

(A Bill published in the Kenya Gazette Supplement No. 142 of 10th August, 2020 and passed by the Senate, with amendments, on 2nd December, 2021.)

THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2020

(Bill No. 11 of 2020)

SENATE BILLS

PARLIAMENT

REPUBLIC OF KENYA



THE CO-OPERATIVE SOCIETIES (AMENDMENT) BILL, 2020

A Bill for

AN ACT of Parliament to amend the Co-operative Societies Act and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

Short title.

1. This Act may be cited as the Co-operative Societies (Amendment) Act, 2020.

Amendment of
section 2 of No.
12 of 1997.

2. Section 2 of the Co-operative Societies Act, in this Act referred to as “the principal Act” is amended —

(a) in the definition of the word “co-operative society” by inserting the words “and includes a provisionally registered co-operative society” immediately after the words “section 4”;

(b) by deleting the definition of the word “Minister”; and

(c) by inserting the following new definitions in their proper alphabetical sequence —

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to co-operative development;

“county executive committee member” means the county executive committee member responsible for matters relating to co-operative development; and

“director” means the county director of co-operatives appointed under section 3A of this Act.

Insertion of new
section 2A.

3. The principal Act be amended by inserting the following new section immediately after section 2 —

2A. All persons shall, in the performance of their functions under this Act, be guided by the following principles —

(a) non-discrimination of members of a co-operative society;

(b) voluntary and open membership;

(c) democratic member control;

(d) autonomy and independence;

(e) public participation and continuous training and awareness creation;

(f) co-operation among co-operative societies

(g) concern for community in general;

(h) self-responsibility and commitment in the conduct of the affairs of a co-operative society; and

(i) equity in the distribution of income derived from a co-operative society;

4. The principal Act is amended by inserting the following new Part IA immediately after the new section 2A —

Insertion of new Part IA.

PART IA — FUNCTIONS OF THE NATIONAL AND COUNTY GOVERNMENTS

2B. The National government and county governments shall, to the extent of their constitutional mandate, put in place measures to promote the development of the co-operative sector and the effective management of co-operative societies.

Obligation of the National government and county governments.

2C. (1) In ensuring that the National Government fulfils its obligations under section 2B, the Cabinet Secretary shall —

Functions of the National government.

(a) formulate a national policy framework and standards for the development and growth of co-operative societies;

(b) maintain a register of approved audit firms in the co-operatives sector;

(c) formulate management standards for co-operative societies;

- (d) develop and co-ordinate the implementation of an intergovernmental relations mechanism in the co-operatives sector;
- (e) register co-operative unions and the apex society;

- (f) promote of good governance and ethics in the co-operatives sector;

- (g) formulate and regulate co-operative education and training standards;

- (h) carry out capacity building for county governments on matters touching on the co-operatives sector;

- (i) promote public private partnership and facilitate regional and international relations on matters touching on the co-operatives sector;

- (j) establish and maintain a research and information centre for co-operative societies; and

- (k) perform such other functions as may be necessary for the fulfilment of the mandate of the National Government under this Act and for the betterment of the co-operatives sector.

- (2) The National Government shall, in the performance of its functions under subsection (1), collaborate with county governments.

2D. Each county government shall, in the performance of its functions under section 2B – of county governments.

- (a) formulate and implement strategies, guidelines and measures in line with the national policy framework and standards for a sustainable co-operatives sector in the county;

- (b) promote, facilitate and register primary co-operatives societies;

(c) promote and facilitate value addition, adoption of appropriate technology and facilitate market information sharing in the co-operatives sector;

(d) collate, analyse and disseminate data on the activities of co-operative societies in the county;

(e) establish and maintain a county co-operative societies research and information centre;

(f) facilitate collaboration and linkage between the co-operative societies, the National Government and relevant stakeholders;

(g) promote good governance in the management of the co-operative societies in the county;

(h) monitor and evaluate the implementation of policies, standards and this Act by co-operative societies with a view to enhancing efficiency in the co-operatives sector; and

(i) perform such other functions as may be necessary for the fulfilment of the mandate of the county government under this Act and for the betterment of the co-operatives sector.

5. The principal Act is amended by inserting the following new section immediately after section 3-

3A. (1) There shall be an Office of the County Director of Cooperatives which shall be an office within the county public service.

(2) The Office shall consist of-

(a) a director who shall be designated by the respective county executive committee member from amongst

the public officers within the county
public service; and

(b) such other county public officers
designated by the county executive
committee member as shall be
necessary for the effective
performance of the Office.

(3) A county executive committee
member shall, in designating a public
officer under subsection (2)(a) ensure that
such person has knowledge and experience
in the administration and management of
cooperatives

6. Section 4 of the principal Act is amended –

(a) by renumbering the existing provision subsection (1);
(b) in the new subsection (1) –

(i) by deleting paragraph (b) and substituting
therefor the following new paragraph –

(b) the implementation of the principles set
out under section 2A.

(ii) by deleting the words “by the Commissioner”
appearing immediately after the words “may
be registered”;

(c) by deleting the proviso; and

(d) inserting the following new subsection immediately
after the new subsection (1) –

(2) A co-operative union or an apex society
shall only be registered with limited liability.

7. The principal Act is amended by inserting the following
new section immediately after section 6 –

6A. (1) An application to register a
primary society shall be made to the
Director in the prescribed form and signed
by at least ten persons qualified to be
members of the society under section 14.

Registration of a
primary society.

Amendment of
section 4 of No.
12 of 1997.

Insertion of new
section 7A in
No. 12 of 1997.

- (2) An application for registration under subsection (1) shall be submitted together with –
- (a) the prescribed fee;
 - (b) minutes of the meeting of members;
 - (c) four copies of the proposed by laws of the co-operative society;
 - (d) information on the names, addresses and signatures of the members of the society;
 - (e) proof that the members have met the requirements for membership under this Act; and
 - (f) such other information as the director may require.
- (3) The Director shall within twenty-one days of receipt of the application under subsection (1) carry out pre-registration procedures including –
- (a) sensitizing applicants on legal requirements for registration;
 - (b) facilitating applicants to fill in any forms required for registration; and
 - (c) verifying that the registration documents are conform to any conditions set by this Act or the Commissioner.
- (4) The Director shall submit an application under subsection (1) to the Commissioner together with a recommendation-
- (a) for the registration of the society; or
 - (b) for the rejection of the application for registration of the society
- (5) Where the Director intends to recommend to the Commissioner that an

application for registration not be granted under this section, the Director shall inform the applicant, in writing of the recommendation.

(6) An applicant who is notified of the recommendation of the respective Director under subsection (5) may lodge an objection with the Commissioner within seven days responding to the recommendation against registration.

(7) The Commissioner shall consider the information received under subsection (4) within fourteen days and shall, if satisfied that the society meets the requirements for registration under this Act, register the society.

8. The principal Act is amended by deleting section 6 and substituting therefor the following new section —

Amendment of
section 6 of No.
12 of 1997.

Procedure for
registration of a co-
operative union or
apex society.

6. (1) An application to register a co-operative union or apex society shall be made to the Commissioner in the prescribed form and be signed by a member of each co-operative society authorized by the respective co-operative society or co-operative union, as the case may be.

(2) An application for registration under subsection (1) shall be submitted together with —

(a) the prescribed fee;

(b) minutes of the meeting of members;

(c) four copies of the proposed by-laws of the co-operative society;

(d) information on the names, addresses and signatures of members;

(e) information on the names, addresses and signatures of the members of the Committee;

- (f) proof that the members have met the requirements for membership under this Act; and
- (g) such other information as may be prescribed or as the Commissioner may require.

(3) The Commissioner shall, in writing and within thirty days from the date of receipt of an application to register a co-operative society –

- (a) register a co-operative society and issue a certificate of registration;
- (b) register a co-operative society provisionally in accordance with section 7; or
- (c) reject the application.

(4) Where the Commissioner fails to register a co-operative society or give reason for rejection within thirty days of receipt of the application, the co-operative society shall be deemed to have been registered.

(5) A co-operative society registered under this section may operate and have a branch or an office in any part of the country without further requirement for registration.

Insertion of new section 6A.

9. The principal Act is amended by inserting the following new section immediately after section 6 –

Refusal to register a co-operative society.

6A. (1) The Commissioner or director may reject an application for registration or pre-registration of a cooperative society where –

- (a) the application does not comply with the provisions of this Act;
- (b) the by-laws of the co-operative society do not conform to this Act;
- (c) the co-operative society has submitted false or misleading information in its application;

(d) the name of the co-operative society is identical to another registered co-operative society or so nearly resembles the name of another registered co-operative society as to be likely to mislead the public as to its nature or identity; or

(e) the objects of the co-operative society are likely to be pursued for an unlawful purpose or used for a purpose incompatible with the peace and welfare of other members of the community.

(2) The Commissioner or director as the case may be shall notify the applicant of the decision to reject an application for registration within fourteen days of such rejection.

10. Section 7 of the principal Act is amended –

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) If the Commissioner or director is not satisfied that an apex society, co-operative union or primary society, as the case may be, has not complied with this Act and is of the opinion that steps may be taken to comply with this Act, the Commissioner may provisionally register the society or union for a period not exceeding one year on such terms and conditions as the Commissioner may specify in writing.

(b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) A provisional registration shall, subject to this section and the conditions that the Commissioner or the director may impose under subsection (1), entitle the apex society, a co-operative union or primary society to operate as a co-operative society under this Act.

(c) by deleting subsection (4) and substituting therefor the following new subsections –

(4) The Commissioner or the director may, by a notice in writing addressed to the co-operative society and for good cause, cancel the provisional registration of a co-operative society.

(4A) A cancellation of the provisional registration under subsection (4) shall operate as a refusal to register the society and the society shall from the date of service of the notice cease to be a registered co-operative society.

(4B) Where a cooperative society has not been registered at the expiration of the period specified by the Commissioner or the director under subsection (1), the co-operative society shall cease to be a registered co-operative society.

(4C) Where a co-operative society ceases to be a registered as co-operative society —

(a) the Commissioner or the director may appoint a competent person to be the liquidator of the co-operative society; and

(b) the validity of any transaction entered into by that co-operative society during the period of provisional registration shall not be affected.

(d) by deleting subsection (5) and substituting therefor the following new subsection —

(5) At any time during the period of provisional registration of a co-operative society, the Commissioner or the director may —

(a) if the co-operative society has complied with this Act and any rules made thereunder, register the co-operative society under section 5; and

(b) the co-operative society shall be deemed to have been so registered on the date of its provisional registration, and this section shall cease to apply to such a co-operative society.

(e) by deleting subsection (6) and substituting therefor the following new subsection –

(6) Where a co-operative society which has been provisionally registered under this section contravenes subsection (3), the co-operative society and every officer or person who purports to act as an officer of the co-operative society commits an offence and shall be liable, on conviction, to a fine not exceeding fifty thousand shillings, or in the case of a continuing offence to a fine not exceeding one thousand shillings for each day during which the offence continues.

Insertion of new section 7A.

11. The principal Act is amended by inserting the following new section immediately after section 7 –

7A. (1) The Commissioner may suspend or cancellation of registration, if

(a) it ceases to comply with the requirements for registration under this Act;

(b) the co-operative society has failed to file returns for a period of three consecutive years;

(c) the co-operative society has failed to achieve its objects; or

(d) the co-operative society is in serious violation of this Act, any other written law or its by-laws.

(2) A director may make a recommendation to the Commissioner for the suspension or cancellation of registration of a primary society where the society meets the conditions for suspension or cancellation of registration under subsection (1).

(3) Before suspending or cancelling the registration of a co-operative society, the Commissioner shall –

(a) issue the co-operative society with a fourteen days' written notice of the

intention to suspend or cancel its registration;

(b) specify the reasons for the intended suspension or cancellation; and

(c) require the co-operative society to respond within fourteen days from the date of receipt of the notice.

(4) Where the Commissioner makes an order for the suspension or cancellation of registration of a co-operative society, the Commissioner shall specify –

(a) the reasons for the suspension or cancellation of the registration;

(b) in the case of suspension, the action required to be taken by the co-operative society in order to comply; and

(c) the period within which any action to remedy the violation may be undertaken.

(5) Where a co-operative society fails to comply with subsection (3) or (4), the Commissioner may make an order for the cancellation of registration and dissolution of a co-operative society.

(6) Where the registration of a co-operative society is cancelled, the co-operative society shall cease to exist as a body corporate.

12. Section 8 of the principal Act is amended –

(a) by deleting subsection (2) and substituting therefor the following new subsection –

(2) A co-operative society which intends to amend its by-laws shall submit to an application to amend the by-laws in the prescribed form together with the proposed amendment, –

(a) in the case of an apex society or co-operative union, to the Commissioner; or

(b) in the case of a primary society, to the director.

(b) in subsection (3) by inserting the words "or director as the case may be" immediately after the words "If the Commissioner";

(c) by inserting the following new subclause immediately after subclause (3) –

(3A) If the director is satisfied that the amendment by a primary society to its by-laws is not contrary to this Act, the director shall register the amendment and submit information relating to the registration, in the prescribed form, to the Commissioner for purposes of updating the register.

(d) in subsection (3A) by inserting the words "or director" immediately after the words "The Commissioner"; and

(e) in subsection (5) by inserting the words "or director" immediately after the words "the Commissioner".

13. The principal Act is amended by deleting section 9 and substituting therefor the following new section –

9. (1) A co-operative union or apex society may, within thirty days from the date of receipt of the decision or a notice under section 6, 7A or 8, appeal to the Tribunal against the decision of the Commissioner for –

(a) refusing to register the co-operative union or apex society and its by-laws or any amendments of its by-laws; or

(b) suspending or cancelling its registration.

(2) A primary society may, within thirty days from the date of receipt of the decision or a notice under section 6, 7A or 8, appeal to the Tribunal against the decision of the director for –

- (a) refusing to register the co-operative society and its by-laws or any amendments of its by-laws; or
- (b) suspending or cancelling its registration.
- (3) A party aggrieved by the decision of the Tribunal under subsection (1) or (2) may, within thirty days from the date of the decision, appeal against the decision to the High Court.

14. Section 10 of the principal Act is amended in subsection (1) by inserting the words "or the Director's" immediately after the words "the Commissioner".

Amendment of
section 10 of No.
12 of 1997.

15. Section 11 of the principal Act is amended –

Amendment of
section 11 of No.
12 of 1997.

- (a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) A certificate of registration or provisional registration signed by the Commissioner or pre-registration director shall be conclusive evidence that the society is duly registered, provisionally registered or pre-registered.

- (b) in subsection (4) by inserting the words "or director" immediately after the words "by the Commissioner";

- (c) in subsection (5) by inserting the words "or director" immediately after the words "by the Commissioner".

16. Section 14 of the principal Act is amended –

Amendment of
section 14 of No.
12 of 1997.

- (a) by renumbering the existing provision subsection (1);

- (b) in the new subsection (1) by inserting the following paragraphs immediately after paragraph (c) –

- (d) he pays the share capital and registration fee required by the co-operative society;

- (e) he is willing to implement his or her obligation and observe the objectives

and by-laws of the co-operative society; and

(f) he meets any other requirements which may be specified in the rules and directives issued for the implementation of this Act.

(c) by inserting the following new subsection (1) –

(2) A primary society may become a member of another co-operative society if –

(a) the primary society has been fully registered as a co-operative society under this Act;

(b) the primary society has passed a resolution authorizing membership in that other co-operative society in accordance; and

(c) that other co-operative society has passed a resolution authorizing membership in accordance with section 16.

17. Section 25 of the principal Act is amended –

(a) in subsection (4) by inserting the words “respective directors” immediately after the words “in consultation with the”;

(b) in subsection (5) by inserting the words “or director as the case may be” immediately after the words “appointed the Commissioner”;

(c) by deleting subsection (7) and substituting therefor the following new subsection –

(7) The auditor shall, before submitting the audited accounts to the members at a general meeting, submit the audited accounts for comments –

(a) in the case of a co-operative union or apex society, to the Commissioner; or

(b) in the case of a primary society, to the director.

(d) in subsection (8) by deleting the words "accounting period" appearing immediately after the words "end of the" and substituting therefor the words "financial year";

(e) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Every co-operative society shall, in the prescribed form and within four months after the end of the financial year submit its annual return together with a certified true copy of the audited accounts and balance sheet of the society for the preceding financial year, –

(a) in the case of a co-operative union or apex society, to the Commissioner; and

(b) in the case of a primary society, to the director.

(f) in subsection (11) by inserting the words "or director as the case may be" immediately after the words "unless the Commissioner".

18. Section 26 of the principal Act is amended by inserting the words "or the director, as the case may be," immediately after the words "by the Commissioner".

Amendment of section 26 of No. 12 of 1997.

19. Section 27 of the principal Act is amended –

Amendment of section 27 of No. 12 of 1997.

(a) in subsection (5) by inserting the words "in the case of a co-operative union or the apex society, or the director in the case of a primary society" immediately after the words "or the Commissioner" in paragraph (b);

(b) in subsection (8) by inserting the words "or the director, as the case may be" immediately after the words "The Commissioner"; and

(c) by deleting subsection (10) and substituting therefor the following new subsection –

(10) The Commissioner or the director, as the case may be, or a person nominated by the Commissioner or the director, may preside at any meeting convened under subsection (8).

20. Section 28 of the principal Act is amended –
(a) in subsection (4) by –

(i) inserting the words “in the case of a co-operative union or the apex society, or to the director in the case of a primary society” immediately after the words “to the Commissioner” in paragraph (h); and

(ii) inserting the words “in the case of a co-operative union or the apex society, or the director in the case of a primary society” immediately after the words “by the Commissioner” in paragraph (k);

(b) in subsection (7) by inserting the words “in the case of a co-operative union or the apex society, or the director in the case of a primary society” immediately after the words “The Commissioner”.

21. Section 29 of the principal Act is amended –

(a) in subsection (7) by inserting the words “or the director” immediately after the words “by the Commissioner” in paragraph (c);

(b) by inserting the following new subsections immediately after subsection (8) –

(8A) Within fourteen days from the date the further resolution is made under subsection (8) by each amalgamating society, the amalgamating societies shall submit an application to the Commissioner or the director, as the case may be, for the approval of the amalgamation and registration of the amalgamated society.

(8B) The application for approval of amalgamation and registration of the amalgamated society shall, in addition to the requirements set out under section 6, be submitted together with –

(a) copies of the preliminary resolution made under subsection (1) by each of the amalgamating societies;

(b) a copy of any notice given under subsection (3), (4) or (5) by a member, a creditor or any other interested person;

(c) copies of the secondary resolution made under subsection (7) by each of the amalgamating societies;

(d) copies of the further resolution made under subsection (8) by each of the amalgamating societies confirming the preliminary resolution; and

(e) the registration certificate of each of the amalgamating societies.

(8C) The Commissioner or the director, as the case may be, shall, in writing and within thirty days from the date of receipt of an application under subsection (8A) –

(a) approve the application and register the amalgamated society;

(b) register the amalgamated society provisionally in accordance with section 7; or

(c) reject the application.

(8D) The Commissioner or the director may, in approving an application under subsection (8C)(a), impose such conditions as may be necessary to ensure compliance.

(8E) The Commissioner or the director shall specify reasons, in writing, where an application made under subsection (8A) is rejected.

(c) in subsection (9) by deleting the introductory clause and substituting therefor the following new introductory clause –

(9) Upon approval of amalgamation and registration of the amalgamated society, –

(d) by deleting subsection (10) and substituting therefor the following new subsection –

(10) Where the Commissioner or the director rejects an application made under subsection (8A) or fails to act within thirty days, the amalgamating societies may, within fourteen days from the date of the decision, appeal to the Tribunal.

22. Section 30 of the principal Act be amended –

(a) in subsection (7) by –

(i) inserting the words “(in this section referred to as the secondary resolution)” immediately after the words “of the society” in the introductory clause; and

(ii) inserting the words “or the director, as the case may be,” immediately after the words “as the Commissioner” in paragraph (c);

(b) by deleting subsection (8) and substituting therefor the following new subsection –

(8) The existing society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.

(c) by inserting the following new subsections immediately after subsection (8) –

(8A) Within fourteen days from the date the further resolution is made under subsection (8), the existing society shall submit an application to the Commissioner or the director, as the case may be, for approval of division of the society and registration of the new societies.

(8B) The application for approval of division of the existing society and registration of new societies shall, in addition to the requirements set out under section 6, be submitted together with –

(a) a copy of the preliminary resolution of made under subsection (1) by the existing society;

(b) a copy of any notice given under subsection (3), (4) or (5) by a member, a creditor or any other interested person;

(c) a copy of the secondary resolution made under subsection (7) by the existing society;

(d) a copy of the further resolution made under subsection (8) by the existing society confirming the preliminary resolution; and

(e) the registration certificate of the existing society.

(8C) The Commissioner or the director shall, in writing and within thirty days from the date of receipt of an application under subsection (8A) –

(a) approve the application and register the new societies;

(b) register the new societies provisionally in accordance with section 7; or

(c) reject the application.

(8D) The Commissioner or the director, as the case may be, in approving the application under subsection (8C) (a), impose such conditions as may be necessary to ensure compliance.

(8E) The Commissioner or the director shall specify reasons, in writing, where an application made under subsection (8A) is rejected.

(d) in subsection (9) by deleting the introductory clause and substituting therefor the following new introductory clause –

(9) Upon approval of division of the existing society and registration of the new societies, —

(e) by deleting subsection (10) and substituting therefor the following new subsection —

(10) Where the Commissioner or the director rejects an application made under subsection (8A) or fails to act on the application within thirty days, the existing society may, within fourteen days from the date of the decision, appeal to the Tribunal.

23. Section 32 of the principal Act be amended in subsection (1) by deleting the word “twenty” appearing immediately after the words “not exceeding” and substituting therefor the words “fifty”.

Amendment of
section 32 of No.
12 of 1997.

24. Section 35 of the principal Act be amended —

Amendment of
section 35 of No.
12 of 1997.

(a) in subsection (2) by inserting the words “or the director, as the case may be,” immediately after the words “The Commissioner”;

(b) in subsection (3) by inserting the words “or the director” immediately after the words “The Commissioner”;

(c) in subsection (5) by deleting the introductory clause and substituting therefor the following new introductory clause —

(5) Where an agent claims to be or to have become unable to comply with subsection (3) by reason of lack of moneys held by or due from him, he shall give a written notification to the Commissioner or the director stating the reasons for his inability and the Commissioner or the director may —

(d) in subsection (6) by inserting the words “or the director” immediately after the words “notify the Commissioner”.

25. The principal Act is amended by deleting section 51 and substituting therefor the following new section —

Amendment of
section 51 of No.
12 of 1997.

(1) A co-operative union or the apex society shall register with the Commissioner every charge created by it and the particulars of the charge within thirty days from the date the charge is created.

(2) A primary society shall register with the director every charge created by it and the particulars of the charge within thirty days from the date the charge is created.

(3) Despite subsection (1) and (2), any interested person may make an application for the registration of a charge and such interested person shall be entitled to recover from the co-operative society the amount of any fees paid by him to the Commissioner or the director member for such registration.

(4) If a co-operative society fails to register within thirty days a charge created by it, and unless the registration has been effected by some other person within that period, every officer of the co-operative society commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for every day during which the default continues.

26. Section 52 of the principal Act is amended –

(a) in subsection (1) by inserting the words “or the director, as the case may be,” immediately after the words “The Commissioner”;

(b) in subsection (2) by inserting the words “or the director” immediately after the words “The Commissioner”; and

(c) in subsection (4) by inserting the words “or the director” immediately after the words “The Commissioner”.

27. Section 53 of the principal Act is amended by inserting the words “or the director, as the case may be” immediately after the words “The Commissioner”.

28. The principal Act is amended by deleting section 54 and substituting therefor the following new section –

Amendment of
section 52 of No.
12 of 1997.

Amendment of
section 53 of No.
12 of 1997.

Amendment of
section 54 of No.
12 of 1997.

Receiver to
give notice of
appointment.

54. (1) Where a person appointed as receiver or manager of the property of a co-operative society under any powers contained in any instrument, that person shall, within seven days from the date of the order of the appointment, give written notice of the appointment to the Commissioner or the director, as the case may be.

(2) Where a person appointed as receiver or manager of the property of a co-operative society under the powers contained in any instrument ceases to act as such receiver or manager, that person shall, within seven days of so ceasing, give written notice to the Commissioner or the director.

(3) The Commissioner or the director shall, within seven days of receipt of the notice of appointment or the notice of cessation of appointment as receiver or manager under subsection (1) or (2), enter the notice in the register of charges.

(4) A person who contravenes the provisions of subsection (1) or (2) commits an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for every day during which the default continues.

29. Section 56 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection –

(2) An officer of a co-operative society who knowingly fails to make any entry required to be made in any register in accordance with this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings.

30. Section 58 of the principal Act is amended –

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The Commissioner or the director may, on its own motion, on request by members or where required by the Cabinet Secretary, undertake an inquiry into the by-laws, working or financial conditions of a co-operative society he or she has registered.

Amendment of
section 58 of No.
12 of 1997.

Amendment of
section 56 of No.
12 of 1997.

(b) by inserting the following new subsection immediately after the new subsections (1) –

(1A) At least one-third of the total members of a co-operative union or the apex society present and voting at a meeting of the co-operative society which has been duly convened in accordance with this Act may by a resolution request the Commissioner to undertake an inquiry into the by-laws, working or financial conditions of any co-operative society.

(1B) At least one-third of the total members of a primary society present and voting at a meeting of the co-operative society which has been duly convened in accordance with this Act may by a resolution request the director to undertake an inquiry into the by-laws, working or financial conditions of any co-operative society.

(c) in subsection (3) by inserting the words “or the director” immediately after the words “The Commissioner”;

(d) in subsection (4) by deleting the introductory clause and substituting therefor the following new clause –

(4) The Commissioner or the director may, where it is found, upon the inquiry, that a co-operative society is not being managed in accordance with this Act or its by-laws, –

(g) by deleting subsection (5) and substituting therefor the following new subsection –

(5) A person who contravenes subsection (2) shall commit an offence and shall be liable, on conviction, to a fine not exceeding five thousand shillings for each day during which the offence continues or to imprisonment for a term not exceeding three years or to both.

31. Section 59 of the principal Act is amended –

(a) in subsection (1) by –

Amendment of
Section 59 of No.
12 of 1997.

(i) inserting the words "or the director as the case may be" immediately after the words "The Commissioner" in the introductory clause;

(ii) inserting the words "or the director" immediately after the words "satisfies the Commissioner" in paragraph (a); and

(iii) deleting paragraph (b) and substituting therefor the following new paragraph –

(b) the applicant deposits with the Commissioner or the director such sum as security for the expenses of the inspection as the Commissioner or the director may require.

(b) in subsection (2) by inserting the words "or the director as the case may be" immediately after the words "The Commissioner".

32. Section 60 of the principal Act is amended by deleting subsection (1) and substituting therefor the following new subsection –

(1) Where an inquiry is held under section 58 or an inspection is made under section 59, the Commissioner or the director may, by a certificate issued under his hand, make an order apportioning the expenses between the co-operative society, the members of the co-operative society or a creditor demanding the inquiry or inspection, and the officers or former officers of the co-operative society.

33. Section 60A of the principal Act is amended by inserting the words "or the director, as the case may be," immediately after the words "the Commissioner".

34. Section 61 of the principal Act is amended –

(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The Commissioner or the director may make an order for dissolution of a co-operative society where –

(a) a special resolution for its dissolution is passed by the members;

Amendment of
section 61 of No.
12 of 1997.

Amendment of
section 60A of
No. 12 of 1997.

Amendment of
section 60 of No.
12 of 1997.

(b) in the case of a primary society, the number of members falls below ten;

(c) the co-operative society's registration has been cancelled;

(d) a court of competent jurisdiction makes an order for its dissolution;

(d) an inquiry or an inspection reveals that the co-operative society is not being managed in accordance with this Act or the by-laws; or

(e) the co-operative society is adjudged bankrupt.

(b) in subsection (2) by deleting the words "Minister with a final appeal to the High Court" appearing immediately after the words "order to the" and substituting therefor the word "Tribunal";

(c) in subsection (3) by deleting the words "Minister or by the High Court, as the case may be" appearing immediately after the words "confirmed by the" and substituting therefor for the word "Tribunal";

(d) in subsection (4) by inserting the words "or the director" immediately after the words "Where the Commissioner"; and

(e) in subsection (5) by inserting the words "or the director" immediately after the words "of the Commissioner".

35. The principal Act is amended by repealing section 62.

Repeal of section 62 of No. 12 of 1997.

36. The principal Act is amended by repealing section 63.

Repeal of section 63 of No. 12 of 1997.

37. The principal Act is amended by deleting section 64 and substituting therefor the following new section –

Amendment of section 64 of No. 12 of 1997.

64. (1) The sections of the Insolvency Act specified in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule, shall apply *mutatis mutandis* in relation to the

Application of Insolvency Act.

liquidation of a co-operative society as they apply to that of a registered company.

(2) The Cabinet Secretary may, by order, amend the Schedule to this Act.

38. The principal Act is amended by deleting section 65 and substituting therefor the following new section –

Amendment of section 65 of No. 12 of 1997.

65. Where an order for dissolution of a co-operative society has been made under section 61, the Commissioner or the director may appoint one or more persons to be liquidator or liquidators of that co-operative society and the property of the co-operative society shall vest in the liquidator from the date upon which the order of cancellation takes effect.

Appointment of a liquidator.

39. Section 66 of the principal Act is amended in subsection (1) by –

Amendment of section 66 of No. 12 of 1997.

(a) deleting the introductory clause and substituting therefor the following new clause –

(b) inserting the words “or the director, as the case may be” immediately after the words “by the Commissioner” in paragraph (i);

(c) inserting the words “or the director” immediately after the words “of the Commissioner” in paragraph (n); and

(d) inserting the words “or the director, as the case may be,” immediately after the words “to the Commissioner” in paragraph (o).

40. The principal Act is amended by deleting section 67 and substituting therefor the following new section –

Amendment of section 67 of No. 12 of 1997.

67. (1) The Commissioner shall open and administer a co-operative societies liquidation account for co-operative unions and the apex society with such bank as the Commissioner may determine.

(2) The director shall open and administer a co-operative societies liquidation account for

primary societies with such bank as the director may determine.

(3) The Commissioner or the director, as the case may be, shall pay into the co-operative societies liquidation account opened under subsection (1) or (2) —

(a) all moneys realized in the liquidation where a bank account does not exist at the commencement of the liquidation;

(b) any unpaid claims on closure of a liquidation of a co-operative society; and

(c) any surplus balance on closure of a liquidation of a co-operative society.

(4) The Commissioner or the director, as the case may be, may utilise the funds in the co-operative societies liquidation account to pay distribution or unpaid claims which have been certified.

(5) The Cabinet Secretary shall make regulations for the administration of the liquidation accounts established under subsection (1) and (2).

41. Section 68 of the principal Act is amended —

(a) by deleting subsection (1) and substituting therefor the following new subsections —

(1) The liquidator shall exercise his powers subject to the guidance and control of the Commissioner or the director, as the case may be, and to any limitations imposed by the Commissioner or the director.

(1A) The Commissioner or director may —

(a) rescind or vary any order made by the liquidator and make any new order he thinks proper;

- (b) remove the liquidator from office and appoint a new liquidator in his place;
- (c) call for all books, documents and assets of the co-operative society;
- (d) by order in writing, in any particular case, limit the powers of the liquidator conferred by section 66;
- (e) at his discretion, require accounts to be rendered to the Commissioner or the director by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the co-operative society;
- (g) make an order for the remuneration of the liquidator;
- (h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;
- (i) require any member or past member of the co-operative society and any trustee, banker, receiver, agent or officer of the co-operative society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator, any money, property, books or documents in his control to which the co-operative society appears to be entitled;
- (j) appoint a special manager for the management of the business of the co-operative society and determine his remuneration and what, if any, security he shall give for the proper performance of his duties;
- (k) any third party consents in writing, refer any dispute between a liquidator and that third party to the Tribunal; or
- (l) require the indemnification of the liquidator.

(b) in subsection (2) by inserting the words “or the director” immediately after the words “by the Commissioner”.

42. Section 69 of the principal Act is amended in subsection (1) by inserting the words “the director” immediately after the words “of the Commissioner”.

Amendment of section 69 of No. 12 of 1997.

43. The principal Act is amended by deleting section 71 and substituting therefor the following new section –

Amendment of section 71 of No. 12 of 1997.

71. (1) If a liquidator of a society whose registration has been cancelled alleges that any of the offences specified under sections 498, 499, 500, 501, 502, 503, 504, 505, 506, 508, or 510 of the Insolvency Act have been committed, he shall report the facts to the Commissioner or the director, as the case may be.

Institution of liquidation proceedings. No. 18 of 2015.

(2) On receipt of a report of a liquidator under subsection (1), the Commissioner or the director may institute such proceedings as may be necessary.

44. The principal Act is amended by deleting section 72 and substituting therefor the following new section –

Amendment of section 72 of No. 12 of 1997.

72. (1) A person who has been convicted of an offence under the Insolvency Act as specified under section 71 shall cease to be an officer of a co-operative society or to be involved in the management of a co-operative society for a period of five years from the date of the conviction.

Power to restrain persons from being officers of a society.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

45. Section 73 of the principal Act is amended –

Amendment of section 73 of No. 12 of 1997.

(a) in subsection (1) by inserting the words “or the director” immediately after the words “the Commissioner”; and

(b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) The Commissioner or the director may, upon inquiry under subsection (1), make an order requiring the person –

(a) to repay the money or restore the property or any part thereof to the co-operative society together with interest as the Commissioner or the director may determine; or

(b) to contribute such sum to the assets of the co-operative society by way of compensation as the Commissioner or the director shall consider just.

46. Section 74 of the principal Act is amended in subsection (1) by deleting the words “under section 73(1)” appearing immediately after the words “of the Commissioner” and substituting therefor the words “or the director under section 73(2)”.

Amendment of section 74 of No. 12 of 1997.

47. Section 75 of the principal Act is amended in subsection (2) by inserting the words “or the director” immediately after the words “the Commissioner”.

Amendment of section 75 of No. 12 of 1997.

48. Section 76 of the principal Act is amended –

Amendment of section 76 of No. 12 of 1997.

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (c) –

(d) between a co-operative society and the Commissioner or the director, including a claim for refusal to grant registration, cancellation or suspension of registration.

(b) in subsection (2) by deleting paragraph (c).

49. The principal Act is amended by deleting section 77 and substituting therefor the following new section –

Amendment of section 77 of No. 12 of 1997.

77. (1) There is hereby established a tribunal to be known as the Co-operative Tribunal which shall consist of the following members appointed by the Judicial Service Commission by a notice in the *Gazette* –

Establishment of the Tribunal.

- (a) a chairperson and deputy chairperson, who shall be of the opposite gender, competitively recruited by the Judicial Service Commission;
- (b) two persons, who shall be of the opposite gender, nominated by the Law Society of Kenya; and
- (c) three persons, at least one of whom shall be of the opposite gender, appointed by the Cabinet Secretary, in consultation with the apex society.

(2) A person is qualified for appointment under subsection (1) if such a person –

- (a) holds a degree from a university recognised in Kenya;
- (b) meets the requirements of Chapter Six of the Constitution; and
- (c) in the case of a person appointed under –

(i) subsection (1) (a), is an advocate of the High Court of Kenya and has at least ten years' experience as a practitioner;

(ii) subsection (1) (b), is an advocate of the High Court of Kenya and has at least five years' experience as a practitioner; or

(iii) subsection (1)(c), has at least ten years' experience in the field of co-operative management and practice.

(3) A member of the Tribunal shall serve for a term of three years which may be renewed for one further term.

(4) A person ceases to be a member of the Tribunal if that person –

(a) no longer meets the requirements under subsection (2);

(b) is absent from three consecutive sittings of the Tribunal without reasonable cause;

(c) resigns in writing, addressed to the Judicial Service Commission;

(d) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;

(e) is adjudged bankrupt;

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

(g) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or

(h) dies.

50. Section 78 of the principal Act is amended –

(a) by deleting subsection (2) and substituting therefor the following new subsection –

(2) An application or reference by the Commissioner, director, the Committee or an officer or member of a co-operative society to the Tribunal under this Act shall be in writing.

(b) by inserting the following new subsection immediately after subsection (2) –

(2A) The Tribunal shall, in writing, and upon an inquiry into an application or reference made to it, communicate its decision to all the parties.

51. Section 79 of the principal Act is amended in subsection (2) by deleting the words “shall be guilty of” appearing immediately after the words “contempt of the Tribunal,” and substituting therefor the word “commits”.

Amendment of
section 78 of No.
12 of 1997.

Amendment of
section 79 of No.
12 of 1997.

Amendment of
section 80 of No.
12 of 1997.

52. Section 80 of the principal Act is amended –
(a) by deleting subsection (1) and substituting therefor the following new subsection –

(1) The chairperson and any two members of the Tribunal shall form a quorum for the purpose of hearing and determining any matter referred to it under this Act.

(b) by inserting the following new subsection immediately after subsection (1) –

(1A) Notwithstanding subsection (1), where one or two members are absent for any part of the hearing, the chairperson sitting alone or with one member may hear and determine an application.

(c) in subsection (3) by deleting the proviso;

(d) in subsection (4) by deleting the word “Chairman” appearing immediately after the words “this Act the” and substituting therefor the word “chairperson”;

(e) by deleting subsection (5) and substituting therefor the following new subsection –

(5) The deputy chairperson may perform the functions of the chairperson if –

(a) the chairperson is unable perform the functions of the office of the chairperson; or

(b) the chairperson authorises the deputy chairperson, in writing, to perform the function of the chairperson.

53. The principal Act is amended by deleting section 82 and substituting therefor the following new section –

Amendment of
section 82 of No.
12 of 1997.

82. The chairperson of the Tribunal may appoint any person with special skills or knowledge on matters regarding the co-operative sector which are the subject matter of any proceedings or inquiry before the Tribunal to act as an assessor in an advisory capacity where it appears to the Tribunal that such special skills

Power to appoint
assessors.

or knowledge is required for the proper determination of the matter.

Amendment of section 84 of No. 12 of 1997.

54. The principal Act is amended by deleting section 84 and substituting therefor the following new section —

84. The chairperson and members of the Tribunal shall be paid such remuneration and allowances as the Judicial Service Commission, in consultation with the Salaries and Remuneration Commission, shall determine.

Amendment of section 85 of No. 12 of 1997.

55. The principal Act is amended by deleting section 85 and substituting therefor the following new section —

85. The Judicial Service Commission shall appoint a secretary to the Tribunal and such other officers as may be necessary for the effective administration of the affairs of the Tribunal.

Insertion of new sections 85A and 85B.

56. The principal Act is amended by inserting the following new sections immediately after section 85 —

85A. A person shall be qualified for appointment as secretary to the Tribunal if the person —

(a) is an advocate of the High Court of Kenya with at least five years' experience as a practitioner;

(b) has demonstrated competence in the performance of administrative duties for at least three years; and

(c) meets the requirement of Chapter Six of the Constitution.

Functions of the secretary.

85B. (1) The secretary shall perform the duties assigned to the secretary under this Act and such other duties as the Tribunal may direct, and in particular, be responsible for —

(a) the day-to-day management of the affairs of the Tribunal;

(b) the establishment and maintenance of a register in

which all records of the Tribunal shall be kept;

(c) the acceptance, transmission, service and custody of documents in accordance with the rules;

(d) the enforcement of the decisions of the Court and those of the Tribunal;

(e) certifying that order, direction or decision of the Tribunal;

(f) maintaining the records of the proceedings and minutes of the Tribunal and such other records as the Tribunal may direct;

(g) managing and supervising the staff of the Tribunal; and

(h) facilitating access to decisions and records of the Tribunal.

(2) The secretary may consider and dispose of procedural or administrative matters in accordance with the rules or on the direction of the Tribunal.

57. The principal Act is amended by deleting section 86 and substituting therefor the following new section —

Power to establish branches of the Tribunal.

86. The Judicial Service Commission shall, in consultation with the chairperson of the Tribunal, establish such offices or registries of the Tribunal in every county.

58. Section 88 of the principal Act is amended by deleting the word "Chairman" appearing immediately after the word "The" and substituting therefor the word "chairperson".

59. Section 89 of the principal Act is amended by deleting subsection (3) and substituting therefor the following new subsection —

(3) An officer or member of a co-operative society who receives any remuneration, salary, commission or other payment in contravention of this section commits an offence and shall be liable, on conviction, —

(a) to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both; and

(b) if the offence is the contravention of subsection (1) of this section, be ordered to repay the amount of the remuneration, salary, commission or other payment received from the society in addition to any other punishment.

60. Section 90A of the principal Act is amended —

(a) in subsection (1) by deleting the word "Minister" and substituting therefor the words "Cabinet Secretary";

(b) by deleting subsection (4) and substituting therefor the following new subsection —

(4) The Fund shall vest in a board of trustees composed of the following persons appointed by the Cabinet Secretary by a notice in the *Gazette* —

(a) one person nominated by the Cabinet Secretary;

(b) one person nominated by the Council of County Governors;

(c) one person nominated by the apex society;

(d) two persons nominated by co-operative unions; and

(e) two persons nominated by primary societies.

(c) by inserting the following new subsection (4) —

(4A) A member of the board of trustees shall serve for a term of four years renewable for one further term.

(d) in subsection (5) by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

Amendment of
section 91 of No.
12 of 1997.

61. Section 91 of the principal Act is amended –

- (a) in subsection (1) by deleting the word “Minister” appearing immediately after the word “The” and substituting therefor the words “Cabinet Secretary”; and

- (b) in subsection (2) by –

- (i) deleting the word “Minister” appearing immediately after the words “made to the” in paragraph (p) and substituting therefor the word “Tribunal”;

- (ii) inserting the words “or the Commissioner, director” immediately after the words “to the Commissioner” in paragraph (q); and

- (iii) inserting the words “or the director” immediately after the words “by the Commissioner” in paragraph (r).

- (c) in subsection (3) by inserting the words “or the director” immediately after the words “where the Commissioner”.

62. Section 92 of the principal Act is amended –

Amendment of
section 92 of No.
12 of 1997.

- (a) in subsection (1) by deleting the words “the Minister” appearing immediately after the words “in this Act,” in the introductory clause and substituting therefor the words “the Cabinet Secretary”;

- (b) by deleting subsection (2) and substituting therefor the following new subsection –

(2) Where the Cabinet Secretary intends to grant an exemption under subsection (1), the Cabinet Secretary shall publish a notice in the *Gazette* of the intention to grant such an exemption at least thirty days before the decision.

- (c) in subsection (3) by deleting the word “Minister” appearing immediately after the words “representation to the” and substituting therefor the words “Cabinet Secretary”; and

(d) in subsection (4) by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

63. Section 93 of the principal Act is amended –

(a) in the marginal note by deleting the word "Minister" appearing immediately after the words "of the" and substituting therefor the words "Cabinet Secretary"; and

(b) by deleting the word "Minister" appearing immediately after the word "The" and substituting therefor the words "Cabinet Secretary".

64. Section 93A of the principal Act is amended –

(a) by renumbering the existing provision subsection (1);

(b) in the new subsection (1) by inserting the words "in the case of co-operative unions or the apex society" immediately after the words "the Commissioner may"; and

(c) by inserting the following new subsection immediately after the renumbered subsection (1) –

(2) The respective director may exercise the powers of the Commissioner under subsection (1) with respect to a primary society registered in the respective county.

65. Section 94 of the principal Act is amended in subsection (3) by deleting the word "Attorney-General" appearing immediately after the word "The" and substituting therefor the words "Director of Public Prosecutions".

66. The principal Act is amended by deleting the Schedule and substituting therefor the following new Schedule –

SCHEDULE

[Section 64.]

PART I – THE INSOLVENCY ACT (NO. 18 OF 2015)

No. of Description of section
section

Amendment of
section 93 of No.
12 of 1997.

Amendment of
section 93A of
No. 12 of 1997.

Amendment of
section 94 of No.
12 of 1997.

Amendment of
the Schedule to
No. 12 of 1997.

384	The circumstances in which a company is unable to pay its debts.
403	Effect of company's insolvency.
420	Questions relating to liquidation may be referred to the Court for determination.
428	Power to stay or restrain proceedings against company when liquidation application has been made.
429	Dispositions of property by company after commencement of liquidation to be void unless the Court otherwise orders.
430	Attachments and other forms of execution against company in liquidation to be void.
432	Consequences of liquidation order.
457	Power to arrest absconding contributory.
471	Preferential debts (general provision).
472	Preferential charge on property of company distrained within three months before making of liquidation order.
473	Expenses of liquidation to have priority over claims under floating charge.
474	Share of assets to be made available for unsecured creditors where floating charge relates to company's property.
475	Power of the Court to appoint special manager of company's business or property when company is in liquidation or provisional liquidator appointed.
476	Power of liquidator to disclaim onerous property.
477	Special provisions relating to disclaimer of leaseholds.
478	Effect of disclaimer in relation to land subject to rent charge.
479	General powers of the Court in respect of disclaimed property.

480	Powers of the Court in respect of leaseholds held by company in liquidation.
481	Creditor not entitled to retain benefit of execution or attachment against liquidator unless creditor completes execution or attachment before commencement of liquidation.
482	Duties of judicial enforcement officers charged with execution of writs and other processes involving companies in liquidation.
483	Power of the Court to rescind contracts entered into by company in liquidation.
484	Power of liquidator to transfer assets of company to its employees.
485	Company in liquidation required to state that it is in liquidation in all invoices, letters and other communications.
486	Interest on debts to be paid if surplus permits.
487	Certain documents relating to company in liquidation to be exempt from stamp duty.
488	Records of company in liquidation to be evidence.
489	Liquidator to lodge periodic statements with Registrar of Companies with respect to current position of liquidation.
490	Effect of resolutions passed at adjourned meetings of company's creditors and contributories.
491	Court may order meetings to be held to ascertain wishes of creditors or contributories.
492	Judicial notice to be taken of documents of the Court.

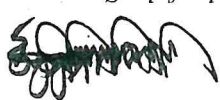
PART II

For the purpose of this Act, the provisions of the Insolvency Act specified in Part I of this Schedule shall have effect as if for reference to "company", "court", "commencement of liquidation", "liquidation order", "contributory" and "director, manager or other officer" there were substituted with "co-operative society", "Tribunal", "the date of dissolution", "order for the cancellation of

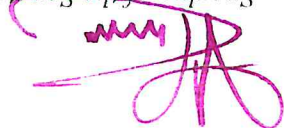
the registration of a co-operative society", "contributor", and
"officer or manager of a co-operative society" respectively.

I certify that this printed impression is a true copy of the Bill as passed by the Senate
on 2nd December, 2021.

Co-operative Societies (Amendment) Bill, 2020


Clerk of the Senate

Endorsed for presentation to the National Assembly in accordance with the
provisions of standing order 156 of the Senate Standing Orders.


Speaker of the Senate

PRINTED BY THE CLERK OF THE SENATE