under this Act or by the by-laws of the Cooperative</p> <p>(3) The reserve fund shall be invested in the manner provided for under applicable law.</p> |

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| | | <p>(4) The reserve fund of a cooperative shall be indivisible and no member shall be entitled to claim a specific any share of it.</p> <p>(5) Upon dissolution of a cooperative the funds under reserve funds shall first be applied to discharge the liabilities of the Cooperative.</p> |
| Distribution of net balance | 68 | (1) Subject to provisions of this Act, the net balance of each year with, any sum available for distribution from previous years, may be distributed in the manner prescribed by rules made under this Act or by the by-laws of the Cooperative |
| PART IX- AMALGAMATION AND DIVISION OF COOPERATIVES | | |
| Amalgamation of Cooperatives | 69 | <p>(1) Any two or more cooperatives (hereinafter referred to as amalgamating cooperatives) may, by special resolution (in this section referred to as the preliminary resolution), resolve to amalgamate as a single cooperative (hereinafter referred to as the amalgamated cooperative).</p> <p>(2) A copy of the preliminary resolution shall be sent to all the members and creditors of each of the amalgamating cooperatives, the Director, and to all other persons whose interests in any of the amalgamating cooperatives will be affected by the amalgamation.</p> <p>(3) Any member of any of the amalgamating cooperatives may, notwithstanding any by-law to the contrary, by notice in writing given to his cooperative at least one month before the date specified as the date of amalgamation, intimate such member’s intention not to become a member of the amalgamated cooperative.</p> <p>(4) Any creditor of any of the amalgamating cooperatives may, notwithstanding any agreement to the contrary, by notice in writing given to such cooperative at least one month before the date specified as the date of amalgamation, intimate such creditor’s intention to demand the payment of any money due to the creditor.</p> <p>(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the concerned amalgamating cooperative, not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his claim is satisfied.</p> <p>(6) Not less than three months after the date of the meeting at which the preliminary resolution is passed, a further special general meeting of</p> |

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| | | <p>each of the amalgamating cooperatives shall be held to consider the preliminary resolution and any notices received under this section.</p> <p>(7) At the special general meeting held under subsection (6) provision shall be made by a further resolution of the cooperative (in this section referred to as the secondary resolution) for—</p> <p>(a) the repayment of the share capital of any member who has given notice under subsection (3);</p> <p>(b) the satisfaction of any claims by creditors who have given notice under subsection (4); and</p> <p>(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) securing of their claims in such manner as determined or directed by the Director.</p> <p>(d) Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).</p> <p>(8) Each amalgamating cooperative may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.</p> <p>(9) If, within such time as the Director considers reasonable, and is satisfied that the secondary resolutions of each of the cooperatives amalgamating comply with the provision of this section, the Director may in writing, forward to the Commissioner the recommendation to register the amalgamated cooperative and its by-laws under the Cooperatives Act. model</p> <p>(10) Where the Director refuses the amalgamation of the amalgamating cooperatives under subsection (9) such cooperatives may appeal against such refusal to Commissioner.</p> |
| <p>Division of Cooperatives</p> | <p>70</p> | <p>(1) A cooperative (hereinafter referred to as the existing cooperative) may, by special resolution (in this section referred to as the preliminary resolution), resolve to divide itself into two or more cooperatives (hereinafter referred to as the new cooperatives).</p> <p>(b)The preliminary resolution shall contain proposals for the division of assets and liabilities of the existing cooperative among the new cooperatives in which it is proposed to be divided and may prescribe the</p> |

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| | | <p>area of operation of, and specify the members who will constitute each of the new cooperatives.</p> <p>(2) A copy of the preliminary resolution shall be sent to all the members and creditors of the existing cooperative, the Director and to all other persons whose interests will be affected by the division of the existing cooperative.</p> <p>(3) Any member of the existing cooperative may, notwithstanding any by-law to the contrary, by notice in writing given to the cooperative within two months of the receipt of the copy of the preliminary resolution, intimate such member's intention not to become a member of any of the new cooperatives.</p> <p>(4) Any creditor of the existing cooperative may, notwithstanding any agreement to the contrary, by notice in writing given to the existing cooperative within two months after receipt of the copy of the preliminary resolution, intimate such creditor's intention to demand the payment of any money due to the creditor.</p> <p>(5) Any other person whose interest will be affected by the division may, by notice in writing given to the existing cooperative within two months of the receipt of the preliminary resolution, object to the division.</p> <p>(6) After the expiry of three months after the date of the preliminary resolution, a further special general meeting of the existing cooperative shall be held to consider the preliminary resolution and any notices received under this section.</p> <p>(7) At the special general meeting held under subsection (6), provision shall be made by a further resolution of the cooperative for—</p> <ul style="list-style-type: none">(a) the repayment of the share capital of any member who has given notice under subsection (3);(b) the satisfaction of any claims by creditors who have given notice under subsection (4);(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) or the securing of their claims as the Director may determine, or direct: |
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| | | <p>that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).</p> <p>(8) The cooperative may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.</p> <p>(9) If, the Director is satisfied within such time as he/she considers reasonable that the provisions of the Preliminary resolution and the provisions of this section have been complied with, he/she may through his/her hand forward to the Commissioner and recommend to the Commissioner to register the cooperatives into which the existing cooperative has been divided and the by-laws of such cooperatives, under the Cooperatives Societies Act.</p> <p>(10) Where the Director refuses to recommend the division of an existing cooperative under subsection (9), the cooperative may appeal to the Commissioner within thirty days of the communication to it of the refusal.</p> |
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PART X - RIGHTS AND OBLIGATION OF COOPERATIVES

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| <p>Cooperative to have charge over member's produce.</p> | <p>71</p> | <p>(1) A Cooperative which has as one of its objects the disposal of any agricultural produce, may enter into a contract with its members, either in its by-laws or by a separate document binding the members to dispose of all their agricultural produce, or such amounts or descriptions of the same as may be stated therein, to or through the Cooperative, and the contract may bind the members to produce the quantities of agricultural produce therein specified, and the contract may also provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract, and any such sum on becoming payable shall be a debt due to the Cooperative and shall be a charge upon the immovable property of the member (subject to registration of the charge under the law under which the property is registered) and all stock then being thereon.</p> <p>(2) Any such contract as is mentioned in subsection (1) shall have the effect of creating in favor of the Cooperative a charge upon the proceeds of sale of all produce mentioned therein, whether existing or future.</p> |
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| | | <p>(3) A Cooperative may, on the authority of a resolution passed in general meeting, pledge the produce deliverable by members under any such contract as is mentioned in subsection (1) as security for loans made to Cooperative, in all respects as if it were the owner of the produce.</p> <p>No contract entered into under this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.</p> |
| <p>Fines for violation of by-laws.</p> | <p>72</p> | <p>(1) The by-laws of a Cooperative may, subject to this Act, provide for the imposition of fines, not exceeding twenty thousand shillings, on its members for any infringement of its by-laws, but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefore has been served on him and he has had an opportunity of showing cause why the fine should not be imposed and, if he so desires, of being heard with or without witnesses.</p> <p>(2) Any such fine shall be a civil debt due to the Cooperative, and shall, without prejudice to any other means of recovery, be recoverable summarily.</p> <p>(3) The whole or any part of such fine may be set off against any moneys due to such member in respect of produce delivered by him to the Cooperative.</p> <p>(4) A member shall not be taken to have infringed the by-laws of a Cooperative by reason of his having failed to deliver produce to such a Cooperative, if the failure was due to the fact that, before becoming a member of the Cooperative, he had contracted to deliver such produce to some other person, and the contract had been disclosed in accordance with subsection (5).</p> <p>(5) It shall be the duty of every person applying for membership of a registered Cooperative to disclose to the Cooperative particulars of all such contracts as are mentioned in subsection (4).</p> |
| <p>Cooperative to have first charge over debts, assets, etc. in certain cases</p> | <p>73</p> | <p>(1) Subject to any other written law as to priority of debts where a Cooperative has—</p> <p>(a) supplied to any member or past member any seeds or manure, or any animals, feeding stuff, agricultural or industrial implements or machinery or materials for manufacture or building; or</p> <p>(b) rendered any services to any member or past member; or</p> <p>(c) lend money to any member or past member to enable him to buy any such things as aforesaid or to obtain any such services, the Cooperative shall have a first charge upon such things or, as the case may be, upon any agricultural produce, animals or articles produced therewith or therefrom or with the aid of such money.</p> |

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| | | <p>(2) The charge shall subsist for such period as the loan or value of the services rendered by a Cooperative to a member shall remain unpaid.</p> |
| <p>Registration of a charge on property of a cooperative</p> | <p>74</p> | <p>(1) A cooperative may charge the whole or part of its property in accordance with its by-laws subject to a resolution by the general meeting and prior approval of the Commissioner upon recommendation by the Director.</p> <p>(2) A charge created by a Cooperative in accordance with section 73 of this Act shall comply with the provisions of the law applicable to the particular type of charge.</p> <p>(3) In addition to complying with provisions of other laws applicable to the particular type of charge, it shall be the duty of every Cooperative to register with the Commissioner, every charge created by it and the particulars thereof.</p> <p>(4) Every Cooperative shall cause a copy of every instrument of a charge which is required by this Act to be registered, to be kept at the registered address of the Cooperative.</p> <p>(5) Every Cooperative shall keep, at its registered address a register of charges in which shall be entered all charges specifically affecting the property of the Cooperative and all floating charges on the property or assets of the Cooperative, giving in each case a short description of the property charged, the amount of the charge, and the name of the person entitled thereto.</p> <p>(6) If any officer of a Cooperative knowingly omits, or permits the omission of, any entry required to be made in any register in pursuance of this section, the officer shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings.</p> <p>(7) The copies of the instruments creating charges which are required by this Act to be registered and the register of charges kept by the Cooperative shall be open, during business hours, to inspection by any creditor or member of the Cooperative, without fee, subject to such reasonable restrictions as the Cooperative, in general meeting, may impose. Provided however, that not more than two hours in each day shall be allowed for inspection, and the register of charges shall also be open to inspection by any other person on payment of the prescribed fee.</p> <p>Any officer of a Cooperative who refuses to allow inspection of the register of charges or copies of the instruments creating charges in accordance with subsection (7) above, or who permits such refusal, shall be guilty of an offence and shall be liable to a fine not exceeding two thousand shillings for every day during which the refusal of permission continues, and the Tribunal may order an immediate inspection of such register or copies.</p> |

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| <p>Cooperative to have first charge over members' share.</p> | <p>75</p> | <p>(1) A Cooperative shall have a first charge upon the share or interest in the capital and on the deposits of a member or past member, and upon any dividend, bonus or accumulated funds payable to a member or past member, in respect of any debt due from such member or past member to the Cooperative, and may set off any sum credited or payable to such member, or past member in or towards the payment of any such debt.</p> |
| <p>Failure to remit the sum deducted</p> | <p>76</p> | <p>(1) Where an employer of a person who is a member of a Cooperative has, under the instructions of the employee, made a deduction from the employee's emoluments for remittance to the Cooperative concerned but fails to remit the deductions within seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at a rate of not less than five per cent per month.</p> <p>(2) The Director may, on behalf of the Cooperative, institute legal proceedings in Tribunal for recovery of the sum owing under subsection (1) without prejudice to any other mode of recovery and such sum shall be a civil debt recoverable summarily.</p> <p>(3) In this section "employer" includes any person, firm or organization holding remuneration or payment for produce of a member of a Cooperative and the term "employee" includes any person who receives remuneration or payment for produce from such persons or firm or organization.</p> |
| <p>Member's share not subject to attachment.</p> | <p>77</p> | <p>(1) Subject to act, the share or interest of a member in the capital of a Cooperative shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy shall not have any claim on such share or interest:</p> <p>(2) Provided that, where a Cooperative is dissolved, the share or interest of any member who is adjudged a bankrupt under such law shall vest in the trustee in bankruptcy in accordance with such law.</p> |
| <p>Rights of members giving notice to withdraw from membership</p> | <p>78</p> | <p>(1) A member may at any time withdraw from a cooperative by giving at least sixty (60) days written notice to the board of directors of a cooperative.</p> <p>(2) Upon giving notice of withdrawal from membership of a cooperative, the member shall –</p> <ul style="list-style-type: none"> (a) be refunded any deposit held by the cooperative on his behalf or any accrued interest on such deposits; (b) be paid any accrued dividends to the member prior to the date of notice of withdrawal; |

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| | | <p>(c) the member’s share shall continue to earn dividends in favour of the member or the members’ nominee or transferee, whenever such dividends are declared; and</p> <p>(d) refund any other sums of money held by the cooperative on the member’s behalf after deduction of any sum owed to the cooperative.</p> <p>(3) A member who has given notice of withdrawal from membership of a Cooperative shall continue being a member of the cooperative, until the members’ share is transferred to another member or otherwise purchased by the cooperative as an institutional capital</p> <p>(4) Where a cooperative fails to make a refund of members’ deposits or any other dues as provided in this section, the cooperative shall be liable to pay a compound interest on the outstanding deposits or other dues to the member at the rate of five per-cent per month for every month that the deposit or other dues remain unpaid.</p> <p>(5) Where a cooperative fails to refund a members’ deposits or other dues, the Director may, at the request of any such aggrieved member, issue an agency notice to the bankers of the defaulting cooperative to recover any such outstanding refunds or other dues together with any interest accrued thereon.</p> |
| <p>Liability of past members.</p> | <p>79</p> | <p>1) The liability of a past member of a Cooperative shall be in respect of the debts of the Cooperative as they existed at the date when he ceased to be a member and proceedings in respect thereof may be commenced within a period of two years from such date:</p> <p>Provided that,</p> <p>(a) in the case of a Cooperative with limited liability, if the first audit of the accounts of such Cooperative after member ceasing to be a member discloses that the Cooperative is solvent, the financial liability of such past member shall cease forthwith.</p> |
| <p>Liability of deceased members</p> | <p>80</p> | <p>(1) The estate of a deceased member shall be liable for the debts of the Cooperative as they existed at the time of his death, and proceedings in respect thereof may be commenced within one year of the death:</p> <p>Provided that—</p> <p>(a) in the case of a Cooperative with limited liability, if the first audit of the accounts of the Cooperative after the death discloses a</p> |

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| | | <p>credit balance in favor of the Cooperative, the financial liability of the estate shall cease forthwith; and</p> <p>(b) a personal representative shall not be liable except in respect of assets in his possession or under his control.</p> |
| <p>Transfer of share or interest of deceased members</p> | <p>81</p> | <p>(1) On the death of a member, a Cooperative may transfer the share or interest of the deceased member to—</p> <p>(a) the person nominated in accordance with this Act and any rules made thereunder; or</p> <p>(b) if there is no person so nominated, such person as may appear to the Committee of the Cooperative to be the personal representative of the deceased member; or</p> <p>(c) if either of such persons is not qualified under this Act and any rules made thereunder or the by-laws of such Cooperative for membership, such person, specified by the nominee or personal representative, as the case may be, who is so qualified, or may pay to such nominee or personal representative, as the case may be, a sum representing the value of such member’s share or interest ascertained in accordance with any rules made under this Act or by-laws of the Cooperative :</p> <p>Provided that—</p> <p>(i) in the case of a Cooperative with unlimited liability, such nominee or personal representative, as the case may be, may require the Cooperative to pay him the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection; or</p> <p>(ii) in the case of a Cooperative with limited liability, the Cooperative shall transfer the share or interest of the deceased member to such nominee or personal representative, as the case may be, being qualified in accordance with this Act or any rules made thereunder or the by-laws of such Cooperative for membership of the Cooperative , or on his application within one month of the death, to any person specified in the application, who is so qualified.</p> <p>(2) A Cooperative shall pay all other moneys due to the deceased member from the Cooperative to such nominee or personal representative, as the case may be.</p> |

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| | | (3) All transfers and payments made by a Cooperative in accordance with this section shall be valid and effectual against any demand made upon the Cooperative by any other person. |
| Evidence of member's interest in the Cooperative. | 82 | <p>(1) Any register or list of members or of shares which is kept by a Cooperative shall be prima facie evidence of any of the following particulars entered therein—</p> <p>(a) the date on which the name of any person was entered in such register or list, as a member;</p> <p>(b) the date on which any such person ceased to be a member; and</p> <p>(c) the number of shares held by any member.</p> <p>(2) A copy of any entry in a book of a Cooperative regularly kept in the course of its business, shall, if certified in accordance with the rules made under this Act, be prima facie evidence in any proceedings of the existence of such entry, and of the matters, transactions, and accounts, therein recorded</p> |
| Restriction on production of Cooperative's books | 83 | (1) No officer of a Cooperative shall in any legal proceedings to the Cooperative or liquidator is not a party may be compelled to produce any of the Cooperative's books where the contents can be proved under section 46 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court, for special cause, otherwise orders. |
| PART XI- INQUIRY, INSPECTION AND SURCHARGES | | |
| Inquiry | 84 | <p>(1) The Director may recommend to the Commissioner to hold an inquiry—</p> <p>—</p> <p>(a) On the director's own accord; or</p> <p>(b) on the direction of the County Executive Committee Member; or</p> <p>(c) on the application of not less than one-third of the members present and voting at a properly convened general meeting of the Cooperative; or</p> <p>(d) on the application of the liquidator or any creditor;</p> <p>(2) pursuant to subsection (1) the Commissioner may inquire into the by-laws, working and financial conditions of any Cooperative.</p> |

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| | | <p>(3) Any official or member of the Cooperative shall produce such cash, accounts, books, documents and securities of the Cooperative, and furnish such information in regard to the affairs of the Cooperative, as the person holding the inquiry may require.</p> <p>(4) The Director shall on receipt of the Commissioner’s inquiry report, implement and enforce the recommendations of the inquiry.</p> <p>(5) On the basis of the Commissioner’s inquiry report, the Director shall, dissolve the Board and cause to be appointed an interim Board of Directors consisting of not more than five members from among the members of the Cooperative for a period not exceeding ninety days.</p> <p>(6) Any person found to have misapplied or retained or become liable or accountable for any money or property of the Cooperative or has been guilty of misfeasance or breach of trust in relation to the Cooperative, the person may, if the Commissioner so recommends, the Director shall direct that the person be required to repay or restore the money or property or any part thereof to the Cooperative together with interest at such rate as the Director deems fit.</p> <p>(7) This section shall apply notwithstanding that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted.</p> <p>(8) Any person aggrieved by an order of the Director under sub-section (6) may, within thirty days appeal to the Cooperative Tribunal.</p> <p>(9) Any party aggrieved by the decision of the Cooperative Tribunal may within thirty days appeal to the High Court on matters of law.</p> <p>(10) Subject to sub-section (8) an order made pursuant to subsection (6) for any monies to be repaid or contributed to a Cooperative shall be filed with the Cooperative Tribunal and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily.</p> |
| <p>Power to Surcharge Officers of cooperatives</p> | <p>85</p> | <p>(1) Where it is established in an inquiry held under section 59 above that any person who has taken part in the organization or management of a cooperative, or any past or present officer or member of the cooperative;</p> |

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| | | <p>(a) has misapplied or retained or become liable or accountable for any money or property of the cooperative; or</p> <p>(b) has been guilty of misfeasance or breach of trust in relation to the cooperative, the Director may, if appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the cooperative together with interest at such rate as the Director thinks just or to contribute such sum to the assets of the cooperative by way of compensation as the Director deems just.</p> <p>(2) This section shall apply notwithstanding that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted.</p> |
| Appeal against surcharge order | 86 | <p>(1) Any person aggrieved by an order of the Director under section 85 (1) may, within thirty days, appeal to the Cooperative Tribunal;</p> <p>(2) A party aggrieved by the decision of the Cooperative Tribunal may within thirty days appeal to the High Court on matters of law</p> |
| Recovery of Surcharge | 87 | <p>(1) Subject to section 86 above, an order made pursuant to section 86 for any moneys to be repaid or contributed to a cooperative shall be filed with the Cooperatives Court and shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily;</p> <p>(2) Without prejudice to the powers by the board of directors of a cooperative to take action for recovery of the sum surcharged under Section 85, the Director may, on behalf of the cooperative institute such action.</p> |
| Conduct of Routine Inspection | 88 | The Director or its authorized officer shall on reasonable notice and at least once every year at the expense of the cooperative carry out routine inspection into the affairs of a cooperative to confirm that the Cooperative is complying with the law. |
| Effects of an inquiry | 89 | <p>(1) The Director shall consider the findings of the inquiry and may-</p> <p>(a) Direct the cooperative to take measures to remedy a finding;</p> <p>(b) Adopt the report with no recommendations if no negative findings are made; or</p> <p>(c) Recommend the Cancellation of registration certificate to the Executive Committee Member.</p> |
| Inspection of books of Indebted Cooperative | 90 | (1) The Director may if it deems appropriate on the application of a creditor of a cooperative inspect or direct a person to inspect the books of the cooperative if – |

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| | | <p>(a) The creditor satisfies the Director that the debt in a sum then due and that the creditor has demanded payments thereof and has not received satisfaction within a reasonable time; and</p> <p>(b) The applicant deposits with the Director such sum as security for the expense of the inspection as the Director may require.</p> <p>(2) The Director shall inform the creditor of the results of the inspection.</p> |
| Expense of the inquiry or inspections | 91 | <p>(1) Where an inquiry or an inspection is held under this Act the Commissioner or Director may by a certificate make an order apportioning the expenses or such part of the expenses incurred between the cooperative the member or creditor demanding the inquiry or inspection and the officers or former officers of the cooperative and the decision of the Director shall be final.</p> <p>(2) Any sum awarded by way of expenses under subsection (1) shall be a civil debt recoverable summarily on production of the certificate referred to in that subsection.</p> |
| PART XII – DISSOLUTION OF COOPERATIVES | | |
| Procedure of liquidation | 92 | <p>(1) If the Director, after receiving the Commissioner’s inquiry report or making an inspection report under this Act, or receiving an application made by at least three fourths of the members of a Cooperative, is of the opinion that the Cooperative ought to be dissolved, the Director may, in consultation with the County Executive Committee Member, order the dissolution of the Cooperative and recommend subsequent cancellation of registration to the Commissioner.</p> <p>(2) Any member of a Cooperative who feels aggrieved by an order under subsection (1) may, within thirty days after the making of such order, appeal against the order to the County Executive Committee Member with recourse to the Cooperative Tribunal.</p> <p>(3) Where no appeal is filed within the prescribed time, the order shall take effect on the expiry of that period, but where an appeal is filed within the prescribed time the order shall not take effect unless it is confirmed by the Cooperative Tribunal.</p> <p>(4) Where the Director makes an order under subsection (1), the Director shall make such further order as may be deemed fit for the custody of the books and documents and the protection of the assets of the Cooperative.</p> <p>(5) No Cooperative shall be dissolved or wound up save by an order of the by the Commissioner on recommendation by the director .</p> |
| | 93 | <p>(1) Where a Cooperative has—</p> |

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| <p>Cancellation of registration</p> | | <p>(a) Less than the prescribed number of members; or</p> <p>(b) Become Insolvent;</p> <p>(c) Failed to file returns with the Director for a period of three years;</p> <p>(d) Failed to achieve its objects;</p> <p>(e) deviated from undertaking the core mandate or business for which it was registered;</p> <p>(f) Is prejudicial to the general public interest; or</p> <p>(g) Upon receipt in writing by at least three fourths of the members of a Cooperative, is of the opinion that the Cooperative ought to be dissolved.</p> <p>(h) Upon recommendation of an inquiry or inspection</p> <p>The Director may, in writing, recommend to the Commissioner the cancellation of its registration and dissolution of the Cooperative. The Commissioner may, in writing, order the cancellation of registration and dissolution of the Cooperative and the order shall take effect immediately.</p> <p>(2) No certificate of registration of a cooperative may be cancelled unless-</p> <p>(a) The Cooperative has been notified in writing on the reasons for proposed cancellation and within six months has failed to attend to the reasons raised to the satisfaction of the Director; and</p> <p>(b) The Cooperative has been given an opportunity to be heard.</p> <p>(3) A cooperative whose registration certificate has been cancelled shall be subject to the winding up process in accordance with this Act and shall cease to exist as a corporate body;</p> <p>(4) Where the Director makes a recommendation under subsection (1), the Director shall make such further order as may be deemed fit for the custody of the books and documents and the protection of the assets of the Cooperative.</p> <p>(5) Any member of a Cooperative who feels aggrieved by an order under subsection (1) may, within thirty days after the making of such order, appeal against the order to the County Executive Committee Member with recourse to the Cooperative Tribunal;</p> <p>(6) Where no appeal is filed within the prescribed time, the order shall take effect on the expiry of that period, but where an appeal is filed within the prescribed time the order shall not take effect unless it is confirmed by the Cooperative Tribunal</p> <p>(7) The name of a cooperative which has been wound up shall be struck off the register of cooperatives and a notice published in the Kenya Gazette.</p> |
| <p>Effects of cancellation</p> | <p>94</p> | <p>Where the registration of a Cooperative is cancelled, the Cooperative shall cease to exist as a corporate body from the date the order takes effect.</p> |

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| Liquidation of a Cooperative whose certificate has been cancelled | 95 | A cooperative whose registration certificate has been cancelled shall be subject to the winding up process in accordance with this Act and shall cease to exist as a corporate body. |
| Application of the Insolvency Act | 96 | Except as provided by this Act, the provisions of the Insolvency Act No.18 of 2015, relating to the liquidation of a company apply to the liquidation of a Cooperative as they apply to the liquidation of a company. |
| Appointment of a Liquidator | 97 | <p>(1) Where the registration of a cooperative is cancelled under section 85, the Commissioner in liaison with the Director may appoint one or more persons to be liquidator or liquidators of that cooperative (hereinafter referred to as the liquidator) and all the property of such cooperative shall vest in the liquidator from the date upon which the order of cancellation takes effect.</p> <p>(2) Upon appointment, all property of the cooperative the subject of such appointment shall vest in the liquidator from the date the cooperative was referred for liquidation;</p> <p>(3) A person shall not be appointed as a liquidator unless the person has –</p> <ul style="list-style-type: none"> (a) An academic degree in financial or legal matters; (b) Has at least five years’ work experience in a financial or legal institution; (c) Meets the constitutional threshold of integrity; and (d) Is not a member or a past member of the cooperative under liquidation. (e) serving Cooperative technical officer or has at least five years’ experience in Cooperative management and practice |
| Powers of a Liquidator | 98 | <p>(1) The liquidator shall have powers to—</p> <ul style="list-style-type: none"> (a) Schedule the manner, before which the creditors whose claims are not already recorded in the books of the cooperative shall prove their claims for admission; (b) institute and defend suits and other legal proceedings by, and on behalf of, the cooperative in the liquidator’s own name or office, and to appear before the Tribunal as litigant in person on behalf of the cooperative; (c) appoint an advocate to assist the liquidator in the performance of the liquidator’s duties; (d) refer disputes to the Tribunal in the prescribed manner; |

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| | | <p>(e) determine from time to time the contributions to be made by the members and past members, and by the estates of deceased members of the cooperative, to the funds of the cooperative;</p> <p>(f) investigate all claims against the cooperative, and subject to this Act, to decide questions of priority arising between claimants;</p> <p>(g) call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;</p> <p>(h) sell the movable and immovable property and rights of action of the cooperative, by public auction or private contract with power to transfer the whole thereof to any person or company or to transfer the same in parcels;</p> <p>(i) carry on the business of the cooperative as far as may be necessary for the proper liquidation of the affairs of the cooperative;</p> <p>(j) determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;</p> <p>(k) take possession of the books, documents and assets of the cooperative;</p> <p>(l) arrange for the distribution of the assets of the cooperative in a convenient manner when a scheme of distribution has been approved by the Director;</p> <p>(m) give such directions in regard to the disposal of the books and documents of the cooperative as may appear to him to be necessary for winding up the affairs of the cooperative;</p> <p>(n) compromise, with the approval of the Director, any claim by, or against, the cooperative;</p> <p>(o) apply to the Director for discharge from the duties of liquidator after completion of the liquidation proceedings.</p> <p>(2) The liquidator shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be necessary, in the same manner as is provided in the case of a court under the Civil Procedure Act (Cap. 21), in so far as such powers are necessary for carrying out the purposes of this section.</p> |
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| Termination of Appointment | 99 | <p>(1) The Director may recommend to the Commissioner to terminate appointment of a liquidator if the Director is satisfied that the liquidator-</p> <ul style="list-style-type: none"> (a) Has failed to meet the performance targets set in the Contract of appointment; (b) Is suspected of mismanagement or execution of fraudulent transactions in the performance of the functions assigned; (c) Tendered false documents to secure the appointment; (d) A situation of conflict of interest has arisen; or (e) In the interest of the public and maintenance of peace. |
| Cooperatives Liquidation Account | 100 | <p>(1) An account to be called the Cooperative Liquidation Account shall be kept by the Commissioner with such bank and shall be administered in the manner approved by regulations.</p> |
| Powers of the Commissioner during Liquidation | 101 | <p>(1) The Commissioner shall;</p> <ul style="list-style-type: none"> (a) receive the cooperatives accounts records from liquidator; (b) procure the auditing of the liquidator’s accounts and authorize the distribution of the assets of the Cooperative; (c) make an order for the remuneration of liquidator; (d) grant a discharge to the liquidator on application by the liquidator after completion of the liquidation proceedings; (a) require any member or past member of the cooperative and any trustee, banker, receiver, agent or officer of the cooperative to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or papers in his/her hands to which the cooperative appears to be entitled; (b) appoint a special manager for the management of the business of the cooperative and determine the remuneration for the manager and what, if any, security the manager shall give for the proper performance of duties; (c) refer any dispute between a liquidator and any third party to the Tribunal if that party consents in writing to be bound by the decision of the Tribunal; (d) require the indemnification of the liquidator. |
| Appeal against order of | 102 | <p>(1) A person aggrieved by any order or decision of the Commissioner or the liquidator under section 87 or section 91 as the case may be, may</p> |

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| liquidator or Commissioner | | <p>appeal against the order or decision to the Tribunal within thirty days of the order or decision.</p> <p>(2) A person aggrieved by a decision of the Tribunal under subsection (1) may appeal to the High Court within thirty days of the decision</p> |
| Enforcement of Orders | 103 | Subject to Sections 102 any order or decision made under section 101 or section 102 on being filed in the court, may be enforced in a court in the same manner as if the order or decision were an order or decision of the court |
| Institution of winding up proceedings | 104 | If the liquidator of a Cooperative whose registration has been cancelled alleges that any of the offences relating to liquidation of a company have been mentioned in the Insolvency Act, 2015 have been committed, the liquidator shall report the facts to the Director, who shall, if deemed fit, institute such proceedings as may be necessary. |
| Power to restrain convicted persons from being officers of Cooperative | 105 | Any person who is convicted of an offence under sections of the Companies Act, 2015 shall cease to be, or remain, an officer of a Cooperative, and shall cease to be concerned in or take part in, whether directly or indirectly, the management of a Cooperative, for a period of five years from the date of their conviction, and any person acting as, or purporting to be acting as such an officer, or being so concerned in, or taking part in the management of a Cooperative during that period, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years. |
| PART XIII – SETTLEMENT OF DISPUTES | | |
| Disputes | 106 | <p>(1) If any dispute or complaint concerning the business of a Cooperative arises—</p> <p>(a) Among members, former members and persons claiming through members, former members and deceased members; or</p> <p>(b) between members, former members or deceased members, and the Cooperative, its Board of Directors or any officer of the Cooperative; or</p> <p>(c) between the Cooperative and any other Cooperative; or</p> <p>(d) between a Cooperative and an employer within the definition of this Act;</p> |

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| | | <p>(e) Regarding the conduct, misconduct or failure of the Board of Directors; or</p> <p>(f) between a liquidator and former members, creditors or other third parties; or</p> <p>(g) a claim by a Cooperative for any debt or demand due to it from a member or former member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or</p> <p>(h) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a Cooperative, whether such debt or demand is admitted or not;</p> <p>(i) between a Cooperative and any other third-party entities that are not a Cooperative concerning the Cooperative business.</p> <p>(2) The dispute shall be referred to the Director at the first instance. The Director shall encourage the parties to refer the dispute to alternative dispute resolution.</p> |
| Establishment of the Kilifi County Cooperative Dispute Resolution Committee | 107 | <p>(1) There is hereby established a Committee to be known as the Kilifi County Cooperative Dispute Resolution Committee</p> <p>(2) The Committee shall listen and determine on appeals by parties dissatisfied by the recommendation made by the Directorate</p> <p>(3) The County Executive Committee Member shall outline the composition and duties of the Kilifi County Cooperative Dispute Resolution Committee in the regulations.</p> |
| Appeals against the decision | 108 | <p>(1) Any person aggrieved by a decision of the Kilifi County Cooperative Dispute Resolution Committee may, within twenty-one days of receipt by him of the notice of such a decision, appeal to the Cooperative Tribunal in writing against the decision in the manner prescribed.</p> <p>(2) The Cooperative Tribunal may reverse, confirm or vary the decision appealed against.</p> <p>(3) Any person aggrieved by the decision of the Cooperative Tribunal under this section may appeal to the High Court against such decision in accordance with the rules of procedure for the time being applicable to the High Court.</p> |

| PART XIV– GENERAL PROVISIONS | | |
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| Procurement and disposal in Cooperatives | 109 | (1) When a Cooperative contract for goods or services or works; or contracts for the disposal of goods; the Cooperative shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective, as shall be enshrined in the Cooperative’s by-laws |
| Enforcement of Ethics and integrity in Cooperatives | 110 | (1) Officers of a Cooperative shall be required to declare income, assets and liabilities as provided for in the regulations. (2) Cooperatives shall develop a code of conduct to set and maintain standards for acceptable behavior in the cooperative business. |
| County Co-operatives Education Fund. | 111 | (1) There is established a fund to be known as the County Cooperatives Education Fund (hereinafter referred to as “the Fund”). (2) The object and purpose for which the Fund is established is the promotion of education, training, research, consultancy and other related activities in the Cooperative sector in the county. (3) The Fund shall consist of money allocated by the county assembly for purposes of Cooperatives, contributions by Cooperatives and any other lawful source. |
| Provision on Regulations | 112 | (1) The Member of the Executive Committee may in consultation, make rules for the better carrying out of the provisions and purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may— (a) prescribe the forms to be used and conditions to be complied with in making application for the registration of a cooperative and the procedure to be followed; (b) prescribe the matter in respect of which a cooperative may or shall make by-laws, and the procedure to be followed in making, varying and revoking by-laws, and the conditions to be satisfied before making, varying or revoking by-laws; (c) prescribe the conditions to be complied with, by persons applying for admission or admitted as members, and the payments to be made, and the interest to be acquired before the exercise of the right of membership; (d) regulate the manner in which funds may be raised whether by means of shares or debentures or otherwise; |

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| | <p>(e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;</p> <p>(f) provide for the appointment, suspension and removal of the members of the Board and other officers, and for the procedure at meetings of the Board, and for the powers to be exercised and the duties to be performed by the Board and other officers;</p> <p>(g) prescribe the accounts and books to be kept by a cooperative;</p> <p>(h) provide for the form of the final accounts and the financial records to be prepared annually, and any other statements and schedules relating thereto;</p> <p>(i) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled, and for the liabilities of past members;</p> <p>(j) provide for the persons by whom and the form in which copies of entries in books of cooperatives may be certified;</p> <p>(k) provide for the inspection of documents and registers at the Director's office and prescribe the fees to be paid thereof and for the issue of copies of such documents or registers;</p> <p>(l) provide for the formation and maintenance of a register for members and, where the liability of members is limited by shares or limited by guarantee, of the register of shares;</p> <p>(m) provide for the order in which the value of a deceased member's interest shall be ascertained and subject to the provision of the act on nomination of a person to whom such interest may be paid or transferred;</p> <p>(n) provide for the mode in which the value of the interest of a member who has become of unsound mind or incapable of managing his or her affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;</p> <p>(o) provide for the manner of formation and maintenance of reserve funds and the objects to which such funds may be applied and for the investments of any funds under the control of a Cooperative;</p> |
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| | | <p>(p) prescribe the procedure to be followed in appeals made to the Member under this Act;</p> <p>(q) prescribe the returns to be submitted by a cooperative to the Director and the Commissioner and the person by whom and the form in which such returns shall be submitted;</p> <p>(r) prescribe the fees to be paid on applications for registration and other acts done by the Director under this Act;</p> <p>(s) prescribe terms of reference for county and Sub County Co-operative development committees and</p> <p>(t) provide for operationalization, and management of the Cooperative Education Fund;</p> <p>(u) prescribe anything which may be prescribed under this Act.</p> <p>(3) in any case where the County Executive Committee Member is satisfied that a substantial number of members of any cooperative are unacquainted with the English or Kiswahili language, the County Executive Committee Member may cause any regulations made under this section to be translated into a language with which such members are acquainted , and to be made known in a manner customary for the community to which such members belong including braille and sign language, provided that on any matter of interpretation the English or Kiswahili version of the rules shall prevail.</p> |
| Remuneration of members of a Cooperative | 113 | <p>(1) No member of a cooperative shall receive remuneration, salary, commission or any other payment from the Cooperative for services rendered save by resolution of the members in a general meeting.</p> |
| Offences | 114 | <p>(1) It shall be an offence under this Act if-</p> <p>(a) a Cooperative or a member of a cooperative fails to do or to cause to be done any act or thing which is required by or under this Act or any Regulations made thereunder to be done; or</p> <p>(b) a Cooperative or a member thereof does anything which is prohibited by or under this Act or any Regulations made thereunder; or</p> <p>(c) a Cooperative or a member thereof willfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Commissioner or Director or any person duly authorized in that behalf by the Commissioner or Director; or</p> <p>(d) a Cooperative or member thereof willfully makes a false return or furnishes false information with respect to any return or information</p> |

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| | | <p>in or which is required by or under this Act or any Regulations made thereunder; or</p> <p>(e) any person willfully and without reasonable excuse disobeys any summons requirements or lawful order issued under this Act or fails to furnish any return or information lawfully required from him by a persons authorized to do so or which he is required to furnished by or under this Act or any Regulations made thereunder; or</p> <p>(f) any person acts or purports to act as an officer of a cooperative when not entitled to do so.</p> <p>(2) Any person who commits an offence under this section shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months or both.</p> <p>(3) Where any cooperative or other person contravenes any of the provisions of this Act or regulations made under this Act –</p> <p>(a) if it is a body corporate, it shall be guilty of an offence and liable to a fine not exceeding five hundred thousand shillings; and</p> <p>(b) every member of the board, member of supervisory board, employee or agent or other officer of a cooperative or person shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term of not less than twelve months or to both such fine and imprisonment</p> <p>(4) The Director of Public Prosecution may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for cases arising under the provisions of this Act.</p> <p>(5) The Executive Committee Member may refer to the Office of the County Attorney for enforcement the provisions of this Act.</p> |
| <p>Exemptions</p> | <p>115</p> | <p>(1) Notwithstanding anything contained in this Act, the Member of the Executive Committee may, by notice in the Gazette—</p> <p>(a) exempt any cooperative from any of the provisions of this Act, subject to such conditions, exceptions or qualifications as the Member may think fit to impose;</p> <p>(b) apply to any cooperative any of the provisions of this Act subject to such modifications as the Member may think fit.</p> <p>(2) The Member of the Executive Committee shall cause to be published in the Gazette a thirty days’ notice of the intention to grant an exemption under subsection (1).</p> |

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| | | <p>(3) Any person with an objection regarding an intended exemption under this section may make representations to the Member of the Executive Committee within the period of the notice.</p> <p>(4) The Member of the Executive Committee may upon considering representations and objections made under this section, either—</p> <p style="padding-left: 40px;">(a) abstain from granting the intended exemption; or</p> <p style="padding-left: 40px;">(b) grant such exemption subject to such terms and conditions as the Member may deem fit.</p> |
| Certain Laws not to Apply | 116 | (1) Notwithstanding the Trade Unions Act (Cap. 233), no cooperative shall be taken to be a trade union. |
| Powers of the County Executive Committee member | 117 | <p>(1) The County Executive Committee member may at any time and on any matter direct the County Director for Cooperatives as to the exercise of the powers and duties conferred upon the County Director for Cooperatives for the better carrying out of the provisions of this Act with regard to the Cooperatives within the County’s respect jurisdictions.</p> <p>(2) The County Executive Committee member may prescribe the fees and levies to be paid for services offered to cooperatives operating within the County;</p> <p style="padding-left: 40px;">(a) The fees imposed under subsection (2) shall not in any way prejudice national economic policies, economic activities across county boundaries or national mobility of goods, services, capital or labour.</p> |
| Other powers of the County Director for Cooperatives. | 118 | <p>(1) Without prejudice to any other powers under this Act the County Director for Cooperatives may—</p> <p style="padding-left: 40px;">(a) call for elections in any primary and secondary Cooperative within the county;</p> <p style="padding-left: 40px;">(b) attend meetings of Cooperatives and require every Cooperative to send to at a proper time, notice and agenda of every meeting and all minutes and communications in respect thereof;</p> <p style="padding-left: 40px;">(c) issue circulars and guidelines for the better administration of this Act with respect to primary and secondary Cooperatives;</p> <p style="padding-left: 40px;">(d) require that Cooperatives update their by-laws; and</p> |

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| | | (e) exercise such other powers consistent with this Act as may be prescribed. |
| Savings and Transitional Clauses | 119 | <p>(1) A cooperative existing before the enactment of this Act shall within one year from the date of enactment ensure that it is in compliance with the provisions of this Act and in particular –</p> <p>(a) Hold fresh elections to comply with the law at the annual general meeting of the following financial year. Persons holding office shall continue to be in office until such elections are held.</p> <p>(b) Amend its by-laws and any rules enacted therefrom to align them with the provisions of this Act; and</p> <p>(c) Undertake such other actions as shall be necessary to align the cooperative to this Act.</p> <p>(2) Any member of a cooperative existing before the enactment of this Act, shall retain his or her rights, assets and liabilities in the cooperative as if such rights, assets and liabilities were held under this Act.</p> <p>(3) Any contract or obligation of a cooperative existing before the enactment of this Act and duly registered shall continue in force as if the contract or obligation was under this Act</p> <p>(4) Any register kept in pursuance of the national law for Cooperatives shall be deemed to be part of the register to be kept in pursuance of this Act;</p> |

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to give effect to the Constitution and particularly Section 7 (e) of Part II of the Fourth Schedule and to make provisions relating to the constitution, registration and regulation of Cooperatives; it also provides for intergovernmental coordination and cooperation relations and creates cooperative offices at county levels. It further establishes the institutional framework for the management of Cooperatives in the County.

The Structure of the Bill is as follows:

The Bill has a total of 119 clauses that have been divided to Parts and provide as follows;

Part 1 (Clauses 1-5) of the bill provides for the preliminary issues including the short title, the interpretation, the objects of the Act, the guiding principles as well as values of Cooperatives and the application of the Act.

Part II (Clauses 6-14) of the bill provides for the responsibilities of The County Executive Committee Member and County Chief officer in charge of Cooperatives. It further establishes the office of the director, appointment and functions and powers of the director. It also spells out funds of the directorate and annual report of the director.

Part III (Clauses 15-17) of the bill provides for the establishment of county and sub county cooperative development forums whose mandate is to provide a platform for consultation and dialogue among Cooperatives in the County, foster growth and development of co-operatives and facilitate implementation of this Act.

Part IV (Clauses 18-32) of the Bill provides for the structure, formation and registration of Cooperatives. It provides for adoption of the 4-tier structure of Cooperative in Kenya that comprise of primary Cooperatives, secondary Cooperatives, Cooperative federations and the apex. This part also contains provision on essentials for registration of a Cooperative society, procedure for registration and amendment of by-laws. It further provides for protection of the name “Cooperative” and “Sacco” and what constitutes evidence for registration.

PART V (Clauses 33-40) Provides for rights and obligations of members of a Cooperative. It provides for qualification for membership, limitation of holding share capital, voting rights of members and transfer of shares. This part also provides for rights of members and member’s rights vis-à-vis the rights of the Cooperative.

PART VI (Clauses 41-46) of the Bill deals with duties of a Cooperative society. It requires a Cooperative society to have a registered address, to keep a copy of the Act and by-laws in the registered office and to maintain records and produce certain books and documents if needed. It further provides for preparation of budget and books of accounts.

PART VII (Clauses 47-58) of the Bill provides for governance and management of Cooperatives specifically, the general meetings, delegate system of representation, Responsibilities and powers

of the Board of Directors and supervisory board, appointment of the Nominating committee and tenure of office of the board.

PART VIII (Clauses 59-68) of the Bill provides for property and funds of Cooperatives. It provides for funds of a Cooperative, restrictions and limitation on borrowing, investment of funds and declaration of bonus and dividend. It also covers maintenance of reserve fund and distribution of net balance

PART IX (Clauses 69-70) of the Bill outlines the procedures for amalgamation and division of Cooperatives including preliminary and secondary resolutions, notification to creditors, distribution of assets and liabilities and the role of the Commissioner in approvals and appeal mechanism when the director refuses to recommend for amalgamation or division of a Cooperative.

PART X (Clauses 71-83) of the Bill provides for the rights and obligations of Cooperative societies which includes the right of a Cooperative society to have charge over a member's, shares and assets by a Cooperative. It further provides for creating charges over Cooperatives' properties and registration of charge with the commissioner, maintenance of register of charges and issuance of certificates. In addition, it deals with withdrawal of membership, transfer of shares, prohibition against attachment of members shares and non-remittances of employee emolument by employers. The Bill further provides for the extent of liability of a past member and liability of a deceased member.

PART XI (Clauses 84-91) of the Bill provides for inquiry, inspection and surcharges. It provides for conduct an inquiry, surcharge of officers of Cooperatives, appeal against the order of surcharge and recovery of surcharge, expense of inquiry and the routine of inspection. This part also clarifies the role of the director which includes recommending an inquiry, enforcing the recommendations of the Commissioner after an inquiry, conducting inspections, powers to recover monies and order remedial actions after inquiry or inspections.

PART XII (Clauses 92-105) of the Bill provides for dissolution of a Cooperative and consequential matters. It contains provisions on the procedure for dissolution, cancellation of registration and effects of cancellation. This part provides the extent of application of the Companies Act Cap 486 and appointment and powers of liquidators. It goes further to spell out powers of the Commissioner during liquidation and enforcement of orders. It also provides for the institution of winding up proceedings and power to restrain convicted persons from being officers of Cooperatives.

PART XIII (Clauses 106-108) of the Bill seeks to establish the Kilifi County Cooperative Dispute Resolution Committee to handle grievances from parties dissatisfied by recommendations of the Directorate. The Bill provides for appeals from decision made by the dispute Resolution Committee to be heard by the Cooperative Tribunal.

PART XIV (Clauses 109-119) of the Bill outlines general provisions which include; Procurement and disposal in Cooperatives, enforcement of ethics and integrity in Cooperatives. This part also provides for establishment the County Cooperative Education Fund. It also empowers the Executive Member to make Rules for the better carrying into effect of this Act. This part also makes provision on remuneration of members of a cooperative, exemptions on the provisions of this Act, offences, additional powers of the CEC member and Director and finally savings and transitional clauses.

Statement on the delegations of legislative powers

The Bill confers on the County Executive Committee member to make regulations necessary to operationalize the Act and for the better carrying out of its objects.

Statement on the limitation of fundamental rights and freedoms

The Bill does not limit any of the fundamental rights of freedoms.

KILIFI COUNTY COOPERATIVES BILL, 2023

Drafted and submitted to the Kilifi County Executive Committee on this

..... day of 2023

By

HON. RAYMOND JOHN NGALA

COUNTY EXECUTIVE COMMITTEE MEMBER

FOR

TRADE, TOURISM AND COOPERATIVE DEVELOPMENT

Signed..... on this day of2023