



# LESOTHO Government Gazette

Vol. XLV

Friday — 15th September, 2000

No. 78

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Price: 60 Lisente



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Price: M2.90**

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#### FIRST SCHEDULE

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# CO-OPERATIVE SOCIETIES ACT NO. 6 OF 2000

## ACT NO. 6 OF 2000

An Act to provide for consolidation of the laws relating to Cooperative Societies and repeal of Cooperative Societies proclamation 1948 and Cooperative Societies (Protection) Act 1966.

Enacted by the Parliament of Lesotho

## PART I

### Short title and commencement

1. This Act may be cited as the Co-operative Societies Act, 2000 and shall come into operation on the date of its publication in the Gazette.

### Interpretation

2. In this Act, unless the context otherwise requires —

“allowance” means the remuneration paid to the Committee members or treasurer or any member carrying out the functions of a society in consideration of their services rendered to the society on regular basis;

“Apex organisation” means an organisation at national level established to facilitate the operation of study groups, primary societies or secondary societies affiliated to it;

“bonus” means a portion of the net surplus of a society divided among its members in proportion to the volume of business done by them with the society;

“By-Laws” means the registered internal regulations made by a society in the exercise of any power conferred by this Act and includes a registered amendment to the by-laws;

“Commissioner” means the Commissioner for Co-operative Development appointed under section 3 of this Act, and includes any person exercising such powers as may be conferred on him under this Act;

“Contributor” means a person who has contributed to the assets of a society in the event of its being wound up;

“Co-operative Officer” means a member of the staff of the Department of Co-operatives;

“Co-operative Societies” are private business organisations of a special nature which are registered under this Act and operate according to co-operative principles and practices;

“delegate” means

- (a) in the case of a primary society in which the general meeting of members is substituted by a meeting of delegates, the representative of a specified number of members elected to attend and vote at the meeting of delegates;
- (b) in the case of a society which is itself a member of another society, the representative of the former society, elected to attend and vote at meetings of the latter society.

“dividend” means a portion of the net surplus of the society divided among its members in proportion to the paid up share capital held by them;

“limited or limited by guarantee” means the liability of its members is limited by its by-laws to —

- (a) the amount unpaid on the shares held by them; or
- (b) such amount as they undertake to contribute to the assets of the society in the event of it being liquidated.

“Management Committee” means the Management Committee of a society elected in accordance with section 58 (2), for the proper management of the affairs of the society;

“member” includes a person or society qualifying for membership in a co-operative society joining in the application for registration of a society and a person or society admitted to membership after registration in accordance with the by-laws;

“Minister” means the Minister responsible for Agriculture, Cooperatives and Land Reclamation;

“net surplus” means the remaining portion of the surplus after provisions have been made for depreciation, bad debts, the reserve fund and the Central Co-operative Fund;

“officer” means a person empowered under this Act, the Rules made under this Act or the by-laws of the society to give directives in regard to the business of a society or to supervise such business;

“pre-co-operative” means any group of persons coming together for the purpose of establishing a society and recognised as such by any apex organisation or by the Commissioner and includes a provisionally registered society;

“primary society” means a society in which all members are individual persons or village groups, formed under section 4 of this Act;

“rules and regulations” means rules made under this Act;

“secondary society” means a society in which all members are themselves primary societies;

“Society” means a co-operative society registered under this Act;

"study group" means a group of individuals who come together for the purpose of establishing a society and recognised as such by any co-operative apex organisation or by the Commissioner

"surplus" means the economic results of a society as shown in the audited financial statements of that society, representing the excess of income over expenditure at the end of a financial year;

"Tribunal" means the Cooperative Societies Tribunal established under section 87.

## PART II

### Registration of Co-operative Societies

#### Commissioner for Co-operative Development

3. (1) There shall be a Commissioner for Co-operative Development who shall be appointed by the Minister by notice in the Gazette.

(2) The Commissioner shall —

- (a) register and protect co-operative societies in accordance with the provisions of this Act;
- (b) advise the Minister on any matter relating to co-operative societies;
- (c) encourage the establishment of co-operative societies in all sections of the economy and help co-operative societies to increase their efficiency; and
- (d) perform such other duties as may be assigned to him by the Minister or under this Act.

#### Types of Co-operatives Societies which may be registered

4. The following co-operative societies or apex organisation may be formed and registered in terms of this Act:

- (a) primary society;
- (b) secondary society;
- (c) apex organisation.

#### Objects for which a cooperative society may be formed

5. A Co-operative Society shall have as its object the promotion of economic and social interests of its members in accordance with cooperative principles and practices.

#### Composition of Primary or Secondary Society

6. (1) A Primary Society shall consist of not less than ten individuals who

qualify for membership in terms of this Act.

(2) A Secondary Society shall consist of two or more cooperatives.

#### Apex organisation

7. (1) There shall be, at the National Level, an Apex organisation which shall facilitate the operations of primary and secondary societies registered under this Act.

(2) An Apex organisation shall consist of not less than two Secondary Societies.

#### Functions of Apex Organisation

8. (1) The Apex organisation shall —

- (a) provide information, education, training and advisory services on cooperative principles and on the Management of Cooperative enterprises;
- (b) assist study groups and societies registered under this Act in determining the feasibility of their projects;
- (c) facilitate the registration of new societies;
- (d) provide, organise and supervise central services such as joint supply of inputs, raw materials or implements, access to technical services and loans, joint marketing of produce and joint use of any services or installations necessary to help others and members of affiliated societies and study groups in achieving their objects;
- (e) advise the Commissioner on matters related to cooperative development policy and legislation;
- (f) represent the cooperative movement of Lesotho at the national or international level;
- (g) coordinate activities of various secondary cooperative societies and government agencies for the promotion of cooperative development.

(2) The Apex organisation shall make its own rules.

(3) The Apex organisation may engage such consultants or experts as it thinks fit to advise it in respect of any matters arising in connection with the exercise of its functions under this Act.

#### Conditions for registration

9. No society, other than a society of which a member is a registered society, shall be registered under this Act unless it consists of at least ten persons who qualify to be members in terms of this Act.



### Qualification for membership

10. No person shall qualify to be a member of a Primary Society unless he —
- is over the age of fifteen years;
  - is a citizen of Lesotho;
  - has made payment of a fee prescribed under the by-laws made under this Act.

### Disqualification for membership to a primary society

11. A person is disqualified from becoming a member of a society if he —
- is convicted of any criminal offence involving dishonesty;
  - becomes of unsound mind;
  - is declared insolvent;
  - is dismissed at a general meeting as provided in this Act.

### Study Group

12. (1) Persons who qualify in terms of this Act to become members shall, for purposes of forming a primary cooperative society, convene a meeting.
- (2) Persons referred to in subsection (1) shall, for purposes of this Act be called a study group.
- (3) A study group shall consist of at least ten individuals.
- (4) A cooperative officer or a person engaged by Apex Organisation shall, at the request of the study group, assist in the formation of a Cooperative Society.

### Functions of a study group

13. A study Group shall —
- organise educational meetings and discuss the proposed Society, its object, operations and benefits to members;
  - assess the probable membership and expected volume of business;
  - compile a list of prospective members and a record of probable contributions in the form of shares labour or savings;
  - prepare, in consultation with the cooperative officer, the by-laws for the proposed society; or;
  - do all such acts as may be necessary in the proposed society.

### Name of society

14. (1) No Society shall be registered by name which in the opinion of the Commissioner is objectionable or misleading or identical to that of a society which is already registered.

- (2) A society shall have —

- the word "cooperative" as part of its name; and
- the word "limited" or limited by guarantee at the end of its name.

### Preliminary meeting of a Society

15. (1) Where the Commissioner is satisfied that all requirements for registration of the proposed society are met by persons who qualify in terms of this Act to form a society, he shall direct that a meeting be convened by those persons.

- (2) At the meeting convened in accordance with subsection (1), the following shall be submitted to the Commissioner —

- the proposed by-laws of the society;
- a written statement prepared and signed by persons present at such meeting and showing —
  - the objects of the proposed society; and
  - the business prospects of the society.
- feasibility study and estimate of revenue relating to the proposed society; and
- a register of proposed members signed by persons who are present at the meeting and who wish to become members of the proposed society.

- (3) Persons present at the meeting and whose names appear in the by-laws of the proposed society shall elect from among themselves and by a simple majority by secret ballot a provisional Management Committee which shall serve until the first General Meeting of the proposed society.

### Application for Registration

16. (1) A society shall, prior to carrying out its activities, submit to the commissioner and in the form set out in first Schedule to this Act, an application form for registration of the society.

- (2) The application form for registration shall —

- contain information specified in the Second Schedule to this Act and be signed by —
  - in the case of a Primary Society, at least ten persons who qualify for membership in terms of this Act;
  - in the case of a Secondary Society, duly authorised persons on behalf of at least two or more societies;
  - in the case of an Apex organisation by not less than two representatives of at least two secondary societies.

- (b) be accompanied by —
  - (i) three copies of the by-laws of the proposed society containing signatures of at least three persons elected to the provisional management committee;
  - (ii) a list of names and addresses, identity numbers and occupations of persons elected to the provisional management committee of the proposed society;
  - (iii) a description of the proposed business and other activities of such society;
  - (iv) a feasibility study and estimated capital relating to the proposed society;
  - (v) minutes of the Preliminary meeting signed by all persons who wish to become members of the proposed society; and
  - (vi) any other document or information that the commissioner may require.

#### Registration

17. (1) The Commissioner may, where he is satisfied that a society has complied with all requirements necessary for registration of a society under this Act, register a society and its by-laws.

(2) Where the Commissioner is of the opinion that the requirements for not registration have been complied with to his satisfaction, he may —

- (a) register the society provisionally for a period specified in the certificate of registration and subject to its compliance with such terms and conditions as may be determined; or
- (b) in writing, refuse to register the society.

(3) The Commissioner shall, where he refuses to register the society in accordance with subsection (2) paragraph (b), state reasons for his refusal.

(4) Refusal by the Commissioner to register a society is subject to appeal by the Minister.

(5) An appeal for refusal to register a society shall be made to the Minister within thirty days of such refusal.

(6) The society shall, on registration, pay such fee as may be prescribed by the Minister.

(7) A society registered provisionally shall, subject to this Act and conditions prescribed by the Commissioner in writing, operate with the same status and powers as a registered society.

#### Cancellation of a provisional registration

18. (1) The Commissioner may, in writing, cancel the provisional registration

of a society where he is of the opinion that the conditions prescribed under this Act have not been complied with.

(2) The cancellation made in terms of subsection (1) shall be deemed to be a refusal to register the society and that society shall immediately cease to operate as a society.

(3) Where a provisional registration is cancelled in terms of subsection (1), the Commissioner shall appoint a liquidator of the society.

(4) A society which contravenes the provisions of this sections commits an offence and is liable on conviction to a fine not exceeding M2 000.

### PART III

#### PRIVILEGES AND DUTIES OF SOCIETIES

##### Societies to be body corporates

19. A society registered in terms of this Act —

- (a) shall be a body corporate;
- (b) shall have power to enter into contracts;
- (c) may acquire, hold or dispose of movable or immovable property;
- (d) may sue or be sued in its corporate name; and
- (e) may perform the duties imposed on it and exercise powers conferred on it by or under this Act.

##### Acts of Societies not to be invalidated by certain defects

20. An act of a society or of a Management Committee or of an employee of a society shall not be deemed to be invalid by reasons only of the existence of some defect in the constitution of the society or of the Management Committee or in the appointment or election of an employee or on the ground that such employee was disqualified for his appointment.

##### Certificate of registration

21. The Commissioner shall issue a certificate of registration as evidence that the society is registered.

##### Address of society

22. (1) A society registered under this Act shall have an address to which all notices and communications shall be sent.

(2) The address declared in the application for registration shall be the registered address until it is changed in accordance with this Act.

(3) Every change of address shall be notified to the Commissioner and to every creditor of the society.



### By-laws of society

23. (1) The by-laws of a society shall set forth the following:
- (a) the name, postal address and residential address of the society;
  - (b) the type of a society;
  - (c) the objects of a society;
  - (d) the nature of the business and other activities carried on by the society;
  - (e) the place where its main business is situated;
  - (f) the manner in which members shall be admitted and the requirements and conditions of admission of members including fees payable in respect of membership and the circumstances under which membership may be terminated;
  - (g) whether the liability of its members is unlimited or limited;
  - (h) the rights, duties and liabilities of members of the society;
  - (i) the manner of election, term of office, suspensions and removal of the management committee and the filling of vacancies by way of election or appointment to the management committee;
  - (j) provisions relating to the holding of an Annual General Meeting and any other meeting or the procedure at meetings;
  - (k) the amount of share capital and the division of Profits Shares;
  - (l) the manner in which the share capital may be increased or reduced;
  - (m) the minimum number of and the manner of payment for shares which each member is requested to hold;
  - (n) the manner in which repayment of amount paid in respect of shares may be paid in case of termination of membership;
  - (o) the purposes for which its funds may be utilised;
  - (p) the manner in which its surplus may be distributed by way of dividend;
  - (q) the condition on which loans may be obtained;
  - (r) the manner in which other funds may be invested;
  - (s) any other matter which may in the opinion of the Commissioner be necessary.

### Amendment of By-laws

24. (1) A society may, subject to the provisions of this Act, amend its by-laws.
- (2) An amendment which changes the names of this society shall not affect any right or obligation of the society or of any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.
- (3) Any amendment of the by-laws of a society shall have effect until it has been registered by the Commissioner.

(4) The Commissioner shall not register an amendment to the by-laws of a society unless —

- (a) a resolution to amend the by-laws has been passed by not less than three-fourths of the members present and voting at a meeting duly convened for that purpose;
- (b) not less than 30 days' notice of the proposed amendment has been given to the members; and
- (c) he is satisfied that the amendment does not contravene any of the provisions of this Act.

(5) Three copies of any amendment to the by-laws of a society shall be submitted to the Commissioner and be accompanied by an application for registration of the amendment, signed by the chairperson and two members of the Management Committee of the society.

(6) The Commissioner shall register an amendment to the by-laws if he is satisfied that the amendment does not contravene any of the provisions of this Act.

(7) The Commissioner shall, in writing, where he refuses to register an amendment to the by-laws, give reasons for his refusal to the society.

(8) Where the Commissioner refuses to register an amendment to the by-laws of a society, an appeal shall be lodged with the Minister within two months of the date of communication of the Commissioner's decision to the society, and of Minister's decision thereon shall be final.

(9) Where the Commissioner registers an amendment to the by-laws of a society, he shall forward a copy of the amendment together with a certificate of registration to the society.

### By-laws to bind members

25. (1) The by-laws of a society shall, when registered, bind the society and the members of the society to the same extent as if they were signed by each member and contained covenants on the part of each member for himself or for his successors to observe all the provisions of those by-laws.

(2) A member of a society shall not, without his written consent, be bound by any amendment of the society's by-laws registered after he became a member, if that amendment requires the members to subscribe additional shares or to increase his liability for the debts of the society in case of liquidation.

(3) Any dispute arising out of the interpretation of a by-law shall be referred to the Commissioner for settlement.

### Restriction of membership in more than one Society

26. No person shall, except with the consent of the Commissioner, be a member of more than one society whose objects are provision of loans to members.

### Vote of members

27. (1) Each member of a primary society shall, irrespective of the number of shares he holds, have one vote only in the affairs of the society, and such vote shall be exercised in person and not by proxy.

(2) In a secondary society or an apex organisation, each society which is a member shall have as many votes as may be provided in the by-laws of the secondary society or an apex organisation, and may, subject to such by-laws, appoint any number of delegates, not exceeding the number of such votes, to exercise its voting power.

### Liability of a Member

28. (1) The liability of a member for the debts of a society in case of liquidation may be either limited by shares or limited by guarantee.

(2) The form of liability shall be deemed in the by-laws of the society.

(3) In case of liability limited by shares, the liability of a member of a society present or past, shall be limited to the amount of shares held by him.

### Liability of past member and estate of deceased member for debts of society

29. (1) The liability of a past member for the debts of a society shall cease on the expiration of two years commencing from the date on which he ceased to be a member.

(2) The liability of the estate of a deceased member shall cease on the expiration of two years commencing from the date of the death of the member.

(3) A past or the estate of a deceased member shall not be liable for the debts of the society, if the first audit of the accounts of such society after the termination of membership of the past or deceased member discloses that the society is solvent.

### Nomination

30. (1) A member of a society may, in writing, nominate a person, in the presence of at least two witnesses, to whom the society may when he dies transfer his shares or and other interest.

(2) Every society shall maintain a register of all persons so nominated.

### Right of member to withdraw from Society

31. A member may withdraw from a society subject to such conditions, and by giving the society such notice in writing as may be prescribed by the by-laws:

Provided that in the case of a primary society such notice shall not exceed six months and in the case of a secondary society or an apex organisation such notice shall not exceed twelve months.

### Expulsion of member

32. (1) A member who contravenes any of the provisions contained in this Act, the Rules and Regulations made under this Act, or the by-laws of the society or who acts in any way detrimental to the interests of the society may be expelled from the society.

(2) A society shall prescribe in its by-laws a procedure for the expulsion of members.

(3) Such by-laws shall provide for reasonable notice of the charge and an opportunity for making representations concerning the charge to be given to the members against whom the expulsion proceedings are directed.

### Register of members and shares

33. (1) Every society shall maintain a register of members and of shares held by the member.

(2) The register of members and shares shall reflect the following:

- (a) the date on which the name of any person was entered in such register as a member;
- (b) the date on which the name of any person was struck off the register; and
- (c) the number of shares held by a member.

### Registration on holding of share Capital

34. No member other than a society shall hold more than one-fifth of the total share capital of a society.

### Restriction on transfer of Shares or other Interest

35. (1) The transfer of the shares or unpaid dividend or bonus of a member or past member or deceased member shall be subject to such conditions as are laid down in section 34 or as may be prescribed by the by-laws of the society.

(2) No member of a society shall transfer any share held by him unless the transfer is in favour of the society, a member of the society or a person whose application for memberships has been accepted by the Management Committee of the society or a nominee appointed as such by a member.

(3) No transfer of a share shall be valid and effective unless the transfer and the name of the transferee has been registered in the register of members and shares on the direction of the Management Committee.

### A copy of Act, Rules and Regulations, By-laws and list of members open for inspection

36. Every society shall keep a copy of this Act, the Rules and Regulations made

under this Act, the by-laws of the society and a list of its members which shall be open for inspection, free of charge, and at all reasonable times at the registered address of the society.

#### **Contract with members**

37. (1) A society which has as one of its objects the sale of any article produced or obtained by the work or industry of its members, whether it is the produce of agriculture, animal husbandry, fisheries, handcraft or otherwise, may provide in its by-laws that —

- (a) every member who produces any such article shall dispose of the whole or any specified amount, proportion or description thereof to or through the society; and
- (b) a member who contravenes the provisions of the by-laws or contract shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by the by-laws.

(2) The validity of any by-laws made or any contract entered into by a society as provided in this section shall not be affected by reason only that it constitutes a contract in restraint of trade.

#### **\* Imposition of Fines upon members**

38. (1) The by-laws of a society may provide for the imposition of fines on its members for any infringement of the by-laws, but no such fine shall be imposed upon any member unless written notice of the intention to impose the fine and reason thereof has been served on and he has had an opportunity of being heard or otherwise of showing cause why the fine should not be imposed.

(2) A fine imposed in accordance with subsection (1) shall be recoverable by the society as a commercial debt due to the society.

#### **Creation of charges in favour of societies**

39. (1) Without prejudice to any other enactment as to the priority of debts, where a society has —

- (a) supplied to any member or past member seeds, fertilizer, animals, feeding stuffs, agricultural or industrial implements or machinery or building materials;
- (b) rendered any services to any member or past member; or
- (c) lent money to any member who is past member to enable him to buy any such things or to obtain any such services as aforesaid,

the society shall have a first charge upon things or upon any agricultural or industrial produce, animals or articles produced therewith or therefrom or with the aid of such money or services.

(2) No person shall transfer any property which is subject to a charge under subsection (1) of this section except with the prior written permission of the society to whom the debt is due:

Provided the rights of a bona fide purchaser or transferee are not affected.

#### **Charge and set-off in respect of shares or other interests of members**

40. A society shall have a charge upon the shares and on the deposits of a member or past or deceased member and upon any dividend, bonus or other sum payable to a member, past or deceased member in respect of any debt due to the society from such member or past member or estate of a deceased member, and may set off any such debt against any sum credited or payable to a member or past member or estate of a deceased member as aforesaid in or towards payment of any such debt.

#### **Shares not liable to attachment or forced sale**

41. Subject to the provisions of section 46 of this Act, the shares held by a member shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability insolvency by such member, and neither his trustee in insolvency or a curator bonis duly appointed shall be entitled to, or have a claim on such shares.

#### **Transfer of shares or other interests on death or permanent insanity of a member**

42. (1) On the death of a member, a society may transfer the shares or other interests of the deceased member to a person nominated by the member in accordance with section 30 of this Act.

(2) Where there is no person nominated in accordance with section 30, the shares or other interests shall be transferred to the person who may appear to the Management Committee of the society to be the heir of the deceased member.

(3) Where there is no heir, the shares or other interests shall be transferred to the person who may appear to the Management Committee to be the legal representative of the deceased member.

(4) Where a person referred to in subsections (1), (2) or (3) does not qualify for membership under this Act or under the by-laws of such a society, the shares or other interest shall be transferred to the person who shall be nominated by the nominee, heir or legal representative of the deceased member as the case may be, within six months of the death of the deceased member.

(5) A society shall, where a member becomes insane, transfer to a person nominated by the member in accordance with section 30, shares or other interests of the insane member.

(6) The value of the shares of the deceased member or of the insane member shall be represented by the sum actually paid by the member to acquire such shares.

(7) All transfers and payments made by a society in accordance with provisions of this section shall be valid and effectual against any demand made upon the society by any other person.



### Proof of entries in the books of society

43. (1) A copy of an entry in any book of a society regularly kept in the course of business shall, if duly certified as provided in subsection (2) of this section, be prima facie evidence in any legal proceedings, civil or criminal, of the existence of such entry and of the matters, transactions and accounts therein recorded and shall to the same extent be admissible.

(2) The copy of an entry in the books of a society shall be certified by declaration in writing at the foot of such a copy stating that it is a true copy of such entry and that the books containing the entry are still in the custody of the society.

(3) The declaration made pursuant to subsection (2) shall be dated and signed by the chairperson and the secretary of the society.

### Transaction by a society with Non-members

44. The transactions of a society with persons other than members shall be subject to the provisions of this Act and to such prohibitions and restrictions as may be prescribed by the by-laws of the society.

### Production of Moneys and books of society

45. An officer, employee or member of a society who is in custody or control of moneys, securities, books, accounts or documents belonging to or relating to the affairs of a society shall, when he is required by the Commissioner, produce the moneys, securities, books, accounts or documents belonging to or relating to the affairs of the society.

### Audit of society

46. A society shall, at least once a year, have its books and accounts audited by the auditor appointed by the Commissioner in accordance with section 74(1).

### Annual report, accounts and financial statements

47. (1) A society shall submit to the Commissioner not later than six months after the close of each financial year, the following:

- (a) an annual report on its activities; and
- (b) two certified copies of the financial statements of the society.

(2) the society shall keep proper accounts and records of its transactions and affairs and do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the society and over the expenditure incurred by the society.

(3) A society which contravenes the provisions of this section commits an offence and is liable on conviction to a fine not exceeding M5 000.

### Duties of the auditor

48. (1) The auditor shall —

- (a) inspect and audit the accounts and any other relevant record of the society;
- (b) inform the Commissioner and the society of any irregularity disclosed by the inspection and audit;
- (c) report to the Commissioner whether the financial statements or any other accounts of the society reflect the true financial transactions and state of affairs of the society;
- (d) state in his report whether —
  - (i) proper accounts and other records of the society have been kept;
  - (ii) the receipt, expenditure and investments of moneys, and acquisition and disposal of assets by the society have been, during the year, in accordance with this act or the by-laws of the society.
- (e) report to the Commissioner and society any other matter arising out of the performance of the audit.

(2) The financial statements prepared by the society after the close of the financial year shall be audited and reported on by the auditor.

(3) The audit of the accounts of a society shall include an examination of and a report on overdue debts, if any, an examination of and a report on the valuation of the assets and liabilities of the society.

(4) The auditor may classify the society into one of the audit classes A to C according to the classification instructions made by the Minister in the Regulations made under this Act.

### Audit fees

49. Every society shall pay such audit fees as the Commissioner may prescribe.

## PART VI

### ORGANISATION AND MANAGEMENT OF SOCIETIES

#### Annual General meeting

50. (1) The supreme authority of a society shall be vested in the Annual General Meeting of its members.

(2) Subject to the provisions of this Act, every member shall have the right to attend and vote at all Annual General Meetings of the society.

(3) Every society shall provide in its by-laws for an Annual General Meeting to be convened by the Management Committee and to be held within three months of each financial year.

(4) Notice of every Annual General Meeting shall be given in writing to each member or delegate entitled to attend the meeting. Such notice shall be given at least thirty working days prior to the date of meeting.

(5) Every notice of the Annual General Meeting shall state the matters for discussion and the resolutions to be proposed, and no other subject shall be discussed without the consent of the majority of the members present and voting at that meeting.

#### Functions of the Annual General Meeting

51. The functions of the Annual General Meeting shall be —

- (a) to consider and confirm the minutes of the previous Annual General Meeting and of any other intervening general meeting;
- (b) to consider the auditor's report and the report of the Management Committee, or any other report by the Commissioner;
- (c) to approve the financial statements and budget;
- (d) to consider and resolve the manner in which any available net surplus is to be distributed or invested subject to the provisions of this Act and the by-laws made under this Act;
- (e) to consider and adopt any amendments to the by-laws;
- (f) to elect members of the management committee and any other committee whose qualifications for election shall be provided for in the by-laws;
- (g) to decide appeals of persons whose applications for membership have been rejected by the Management Committee;
- (h) to consider and determine the maximum amount the society may borrow;
- (i) to hear and decide upon any complaints brought by members aggrieved by a decision of the committee except that notice of the intention to bring such complaint before the meeting shall be in writing and given to the Secretary at least fifteen days prior to the meeting; and
- (j) to transact any other general business of the society of which due notice has been given to members.

#### Meetings of delegates

52. (1) Notwithstanding the provisions of section 50 of this Act, in a primary society, provision may be made by the by-laws of the society to substitute the general meeting of members by a meeting of delegates, each delegate representing a specified number of individual members, and in any such case all the provisions of this Act referring to meetings of members shall include reference to meetings of delegates.

(2) Every individual who is a member of a society other than an officer of the society, may be elected as a delegate.

(3) A society having the general meeting of members substituted by a meeting of delegates, shall make by-laws specifying the methods of electing the delegates, the number of individual members to be represented by each delegate and the term of office of the delegates.

#### First meeting

53. (1) Every society shall within three months of the receipt of the certificate of registration, unless the time is extended by the Commissioner, hold a first meeting of its members.

(2) The business of the first meeting shall include the election of officers who shall serve in the provisional Management Committee until the first Annual General Meeting prescribed by the by-laws of the society.

#### A Special Meeting

54. (1) A Special Meeting of a society may be convened —

- (a) at any time when the Management Committee of the society deems it necessary;
- (b) on receipt of a requisition for such a meeting signed by at least one-fifth of the members or delegates of the society and stating the objects of the meeting.

(2) If the Management Committee fails to convene a meeting in accordance with subsection (1) (b) within one month of receiving the requisition for the meeting, the members making the requisition may request the Commissioner in writing to convene the meeting.

(3) Before the meeting referred to in subsection (2) is convened, the members making the requisition shall make a notice, to all members stating the objects of the meeting and the fact that the Management Committee failed to convene the meeting.

(4) The Minister may, notwithstanding any Regulations or by-laws prescribing the period of notice for a special meeting of a registered society, order the Commissioner to convene and preside over an extra-ordinary meeting in such manner and at such time and place as the Minister may direct.

(5) The Minister may specify the agenda for the meeting to be convened in accordance with subsection (4).

#### Quorum at Meetings

55. (1) No business shall be transacted at any meeting unless a quorum of members or delegates is present.

(2) The quorum necessary for the transaction of business shall be two thirds majority of members present and voting.



(3) If within thirty minutes of the time fixed for a meeting the members or delegates present are not sufficient to form a quorum, the meeting shall not proceed if it is convened on the requisition of members or of delegates and shall stand adjourned to the same day in the next week at the same time and place.

(4) If at the adjourned meeting, a quorum is not present within thirty minutes of the time fixed for the meeting the members or delegates present shall form a quorum, Provided the number is not less than one-eighth of the total membership. The Total number of delegates at such a meeting shall also be within the same proportion.

(5) The meeting with such reduced quorum shall not have power to amend the by-laws.

#### Voting at meetings

56. (1) Except as otherwise provided in this Act or in the by-laws, any question referred to the members or delegates present at meetings shall be decided by a majority of votes.

(2) At any meeting, a resolution put to vote shall be decided by a show of hands unless voting by secret ballot is demanded by at least five of the members present and voting.

(3) At the election of members to the Management Committee, the voting shall in all cases be by secret ballot.

(4) In the case of an equality of votes the chairperson shall have a casting vote.

#### Minutes of meetings

57. (1) Minutes of the meetings shall be entered in the minute book and shall contain —

- (a) the number of members or delegates present at the meeting and the name of the chairperson who presided;
- (b) the time the meeting commenced and ended; and
- (c) all resolutions and decisions taken at the meeting.

(2) The minutes of each meeting shall be read at the next following meeting, and, if signed by the chairperson of that meeting and the secretary, be evidence of everything therein contained.

(3) The minutes of each meeting shall be circulated within a period of sixty days from the date of the meeting.

#### Management Committee

58. (1) Every society shall have a management committee and the number of members of such committee shall be prescribed in its by-laws.

(2) Subject to subsection (3), members of the management committee shall be elected, suspended or removed only by a majority of members or delegates

present and voting at the Annual General Meeting of the society.

(3) If during the term of office of the management committee, a vacancy occurs in the committee, the committee may, if the number of members falls below the requirements of the by-laws, co-opt a member of the society to serve on the Management Committee until the next Annual General Meeting of the society.

#### Term of office of Management Committee

59. The term of office of the management committee shall be one year but may be eligible for re-election, except that the re-election shall not be for more than three consecutive years.

#### Functions of the Management Committee

60. (1) The management committee shall —

- (a) conduct and manage the affairs and business of the society and, subject to any restrictions contained in the by-laws or in any resolution taken at a meeting of members;
- (b) exercise all the powers required to ensure the full and proper administration and management of the affairs, business and property of the society, except those powers reserved to the Annual General Meeting of the society;
- (c) have the legal and judicial representation of the society before all competent authorities and in all dealings and transactions with third parties;
- (d) consider, approve or reject subject to the provisions of this Act, applications for membership of persons who apply after registration of a society;
- (e) call for and examine regular reports from persons employed by the society with the object of disclosing the true position of the society, its operations and financial conditions;
- (f) open and operate banking accounts;
- (g) appoint sub-committees if necessary and prescribe their functions;
- (h) keep members informed of the progress of the society, to encourage interest and a sense of ownership on the part of the members;
- (i) carry out educational and advisory work among the members with respect to co-operative principles and the objects of the society;
- (j) prepare and present to the Annual General Meeting of the society a proposal for the distribution of any net surplus accrued during the preceding financial year in accordance with this Act and by-laws of the society;
- (k) make a report to the Annual General Meeting on the work of the Management Committee during the preceding financial year and make such recommendations as it may deem necessary to maintain

or improve the services provided by the society to its members;

- (1) take immediate action to correct mistakes, errors or malpractices which are disclosed in the reports of the Commissioner or the auditor.

(2) A full record of all proceedings of the management committee in carrying out its duties shall be kept and be available for inspection by the Commissioner or his representative.

#### Meetings of the Management Committee

61. (1) The management committee shall meet as often as the business of the society may require and in any case not less than once in every month.

(2) The quorum at a meeting of the management committee shall be half of the number of its members present and voting.

(3) Decisions shall be taken by a simple majority of votes and the chairperson shall have a casting vote.

(4) Minutes of management committee meetings shall be recorded by the secretary in the manager's minutes book and shall include —

- (a) the number and names of those present;
- (b) the name of the chairperson presiding at the meeting; and
- (c) a brief record of the business done and the decisions taken, and a statement with respect to each decision whether it has been taken unanimously by those present.

(5) Any member of the management committee who, without due excuse, fails to attend three consecutive meetings of the management committee, shall be deemed to have vacated his office.

(6) The office vacated shall be filled in accordance with section 58(3).

#### Liability of members of Management Committee

62. (1) The members of the Management Committee shall, in the conduct of the affairs of the society, exercise prudence and diligence.

(2) The Management Committee shall be jointly and severally liable for any loss sustained through failure on their part to exercise such prudence and diligence or through any act which is contrary to the provisions of this Act or of any Rules and Regulations made thereunder, or to the by-laws of the society.

(3) Where the Management Committee has employed a manager to administer and manage the affairs of the society, such appointment shall not absolve the committee from its responsibility for the proper direction of the affairs of the society.

#### Restriction relating to members of Management Committee

63. (1) No member of a Management Committee shall hold office of profit under the society.

(2) A member of a Management Committee may receive such allowance as may be prescribed in the by-laws of a society.

(3) A member of the Management Committee shall be entitled to recover such out of pocket expenses generally approved in principle beforehand by the Management Committee, as may have been incurred in connection with work performed for or on behalf of the society and in such amounts as may be specifically approved by the Management Committee.

#### Functions of the chairperson, secretary or treasurer

64. (1) The chairperson shall —

- (a) preside at all meetings including the meetings of the management committee. In the absence of the chairperson, his functions shall be carried out by the vice-chairperson, and in the absence of both the chairperson and the vice-chairperson at any meeting, by any other person elected by a majority of those present at that meeting;
- (b) have the rights conferred upon him by the by-laws and in particular the right to order the closure of a discussion and to put a matter to the vote.

(2) The secretary shall —

- (a) maintain and keep up-to-date all the society's records, papers, and registers;
- (b) sign on behalf of the Management Committee and conduct its correspondence;
- (c) in consultation with the chairperson summon and attend all meetings including the meetings of the Management Committee and to record the proceedings of such meetings in a minute book;
- (d) conduct the ordinary business of the society and perform all the duties entrusted to him by the management committee.

(3) The Treasurer shall —

- (a) take charge of all financial transactions of the society, including all moneys received by the society from a bank, from members and from other persons, and to make disbursements in accordance with the directions of the Management Committee;
- (b) prepare or cause to be prepared all the receipts, vouchers and documents required by the Rules and Regulations or called for by the Management Committee;
- (c) be responsible for the proper and punctual keeping of all the society's accounts and accounts books;
- (d) keep an inventory of the property belonging to the societies.

### Investment of funds

65. A society may invest or deposit its funds —

- (a) in investments and securities that are authorised for the investment of trust funds by the Commissioner;
- (b) with any bank registered under the Financial Institutions Act 1999;
- (c) in the shares of any other society;
- (d) in the purchase or leasing of land or buildings or in the construction of building necessary for the conduct of its business and the welfare of the Co-operative Movement;
- (e) in such other manners as may be approved in writing by the Commissioner, either generally or in any particular case.

### Reserve fund

66. (1) There shall be a reserve fund which shall be composed of surplus from societies transactions.

(2) Moneys from the reserve fund shall be used in such manner as may be prescribed in the by-laws of a society.

(3) At least one-half of the reserve fund shall be kept in the form of liquid assets.

(4) A society shall pay into the reserve fund at least five per cent of the surplus resulting from the operations of the society during the financial year, provided that when the reserve fund has reached an amount that is equal to fifty per cent of its paid up share capital, such society may carry five cent of its surplus to the reserve fund.

(5) The issue of bonds or debentures by a society shall be subject to approval of the Commissioner.

(6) The reserve fund shall be indivisible and no member shall claim any specific share of it.

### Restrictions on Loans

67. (1) A society shall not make a loan or allow any credit to any person other than a member except that a society, with the written consent of the Commissioner, make a loan to another society.

(2) A society shall, except with the permission of the Commissioner, not lend money on the security of any movable property other than produce or goods in which the society is authorised to deal.

### Restriction on borrowing

68. (1) A society may receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by

its by-laws.

(2) A society which under its by-laws has power to borrow money shall determine from time to time at the Annual General Meeting, the maximum liability which it may incur in loans or deposits from members and non-members and notify the Commissioner of the maximum so fixed.

(3) The maximum so fixed shall be subject to the approval of the Commissioner who may, at any time, reduce the maximum or impose such conditions as he considers necessary and his decision shall be final.

## PART VII

### PROPERTY AND FUNDS OF SOCIETIES

#### Capital

69. (1) A society's capital may be composed of the following:

- (a) registration fees which shall not be refundable except in case where an application for membership has been rejected;
- (b) shares subscribed and paid up by members, of which a minimum number prescribed in the by-laws shall only be withdrawable after termination of membership, except that shares subscribed in excess of this minimum contribution may be either withdrawable or transferable, subject to the provisions of this Act and to any limitations laid down in the by-laws;
- (c) voluntary savings deposits from members which shall be withdrawable subject to conditions laid down in the by-laws;
- (d) deposits or loans from non-members subject to such restrictions as are laid down in this Act and in the by-laws;
- (e) surplus carried to the reserve fund which shall be indivisible social capital of the society; and
- (f) donations made by third persons except that no donations from any foreign source whether offered directly or otherwise, shall be received by a society without prior consultation with the Commissioner.

#### Central Co-operative Fund

70. (1) There shall be established a fund by an apex organisation to be known as the Central Co-operative Fund to which every society shall contribute five per cent of the surplus resulting from the operations of the society during the preceding financial year.

(2) The Central Co-operative Fund shall be used to further co-operative education, training, research, audit and for the general development of the Co-operative Movement in Lesotho.

(3) The Central Co-operative Fund shall be administered as a trust fund by an Apex organisation in such manner as the Minister may prescribe in the Rules



and Regulations.

#### Distribution of net surplus

71. (1) The remainder of the surplus resulting from the operations of the society during the preceding financial year may after contributions are made to the Reserve fund and to the Central Co-operative Fund in accordance with sections 66 and 70 respectively be divided among the members as follows:

- (a) by way of dividend;
- (b) bonus or allocation to any other funds constituted by the society to such extent and under such conditions as may be prescribed under this Act or in the by-laws.

(2) No society shall pay a dividend on paid-up share capital exceeding a maximum rate to be determined by the Minister from time to time in the Rules and Regulations.

(3) a person may donate an amount not exceeding ten per cent of the annual net surplus for a charitable purpose.

#### Bonus Shares

72. (1) A society may distribute a part of its net surplus among its members in the form of bonus shares.

(2) A member holding such shares, is entitled to withdraw or transfer the shares only after five years from the date when the bonus shares were issued.

(3) For purposes of this section a "member" includes a person who has resigned as a member.

### PART VIII

#### DUTIES AND POWERS OF THE COMMISSIONER

##### Assistance in organisation of co-operatives and technical advice

73. The Commissioner may provide to societies co-operative officers who shall provide any assistance or technical advice in the formation, organisation and operation of societies in order to enable them to comply with the provisions of this Act.

##### Power of Commissioner regarding accounts of societies

74. (1) The Commissioner shall appoint an auditor who shall audit the accounts of societies in accordance with this Act.

(2) The Commissioner shall —

- (a) have access to all accounting and other records relating directly or indirectly to financial transactions of the society;
- (b) require the production of any book or document relating to the

affairs of the society, or any cash or securities belonging to the society.

- (c) require an officer, employee or member of the society to furnish any material information in regard to any transactions of the society or the management of its affairs; and

(d) to make copies of or extract from accounting and other records.

(3) Notwithstanding subsection (1) the Commissioner may delegate the exercise of his power to audit societies, partly or totally to a co-operative apex organisation, as soon as such organisation has established an audit section and employed competent staff to take over this function.

(4) Where the exercise of the audit function has been delegated to a co-operative apex organisation, the Commissioner shall supervise the audit carried out by the audit section of the co-operative apex organisation and do all things necessary to ensure that the audit is effectively conducted and in accordance with the provisions of this Act.

##### Inquiry by Commissioner

75. (1) The Commissioner may, where he deems it is necessary, or on the application of a majority of the members of the management committee or one-third of the members, hold an inquiry or direct any person authorised by him in writing to hold an inquiry into the constitution, operation and financial condition of a society or any other affairs of a society.

(2) Officers, employees or members of the society shall, on request, produce books, accounts, papers and securities of the societies and furnish such information in regard to the affairs of the society as the Commissioner or the person authorised by him may require.

(3) The Commissioner shall communicate the results of such an inquiry to the society into whose affairs the inquiry has been made.

(4) The Commissioner may, following an inquiry made under this section, issue an order which shall be binding on all members of a co-operative society, committee and employees.

##### Examination of books of indebted society

76. (1) The Commissioner shall, on the application of a creditor of the society, examine or direct any person authorized by him in writing, to examine the books of the society where the creditor —

- (a) proves to the satisfaction of the Commissioner that an ascertained sum of money is due to him and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and
- (b) deposits with the Commissioner, as security for the costs of the proposed examination any such sum as the Commissioner may determine.

(2) The Commissioner shall communicate the results of such examination to the creditor and to the society whose books were examined.

#### Communication of defects in the operation of a society

77. (1) If an audit, inquiry or examination of books made under this Act discloses any defect in the operation of a society, the Commissioner may bring such defect to the notice of the society and if the society is affiliated to a secondary society or apex organisation also to the notice of that other society.

(2) The Commissioner may make an order directing the society to take such action as may be specified in the order within time mentioned therein to remedy the defects disclosed in the audit inquiry or examination of books.

#### Costs of inquiry and examination

78. (1) Where an inquiry is held under section 75 or an examination is made in terms of section 76 (1), the Commissioner may, by certificate, make an award apportioning the costs or part of the costs that he may consider necessary between the society, the members or creditors demanding the inquiry or examination and the officers or past employees of the society.

(2) The decision of the Commissioner made pursuant to subsection (1) shall be final.

(3) A sum awarded by way of costs under subsection (1) shall be a civil debt recoverable summarily on production of the certificate referred to in that subsection (1).

#### Dissolution of society

79. (1) Where the Commissioner —

- (a) after holding an inquiry under this Act; or
- (b) after making an examination under this Act and on receipt of an application made by three-fourths of the members present and voting at an extra-ordinary meeting,

is of the opinion that such society ought to be wound up, he may issue an order directing it to be wound up.

(2) The Commissioner may make a winding-up order in respect of a society which has ceased or the membership of which is reduced to less than the minimum membership prescribed in this Act.

(3) No society shall be wound up save by an order of the Commissioner.

(4) A member of a society may, within two months from the date of a winding-up order, appeal in writing to the Minister, against the winding up order and the decision of the Minister thereon shall be final.

(5) When making a winding-up order under this section, the Commissioner may appoint a Liquidator for this purpose and fix his remuneration.

(6) A Liquidator shall not wind-up a society unless —

- (a) an appeal instituted under subsection (4) of this section has been determined; or
- (b) until two months have elapsed from the date of winding-up order.

#### Powers of the Liquidator

80. (1) The Liquidator shall —

- (a) take immediate possession of all assets belonging to the society and of all books, records and other documents pertaining to the business thereof;
- (b) carry out the business of the society so far as may be necessary for winding-up beneficially, except that he shall not for this purpose be entitled to issue any loan;
- (c) fix by notice in the Gazette a date before which creditors shall state their claim for admission;
- (d) refer a dispute to the Tribunal;
- (e) institute and defend suits and other legal proceedings on behalf of the society;
- (f) give such direction in regard to the collection and realization of assets as may be necessary in the course of winding up the society;
- (g) investigate all claims against the society and, subject to the provisions of this Act, decide by order, questions of priority arising between claimants;
- (h) pay claims against the society (including interest payable up to the date of the winding-up order) according to the respective priorities, if any and in full or to such an extent as the assets of such a society permit;
- (i) compromise any claim by or against the society, provided that the approval of the Commissioner has first been obtained;
- (j) call meetings of members whenever necessary for the proper conduct of the liquidation, giving not less than fifteen working days notice of every such meeting;
- (k) decide by order, and subject to any by-laws limiting the liability of members contributions to be made by members, past members or by the estates of deceased members of the society to its assets;
- (l) arrange for the distribution of the assets of the society in a convenient manner where a scheme of distribution has been approved by the Commissioner; and
- (m) decide which persons are to bear the costs of the liquidation and in what proportion.

(2) A creditor who shall not prove his claim before the date for admission



is fixed by the liquidator in accordance with paragraph (c) of subsection 1 shall be excluded from any distribution.

(3) A person aggrieved by an order of the Liquidator made under this section may, in writing, appeal to the Commissioner within thirty days of the date of such order.

(4) A person aggrieved by a decision of the Commissioner under the provisions of subsection (2) may appeal in writing to the Minister within thirty days of such a decision and the decision of the Minister is subject to appeal to the High Court.

(5) A Liquidator shall deposit the funds and other assets of a dissolved society which are collected by him or which come into his possession as Liquidator in such manner and in such place as may be determined by the Commissioner.

(6) A Liquidator shall, once in every three months —

- (a) submit to the Commissioner a report stating the progress made in winding-up the affairs of the society;
- (b) on completion of the liquidation proceedings, submit a final report and hand over to the Commissioner all books, registers and accounts relating to such proceedings and are kept by him.

(7) A Liquidator appointed under this Act shall, in addition to other powers, have power to summon and enforce the attendance of parties and witnesses and to compel the production of documents in the same manner as is provided in the case of Court of competent jurisdiction.

#### Power of Commissioner to control liquidation

81. (1) A Liquidator shall exercise his powers subject to the control and supervision of the Commissioner.

(2) The Commissioner may —

- (a) rescind or vary an order made by Liquidator and make a new order where necessary;
- (b) remove a Liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) limit by order in writing the powers of a Liquidator under this section;
- (e) require accounts to be rendered to him by the Liquidator;
- (f) procure the auditing of the Liquidator's accounts and authorize the distribution of the assets of the society;
- (g) make an order for the remuneration of the Liquidator, which remuneration shall be included in the costs of liquidation and shall be payable out of the assets in priority to all other claims; and
- (h) refer any subject of dispute between a Liquidator and a third party to the tribunal if the third party has consented in writing to be bound by the decision of the tribunal.

#### Enforcement of Liquidation Order

82. (1) The decision of the Tribunal on a matter referred to it under section 80(1) (b) shall be binding upon the parties and enforceable in like manner as an order made by the Commissioner under that section.

(2) An order made by the Commissioner under sections 77 and 78 shall be enforced by a Court of competent jurisdiction in like manner as a decree of that Court.

#### Disposal of assets on liquidation

83. Upon the winding up of a society, the assets, including the reserve fund, shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the payment of the share capital held by the members and then, provided that the by-laws of the society permit, to the payment of a dividend or bonus at a rate not exceeding that laid down in the Rules and Regulations or in the by-laws of the society for a period during which no dividend or bonus was in fact paid.

#### Cancellation of registration

84. (1) Where the Commissioner issued a winding-up order in accordance with this Act, and the affairs of the society have been wound-up with the assistance of a liquidator, the Commissioner shall, within two months of the winding-up of the society, make an order cancelling the registration of the society and such society shall be dissolved and cease to exist as a body corporate from the date of such order.

(2) The claim of a creditor or a member of the society who has received what is due to him upon the approved scheme of distribution shall prescribe after two years from the date of cancellation of registration and a notice of closure of liquidation and cancellation of registration is published in the Gazette.

(3) Any moneys remaining after the disposal of assets on liquidation and any sums unclaimed after two years shall, except in the case of a secondary or Apex organisation, be carried to the co-operative societies liquidation account kept by the Commissioner.

(4) A sum carried to the co-operative societies Liquidations Account shall be kept in this Account for at least two years and may after that be transferred to the Central Co-operative Fund, or applied generally for the furtherance of Co-operative Principles and Practices in such manner, as may be specified by the Minister.

(5) The interest accruing in respect of the sums carried to the Co-operative Societies Liquidation Account in accordance with this section, may be applied for purposes specified in subsection (4) or as the Minister may direct.

#### Surcharge and attachment

85. (1) Where —

- (a) in the course of an audit of a society held under the provisions of this Act;
- (b) in the course of an inquiry into the affairs of a society held under section 75 or in the course of an examination of books under section 76; or
- (c) in the course of the winding up of a society,

it appears that a person who has taken part in the organisation and management of such society has misapplied or retained or become liable or accountable for any money or property of such society or breach of trust in relation to such society, the Commissioner may, on his own motion, or on application of the Liquidator or any creditor or contributor, examine the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Commissioner deems just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust and such order shall be enforced in the same manner as if the order had been a judgement of a court of competent jurisdiction.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

(3) The Commissioner may, where he is satisfied that a person with intent to delay the execution of any order or award which may be made against him under this Act —

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from Lesotho,

unless adequate security is furnished, direct the interim attachment of the said property or part of the property as he may consider necessary and such attachment shall have the same effect as if it has been made by a Court of competent jurisdiction.

(4) A person aggrieved by an order of the Commissioner made under subsection (1) or (3) may appeal to the Minister within two months by the directive of the Commissioner to attach the said property.

#### Disputes to be referred to Commissioner

86. Any dispute arising out of activities of cooperative societies whether its —
- (a) among members, past members and persons claiming through members, past members and deceased members;
  - (b) between a member, past member or deceased member, and the society, its Management Committee or any officer of the society;
  - (c) between the society or its management committee and any officer of the society; or
  - (d) between the society and any other society, may be referred to the

Commissioner.

#### Establishment of Tribunal

87. (1) There is established a Tribunal to be known as the Cooperative Societies Tribunal.

(2) The tribunal shall consist of —

- (a) a chairman who shall be a person who is a legal practitioner of not less than 4 years experience and shall be appointed by the Minister in consultation with the Chief Justice;
- (b) a member who shall be a representative of cooperative societies and shall be appointed by the Minister; and
- (c) a member who shall be a person with experience in cooperative societies issues and shall be appointed by the Minister.

(3) A member and chairman shall hold office for a term not exceeding 3 years and are eligible for re-appointment.

(4) Two members of the Tribunal shall form a quorum.

(5) At a meeting of the Tribunal, the chairman shall have a deliberative vote and in the case of equality of votes, he shall have a casting vote.

(6) The Tribunal may —

- (a) regulate its own procedure; and
- (b) appoint one of its members to act as chairman where the chairman is absent.

(7) There shall be a secretary of the tribunal who shall be a public officer.

(8) Where a person who is not a public officer is appointed a member, he shall receive such allowance as the Minister after consultation with the Minister responsible for Finance, may determine.

(9) A member of the tribunal who has a direct interest in the matter which is the subject of the proceedings before the tribunal, shall not take part in those proceedings.

#### Sittings of the Tribunal

88. The Tribunal shall sit in such place and at such times as the chairman may appoint.

#### Appeals to the Tribunal

89. A person aggrieved by a decision of the Commissioner made in relation to a dispute arising out of activities of cooperative societies whether —

- (a) among members, past members and persons claiming through members, past members and deceased members;
- (b) between a member, past member or deceased member, and the society, its Management Committee or any officer of the society;

- (c) between the society or its management committee and any officer of the society; or
- (d) between the society and any other society.

May within 21 days of the date upon which he is informed of the decision, appeal to the Tribunal.

- (2) A person making an appeal in accordance with subsection (1) shall —
  - (a) give to the secretary of the Tribunal a written notice of appeal; and
  - (b) set out in the notice of appeal the grounds upon which the appeal is based.

(3) A person aggrieved by the decision of the Tribunal may appeal to the High Court within 30 days of the date of the decision of the Tribunal.

#### **Proceedings of the Tribunal**

90. (1) The proceedings of the Tribunal shall be open to members of the concerned society.

(2) The Tribunal shall not be bound by rules of evidence and shall admit as evidence any matter, which in its opinion shall assist it to arrive at a just equitable decision.

- (3) The Tribunal shall have power to —
  - (a) summon any person to give evidence in any proceedings before the Tribunal or produce to the Tribunal any document relating to the proceedings before it; and
  - (b) confirm, vary, amend, reverse or alter a decision made by the Commissioner.

#### **Miscellaneous powers of the Commissioner**

91. The Commissioner shall —
- (a) prescribe the accounts and books to be kept by a society;
  - (b) prescribe the returns to be submitted by a society to the Commissioner and the form in which such returns shall be submitted;
  - (c) prescribe any form to be used for a purpose under this Act;
  - (d) reduce the maximum limit of borrowing from members and non-members, fixed by a society under this Act and impose such conditions as he may deem necessary;
  - (e) convene extraordinary special meetings in accordance with the provisions of this Act;
  - (f) prescribe the audit fees to be paid by a society;
  - (g) rescind a resolution or action of an officer or a Management Committee which in his opinion is outside the objects of the society as defined in the by-laws of the society;

- (i) freeze the bank accounts of a society when it is proved to the satisfaction of the Commissioner that such measure is necessary to prevent losses or misuse of funds; and
- (j) where the Commissioner is satisfied after due inquiry by a person appointed by him that the management committee of a society is not performing its duties properly, he may suspend all or some activities of the society for the prescribed period:

except that the Commissioner shall use such extraordinary powers only after giving an opportunity to the management committee to show cause why action should not be taken to suspend the activities to the society.

### **PART IX MISCELLANEOUS**

#### **Powers of Minister to make regulations**

92. The Minister may make regulations for carrying into effect the provisions of this Act and without limiting the generality of this provision, the Minister may make regulations —

- (a) providing for the administration and use of the Central Co-operative Fund and of the Co-operative Liquidation Fund;
- (b) prescribing the maximum rate of dividends on share capital or subscription capital which may be paid by societies; and
- (c) providing for the establishment, functions and powers of the Co-operative Planning and Development Board.

#### **Recovery of sums due to Government**

93. (1) All sums due from a society to the Government may be recovered in the manner provided for the recovery of debts due to the Government under any written law for the time being in force.

(2) Sums due from a society to the Government and recoverable under subsection (1) may first be recovered from the property of the society, and secondly from the members subject to the limit of their liability.

#### **Prohibition of the use of the word "Co-operative"**

94. (1) No person other than a society shall, without the sanction of the Commissioner, trade or carry on business under a name or title of which the word Co-operative is its equivalent.

(2) A person who contravenes the provision of subsection (1) commits an offence and is liable on conviction to a fine of not less than M5000 and not exceeding M10 000 or to imprisonment for a period of not less than 3 years and not exceeding 5 years or both.



### Amalgamation of society

95. (1) Any two or more societies may, at each society's extraordinary general meeting, resolve to amalgamate societies into one society.

(2) The resolution to amalgamate societies into one society shall be passed at the special meeting by not less than three-quarters of the members present and voting.

(3) Where an amalgamation involves the transfer of liabilities by one society to another society, three months notice of the amalgamation shall be given to all creditors of the amalgamating societies.

(4) Creditors of any of the amalgamating societies shall be entitled to a refund of any sum due to them if they make a written demand at least one month before the date which is fixed for the amalgamation.

(5) Where the amalgamating societies obtain prior agreement not to make a demand of not less than three-quarters in value of the creditors, the agreement shall be binding on all creditors.

(6) A member of the amalgamating societies may, notwithstanding any by-laws to the contrary and by notice in writing given to his society at least one month before the date specified as the date of amalgamation, declare his intention not to become a member of the amalgamated society.

(7) If the Commissioner is satisfied that -

- (a) the proposed amalgamation is not against the interest of the members of the societies proposing the amalgamation;
  - (b) the proposed by-laws of the proposed amalgamated societies are in accordance with the provisions of this Act; and
  - (c) the requirements laid down in this section have been complied with
- he shall register the amalgamated society and its by-laws.

(8) The registration of amalgamated societies shall, upon registration of the amalgamated society, be deemed cancelled and the societies dissolved.

(9) The registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society.

(10) the remaining members of the amalgamating societies shall become members of the amalgamated society subject to its by-laws.

(11) The creditors of the amalgamating societies or any other persons who have claims against the amalgamating societies, and whose claims were not satisfied before the registration of the amalgamated society may pursue such claims or causes of action against the amalgamated society.

### Offences

96. A society which, or a persons who -

- (a) refuses to do an Act or fails to furnish any information required for the purposes of this Act;
- (b) disobeys summons, requisition or lawful written order issued under the provision of this Act;
- (c) makes a false return or furnishes false information in connection with his duties;
- (d) acts or purports to act as a member of a Management Committee when not entitled to do so;
- (e) performs an act which requires the consent or approval of the Minister or the Commissioner without having first obtained that consent or approval;
- (f) makes any false, misleading or inaccurate statement either orally or in any official document or book; or
- (g) fails to account for, or make prompt or true return of any money or property for which he is responsible in connection with his duties.

commits an offence and is liable on conviction to a fine of not less than M5000 and not exceeding M10 000 or to imprisonment for a period of not less than 3 years and not exceeding 5 years or both.

### Certain Acts not to apply

97. The provisions of the Companies Act and the Societies Act shall not apply to societies registered under this Act.

### Repeals and savings

98. (1) The Cooperative Societies Proclamation, the Co-operative Societies Rules 1948 and the Cooperative Societies (Protection) Act 1966 are repealed.

(2) A society which was, before the coming into operation of this Act, registered under the provisions of the repealed Enactment shall be deemed to be a society registered under this Act.

(3) Societies registered or deemed to be registered under the repealed Enactment shall adapt their by-laws in conformity with this Act not later than six months after the commencement of this Act.

## FIRST SCHEDULE

(Section 16)

## THE CO-OPERATIVE SOCIETIES ACT, 2000

## APPLICATION FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

1. We, the undersigned

.....  
 .....  
 .....  
 .....

(Insert names, age, nationality, address and occupation of at least ten persons, or of at least two persons duly authorized in this behalf of each society if the application is made by societies) desire to form a co-operative society under the co-operative societies Act, 2000, and hereby apply for registration.

2. The name of the proposed society shall be -

.....(insert name proposed)

3. The registered office of the proposed society shall be at -

.....  
 .....

(Insert proposed address)

and its postal address shall be -

.....  
 .....

4. Enclosed are three copies of the proposed by-laws which specify the objects of the society, the minutes of the preliminary meeting and one copy of the feasibility study.

.....  
 .....

5. The proposed by-laws were approved by (indicate, the number of people who attend the meeting)

.....  
 persons willing to become members at a preliminary meeting held at

.....on.....

6. The following undersigned persons, are now willing to become members and have made the payments necessary for admission to membership as provided in the enclosed by-laws

Dated at.....on this.....day of.....

Names and signatures of original members:

.....  
 .....  
 .....  
 .....  
 .....  
 .....



## SECOND SCHEDULE

(Section 16)

## THE CO-OPERATIVE SOCIETIES ACT, 2000

ADDITIONAL INFORMATION THAT MAY BE REQUIRED  
TO ACCOMPANY AN APPLICATION  
FOR REGISTRATION OF A CO-OPERATIVE SOCIETY

In order that more information and assistance may be given to those who desire to organise a co-operative society and to determine whether organisation and registration appear economically viable or otherwise, the following information is required where applicable -

1. Location of a proposed society  
Give the location and approximate site of the area in which the proposed society will provide services to members (if other societies are to be members, give their names and location).  
.....  
.....
2. Type of a co-operative society required  
Describe briefly the main purpose for which the society is to be organized  
.....  
.....  
.....  
.....
3. Reasons  
Give detailed reasons for forming the society  
.....  
.....  
.....
4. Source of membership support  
Describe briefly the main occupation or employment, or residential area, or other bond of association or occupation of the people to become members.  
.....  
.....  
.....

## 5. Attitude towards Community projects

Do the people referred to in item 4 work well together in voluntary projects to benefit the community or area in which they live, or the occupational, employment or other group to which they belong?  
.....  
.....  
.....

## 6. Expected membership

(a) number of persons ready to join now.  
.....

Estimated potential membership  
.....

## 7. Leadership

Are there persons in the group desiring to organize themselves, who are prepared to give gratuitous services to start the society and to assist in its operations?  
(List a few of them)  
.....  
.....

## 8. Officers

Are the persons mentioned in item 7 prepared to act as members of the Management Committee and do they understand what their duties will be?  
.....  
.....

## 9. Management

If the society is registered, will the services of a competent manager (or secretary, treasurer) be available?  
If so, provide the following information:  
.....  
.....

- (a) name  
.....
- (b) Experience and training  
.....  
.....
- (c) will he or she be able to keep or supervise the keeping of accurate books or records?  
.....
10. Financial participation by members
- (a) will members provide share capital or other contributions to start the society and continue to give it financial support after operation commence?  
.....
- (b) value of each share  
.....
- (c) total expected to be paid on shares when operations commence  
.....
- (d) total paid-up membership fees expected when operations commence
- (e) from what source of income will members provide the capital required?  
(e.g. salaries, wages, business, etc)
11. Educational meetings
- Have educational meetings been held to discuss the proposed society, its operations and its benefits to members if they support it?  
.....  
.....
- (a) if so, how many?  
.....
- (b) average number of attendants  
.....
- (c) resource persons  
.....

## 12. Study groups

Have study groups been organized to involve and inform people who wish to become members?  
.....

- (a) if so, how many?  
.....
- (b) how long have they been in operation?  
.....
- (c) have model by-laws been discussed?  
.....
- (d) study group leaders  
.....

## 13. Office space

If office space, a building or equipment is required for the purposes of the society how will this be obtained and financed?  
.....

## 14. Planning and technical advice

Has advice been obtained on whether planning of the proposed society seems adequate and whether it has reasonable prospects of success if the members give it their support?  
.....

If so, give the source of such advice  
.....  
.....

## 15. Consultation with Co-operative Officer or Apex Organisation

Has a Co-operative Officer or Field Officer of any Apex Organisation been consulted on the need for the proposed society and necessary preparation? (Give details).  
.....  
.....

Signature of any two applicants and the Resource Person

1. ....
2. ....
3. ....

Postal address.....

.....

.....

.....

Endorsement by Co-operative Officer.....

Date.....

Address.....

.....

.....

.....

### THIRD SCHEDULE

(Section 23)

#### THE CO-OPERATIVE SOCIETIES ACT, 2000 INFORMATION REQUIRED TO BE IN THE BY-LAWS OF A CO-OPERATIVE SOCIETY

Every society under subsection (1) of section 4 of this Act shall have by-laws in respect of the following matters -

1. The name of the society
2. The place and postal address of its registered office
3. The objects of the society
4. The geographical area of operation of the society
5. The purpose to which the society's funds may be applied
6. The value of each share
7. The qualification for membership, the terms of admission of members, the entrance or affiliation fees, if any, payable and the mode of admission.
8. The manner of raising share capital, if any, and other funds and the terms of withdrawal or transfer of shares.
9. The rights and obligations of members and the extent of the liability of members for debts of the society
10. The conditions under which a member may withdraw from membership.

11. The mode of summoning and conducting meetings, and the rights of voting.
12. The powers and duties of general meetings and Management Committee.
13. The modes of election, appointment, term of office, suspension and removal of the Management Committee and officers of the society.
14. The authorization of an officer or officers to sign documents and to use the seal on behalf of the society.
15. The method of constituting, operating and allocating the reserve fund and the amount or method of fixing the amount to be contributed thereto.
16. The disposal of the annual net surplus.
17. The honorarium or allowance, if any, to be paid to officers of the society.
18. Unless the Commissioner otherwise determines, in the case of a society the objects of which include the creation of funds to be lent to the members, additional by-laws in respect of the following matters -
  - (a) the conditions on which loans may be made to members, including -
    - (i) the maximum rate of interest;
    - (ii) the maximum period allowed for the payment of a loan;
    - (iii) the extension of the term and renewal of a loan;
    - (iv) the purpose for which a loan may be granted; and
    - (v) the security required for repayment;
  - (b) the consequence of default in payment of any sum due on account of shares, subscriptions, deposits or loans and the consequences of failure to use loan for the purpose for which it was granted;
  - (c) the occupation or residence of persons who may become members; and
  - (d) the conditions on which loans and deposits may be received from members and non-members and the extent to which the society may borrow from members and non-members.
19. In the case of a secondary society or an Apex Organisation, the method of representation of members at general meetings, the removal of delegates and the manner of voting of delegates.
20. In the case of a primary society where the general meeting of members is replaced by a meeting of delegates, the method of electing delegates and their deputies, the number of members to be represented by each delegate, and

the conditions for the eligibility of the delegates and their terms of office.

21. The duties of the chairperson, secretary, treasurer or manager of a society.
22. By-laws in respect of any other matters incidental to the management of the society's business.
23. Prescribe the Form for admission to membership of a society.

**FOURTH SCHEDULE  
CERTIFICATE OF REGISTRATION  
NO. ....**

(Section 21)

IN THE MATTER OF APPLICATION NO..... MADE BY

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

I hereby certify that I have this day registered .....  
as a co-operative society with.....under the above  
name and with its address at.....  
in accordance with the co-operative societies Act No.....  
of.....

Written at Maseru

This .....day of.....

**COMMISSIONER OF CO-OPERATIVE SOCIETIES**

## FIFTH SCHEDULE

(Section 17)

## PROVISIONAL CERTIFICATE OF REGISTRATION

NO.....

IN THE MATTER OF APPLICATION NO.....MADE BY:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

I hereby certify that I have this day provisionally registered.....  
.....as a co-operative society with.....  
under the above name and with its address at:.....  
.....  
in accordance with the co-operative societies Act No.....of.....

This.....day of.....

COMMISSIONER OF CO-OPERATIVE SOCIETIES