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CONTENT

Bill for Introduction into the National Assembly—

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THE SACCO SOCIETIES (AMENDMENT) BILL, 2018

A Bill for

AN ACT of the Parliament to amend the Sacco Societies Act, 2008

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Sacco Societies (Amendment) Act, 2018.

Amendment of No. 14 of 2008.

2. The Sacco Societies Act, (in this Act referred to as the "principal Act"), is amended by deleting the word "Minister" wherever it appears and substituting therefor the words "Cabinet Secretary".

Amendment of section 6 of No. 14 of 2008.

3. Section 6 of the principal Act is amended in subsection (4) by deleting paragraph (a) and substituting therefor the following new paragraph—

"(a) a Member of Parliament or a County Assembly."

Amendment of section 20 of No. 14 of 2008.

4. Section 20 of the principal Act is amended—

(a) in subsection (2) by deleting the words "Controller and";

(b) in subsection (3) by deleting the expression: "2003" and substituting therefor the expression, "2015".

Amendment of section 24 of No. 14 of 2008.

5. Section 24 of the principal Act is amended in subsection (2) by deleting the words "Second Schedule" appearing in paragraph (b) and substituting therefor the word "regulations".

Amendment of section 27 of No. 14 of 2008.

6. Section 27 of the principal Act is amended—

(a) in subsection (1), by deleting the words "prescribed in section 30 and the Second Schedule" appearing in paragraph (d) and substituting therefor the words "as may be prescribed in the regulations";

(b) in subsection (7), by deleting the word "Tribunal" and substituting therefor the words "Cabinet Secretary"; and

(c) by inserting the following new subsection immediately after subsection (7)—

"(8) The registration of a Sacco Society, the license of which, is revoked under the provisions of this Act shall be cancelled in accordance with section 62 (d) of the Co-operative Societies Act."

7. Section 45 of the principal Act is amended in paragraph (a) by deleting the expression "Cap. 486" appearing in the marginal note.

Amendment of section 45 of No. 14 of 2008.

8. Section 51 of the principal Act is amended—

Amendment of section 51 of No. 14 of 2008.

(a) by inserting the following words "or any officer, director, committee member, employee or agent of the Society in such amounts as the Authority may consider fit" immediately after the word "society" appearing in paragraph (m); and

(b) by deleting the word "and" appearing at the end of paragraph (p) and substituting therefor the word "or".

9. The principal Act is amended by inserting the following new section immediately after section 53—

Amendment of section 53 of No. 14 of 2008.

Application of Information and Communications Technology.

53A (1) The Authority may establish and operate an electronic filing system for the purposes of electronic filing of the statutory returns and documents or other information required to be furnished to Authority under the Act or any other written law.

(2) The Authority shall, in establishing an electronic filing system, issue general or specific guidelines and directions on the use and procedure of the system, including—

(a) the registration of Sacco Societies to participate in the electronic filing system;

(b) the issuing and cancellation of authentication of codes to the registered users of the electronic system;

(c) statutory returns, documents or other information that may be

transmitted through the electronic filing system;

(d) the correction of errors in, or amendments to, statutory returns, documents or other information filed in the electronic filing system;

(e) the use of the electronic filing system, including the procedure applicable if there is a breakdown or other interruption in the system;

(f) the use, in any electronic transmission or filing, of symbols, codes, abbreviations or other notations to represent any particulars or information required under the Act or any other written law; and

(g) any other matters for the better use and provision of the electronic filing system.

(3) A Sacco Society shall, subject to any directions or guidelines issued by the Authority, furnish any return, document or other information required to be furnished under the Act, these Regulations or any other written law through the use of the electronic filing system established by the Authority.

(4) The Authority may, in accordance with the directions or guidelines issued under subsection (3), serve a notice or any other document to the registered computer account of the Sacco Society.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning in line with the proposals announced in the Budget from 2018/19. The principal object of the Bill is to amend the Act by providing for the usage of ICT in collecting and receiving of statutory reports. This is aimed at reducing the regulatory reporting burden on SACCOs and ensuring of a faster, efficient and accurate reporting, monitoring and analysis of SACCOs financial status at any time, being the cornerstone of Risk-Based Supervision (RBS).

The Bill also seeks realign the definition and roles of Minister to be Cabinet Secretary and also the responsibility and office of the Controller of Budget as reflected in the Act, to be in line with the Constitution.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit any fundamental rights or freedoms.

Statement that the Bill concerns county governments

The Bill does not concern county governments in terms of Article 109(3) of the Constitution and does not affect the functions and powers of county governments .

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 18th June, 2018.

JOSEPH K. LIMO,
Chairperson,
Committee on Finance and National Planning.

Section 6 of the (No. 14 of 2008) which it is proposed to Amend

6. Board of the Authority

(1) The oversight function and management of the Authority shall vest in a Board of the Authority which shall comprise—

(a) the chairman to be appointed by the Minister from amongst the members appointed under paragraph (e);

(b) the Permanent Secretary to the Treasury or his representative;

(c) the Commissioner or his representative;

(d) the Governor of the Central Bank or his representative;

(e) four members, not being public officers, appointed by the Minister by virtue of their knowledge, and possession of a minimum of ten years experience, in co-operative practice and management, law, finance or economics; and

(f) the chief executive officer appointed under section 12.

(2) A member of the Board appointed under subsection (1)(e) shall hold office for a term of three years and shall be eligible for re-appointment for one more term of up to three years.

(3) The members of the Board appointed under subsection (1)(e) shall be appointed at different times so that the respective expiry dates of their terms shall fall at different times.

(4) A person shall not be qualified for appointment as a member of the Board, if that person is—

(a) a member of the National Assembly or of a local authority;

(b) a director or employee of a Sacco society or of a co-operative society;

(c) auditor of a Sacco society or of a co-operative society; and

(d) a person who is prohibited from being a director or to take part in the management of a cooperative or financial institution by the Commissioner under the Co-operative Societies Act (Cap. 490) or by the Central Bank of Kenya respectively.

(5) A member of the Board appointed under subsection (1)(e) may be removed from office by the Minister, if that member—

(a) accepts any office the holding of which, if he were not a member of the Board, would make him ineligible for appointment to the office of a member of the Board;

(b) fails to discharge the functions of his office whether arising from infirmity of body or mind or any other cause;

(c) conducts himself in a manner not befitting a member of the Board; and

(d) becomes subject to any disqualification set out in subsection (4)(d).

(6) A member of the Board appointed under subsection (1)(e) may resign office by giving a fourteen days notice to the Minister.

Section 20 of the (No. 14 of 2008) which it is proposed to Amend

20. Accounts and audit

(1) The Authority shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) The Authority shall within three months of the closure of the financial year submit to the Controller and Auditor-General—

(a) a statement of income and expenditure during that period;

(b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

Section 24 of the (No. 14 of 2008) which it is proposed to Amend.

24. Application for licence

(1) A Sacco society intending to transact the deposit-taking business in Kenya shall, before commencing such business, apply in writing, to the Authority for a licence, in the prescribed form.

(2) An application under subsection (1) shall be accompanied by—

(a) a copy of the certificate of registration and the by-laws of the Sacco society;

(b) evidence that the Sacco society meets the minimum capital requirements prescribed in the Second Schedule;

(c) information relating to the place of business, indicating that of the head office, and branches, if any;

(d) the prescribed fees;

(e) a report by the Sacco society, covering the following—

(i) objectives of the deposit-taking Sacco society business;

(ii) membership and share capital;

(iii) economic and financial environment;

(iv) organisational structure and management; and

(v) financial and risk analysis;

(f) such other requirements as the Authority may prescribe.

(3) A Sacco society may appeal to the Minister in reference to refusal to grant a licence within thirty days after receipt of notification of refusal.

(4) The Minister may reverse the decision of the Authority only if—

(a) the Authority failed to follow required procedures in making its decision;

(b) the Authority's decision was contrary to the Act and the regulations;

(c) there was no factual basis for the Authority's decision; or

(d) based on a review of the record the Authority committed a manifest error in its assessment of facts, or abused its discretion in taking its decision.

(5) The Authority shall, in consultation with the Minister make regulations providing for further requirements to be fulfilled before the grant of licence to a Sacco society.

Section 27 of the (No. 14 of 2008) which it is proposed to Amend.

27. Revocation of licence

(1) The Authority may, by notice in writing to a Sacco society, revoke the licence if the Sacco society—

(a) ceases to carry on deposit-taking business in Kenya or goes into liquidation or is wound up or is otherwise dissolved or deregistered under the Co-operative Societies Act (Cap. 490);

(b) fails to comply with this Act, or any rules, regulations, orders or directions issued under the Act or any condition of the licence;

(c) fails to pay the annual licence fee as required under section 25(3);

(d) does not hold at least fifty percent of the capital requirements prescribed in section 30 and the Second Schedule; or

(e) has knowingly engaged in serious criminal or fraudulent acts that are likely to cause insolvency, substantial dissipation of assets or earnings or may otherwise weaken the deposit-taking Sacco society's condition or seriously prejudice the interests of the deposit-taking Sacco society's members.

(2) The Authority shall, before revoking a licence, give to the Sacco society not less than fourteen days' notice in writing of its intention, and shall consider any representations made to it in writing by the Sacco society within that period before revoking the licence.

(3) The Authority shall cause the name of every Sacco society whose licence is revoked under this section to be published forthwith in the *Gazette* and at least one newspaper of national circulation.

(4) Where the licence of a Sacco society is revoked or cancelled, the Sacco society shall not be entitled to any refund of the licence fee in respect of any unexpired period of the licence.

(5) An aggrieved Sacco society may appeal to the Minister in respect of a revocation of its licence within thirty days after being notified of the revocation.

(6) An appeal shall not have the effect of suspending the actions of the Authority while the appeal is being pursued.

(7) The Tribunal may reverse the decision of the Authority only if—

(a) the Authority failed to follow required procedures in making its decision;

(b) the Authority's decision was contrary to this Act and the regulations;

(c) there was no factual basis for the Authority's decision; or

(d) based on a review of the record, the Authority committed a manifest error in its assessment of facts, or abused its discretion in taking its decision.

Section 45 of the (No. 14 of 2008) which it is proposed to Amend

45. Qualifications of external auditors

A person shall be qualified for appointment as an external auditor of a Sacco society if that person—

(a) is qualified as an auditor under the Companies Act (Cap. 486);

(b) is among the list of auditors approved and duly registered by the Authority; and

(c) is not—

(i) an officer of a Sacco society;

(ii) a partner of a director of a Sacco society;

(iii) an employer or employee of an officer of a Sacco society;

(iv) an officer or employee of an associate of a Sacco society;

(v) a partner or an employer of a person who regularly performs the duties of secretary or book-keeper for a Sacco society; or

(vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories enumerated in this section.

Section 51 of the (No. 14 of 2008) which it is proposed to Amend

51. Supervisory enforcement actions

Where the Authority determines that a Sacco society conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall—

(a) restrict, suspend or prohibit the payment of dividends by the society;

(b) prohibit the conversion of any profits of the society into capital;

(c) direct the suspension or removal of any officer involved in such conduct from the service of society;

(d) require the society to reconstitute its board of directors;

(e) withhold branch or other corporate approval with respect to such society;

(f) undertake regular inspections of that society;

(g) order the society to submit to the Authority within forty-five days a capital restoration plan to restore the society to capital adequacy as prescribed in section 29 or in the case of issues unrelated to capital such as violations of law, a plan to resolve all deficiencies to the satisfaction of the Authority;

(h) prohibit the society from awarding any bonuses, or increments in salary, emoluments and other benefits of all directors and officers of the society;

(i) appoint a person suitably qualified and competent in the opinion of the Authority to advise and assist the society in designing and implementing the capital restoration plan or other corrective action plan and the person appointed shall regularly report to the Authority on the progress of the plan;

(j) impose restrictions on growth of assets or liabilities of the society as it deems fit;

(k) restrict the rate of interest on deposits payable by the society to such rates as the Authority shall determine;

(l) order the society to do any or take such other action that the Authority may deem necessary to rectify a capital deficiency or other weakness;

(n) issue an order placing the society under statutory management;

(o) restrict the withdrawal of deposits from the society;

(p) institute legal proceedings against any officer, director, committee member, employee or agent of the society; and

(q) issue such administrative directives as the Authority may deem necessary.

Section 53 of the (No. 14 of 2008) which it is proposed to Amend

53. Collection and furnishing of information to the Authority, etc.

(1) The Authority or any person officially authorized in that behalf by the Authority may, by notice in writing, require any person to furnish to the Authority or to the authorized person, within such period as is specified in the notice, all such returns or information as specified in such notice.

(2) The Authority shall collect such data and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of Sacco societies and the protection of their members funds and, for this purpose, may require any Sacco society to submit statistical and other returns on a periodic basis in addition to any other returns required by law or as prescribed by the Authority.

(3) The Authority may require any institution to furnish to the Authority, at such time and in such manner as the Authority may direct, such information as the Authority may reasonably require for the proper discharge of its functions under this Act.

(4) The information required to be furnished under this section may include information relating to any person which is an associate of the Sacco society required to furnish information under that subsection.

(5) The Minister may require the Authority or a deposit-taking Sacco society to furnish to him, at such time and in such manner as he may direct, such information as the Minister may require.

(6) Where the Authority or person is required to furnish information under this Part, the Authority, institution or person shall furnish that information and any supplemental material that may be required as a result of that information within the period specified under this Part or within such reasonable period thereafter as may be agreed or directed.