

***LAWS OF SOUTHERN SUDAN***

**THE CO-OPERATIVE SOCIETIES ACT, 2011**

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# **LAWS OF SOUTHERN SUDAN**

## **THE CO-OPERATIVE SOCIETIES ACT, 2011**

**In accordance with the provisions of Article 59 (2) (b) read together with Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan hereby enacts the following-**

### **CHAPTER I**

#### **PRELIMINARY PROVISIONS**

**1. Title and Commencement.**

This Act may be cited as “The Co-operative Societies Act, 2011” and shall come into force on the date of its signature by the President.

**2. Repeal and Saving.**

- (1)** The Co-operative Societies Act, 2003 and any provision of existing legislation in force in Southern Sudan which is governed by this Act, is hereby repealed.
- (2)** All the societies or unions which were registered under any other law shall re-register in accordance with the provision of this Act.
- (3)** All proceedings or orders taken or made under the existing law except to the extent they are revoked or cancelled by this Act, shall remain in force or effect until they are repealed or amended in accordance with the provisions of this Act.

**3. Purpose.**

The purpose of this Act is to provide for the law to regulate the formation, constitution, registration and functioning of co-operative societies in Southern Sudan.

**4. Authority and Application.**

- (1)** This Act is drafted in accordance with the provisions of Articles 40, 55, and paragraph 9 and 19(1) of Schedule B of the Interim Constitution of Southern Sudan which grants the Government of Southern Sudan authority over commerce, commercial regulation, and establishment of minimum standards and conditions of operation in Southern Sudan.

(2) This Act applies to all co-operative societies in Southern Sudan.

## 5. Interpretation.

In this Act, unless the context otherwise requires the following words and expressions shall carry the meaning assigned to them as follows –

**" agricultural produce"** means any-produce or article produced or obtained by the work or industry of members of a co-operative society or marketed by a cooperative society, whether the produce be of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise;

**"apex society"** means a society formed at the Government of Southern Sudan level by the co-operative movement in Southern Sudan and registered under this Act to promote co-operative development and represent the interests of co-operative societies at the local, national and international level;

**"by-laws"** means the internal rules of a society or a union registered under this Act;

**"capital"** means the equity in form of common stock and includes all disclosed reserves, retained earnings, grants or donations;

**"Committee"** means the Management Committee established under section 34 which is the governing body of a co-operative society, to whom the management of its affairs is entrusted and includes a board of directors;

**"Co-operative society"** means a society registered in accordance with section 15 of this Act;

**"co-operative union"** means a co-operative society whose membership is restricted to primary societies;

**"deposit"** means a sum of money paid on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the society to receive it at the risk of the society receiving it;

**"dividend"** means part of the annual surplus made by a society or a union and earmarked by such society or a union for distribution to its members in proportion to their dealings within the society or union;

**"functional society"** means a primary co-operative society;

**"Government"** means the Government of Southern Sudan, the State Government and the Local Government;

**“member”** means any physical or juridical person registered as a member in any society registered in accordance with the provisions of this Act;

**“Minister”** means the Minister for Co-operatives and Rural Development of the Government of Southern Sudan;

**“Ministry”** means the Ministry responsible for co-operatives and rural development;

**“officer”** means any member of the Committee such as a secretary, treasurer of the society and any other person authorized by this Act, any regulation or by-laws or authorized by the Registrar, to issue a directive concerning the affairs of the society or union;

**“personal representative”** means any person who, under law or custom, is responsible for administering the estate of a deceased person;

**“President”** means the President of the Government of Southern Sudan;

**“primary society”** means a co-operative society whose membership is restricted to individual persons, and has the same meaning as a functional society;

**“Registrar”** means the Director General for Co-operative Development in the Ministry of Co-operatives and Rural Development at the Government of Southern Sudan Level, the Director for Co-operatives Development at the State Level and their deputies and assistants;

**“regulations”** means the regulations issued by the Minister in accordance with the provisions of this Act;

**“special resolution”** means a resolution passed by two thirds of the members present and voting at a general meeting of a society;

**“responsible State Minister”** means the minister responsible for co-operatives development at the State level;

**“share”** means the amount represented by a member's interests or portion in the equity of a society as a co-owner; and

**“union”** means an institution formed by societies and unions as members.



## **CHAPTER II**

### **THE CO-OPERATIVE SOCIETY AND ITS ROLE**

#### **6. Definition of Co-operative Society.**

A co-operative society is an association composed of a fixed minimum number of members and established for the purpose of promoting the economic and social interests of its members in accordance with the following principles –

- (a) the capital of the society shall consist of unlimited number of shares and every member may have the right to transfer his or her shares to another member in accordance with the provision of this Act;
- (b) in a primary society, every member of the society shall have only one vote irrespective of the number of shares he or she holds;
- (c) the interest from the surplus shall be paid only on fully paid up shares and shall not exceed fifteen percent of the value of such shares per annum;
- (d) dividend may be paid to the members in accordance with the regulation or by-laws made under this Act; and
- (e) the management of the society shall be directed by persons elected from among its members.

#### **7. Protection and Status of a Society.**

- (1) For the purpose of criminal responsibility, property of the society shall be taken to be public property and its employees and the members of its Committee shall be taken to be public servants.
- (2) Official documents, seals and registers of the society shall not be removed from its premises except in accordance with the provisions of its by-laws.
- (3) The society may insure its moveable and immovable property.
- (4) A society shall not be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the Registrar, to mislead the members of the public as to its identity.
- (5) The word “Co-operative” shall form part of the name of every co-operative society.
- (6) A business organization or individual shall not use the name “Co-operative” in its title or operation except as defined under section 17 of this Act.
- (7) Any business, organization or individual who uses or carries on business under a name or title of which “co-operative” or any contraction or imitation of that word is the last word, unless duly registered as a co-operative society, commits an

offence and is liable on conviction to a fine not exceeding one thousand Sudanese Pounds.

### **CHAPTER III**

#### **ORGANIZATION OF CO-OPERATIVE SOCIETIES**

##### **8. General Organization.**

- (1) The organizational set up of cooperative societies shall be as follows –
  - (a) primary societies with individual physical persons as members at the level of Boma, Payam or County level;
  - (b) county unions with membership of primary and functional societies at the county level;
  - (c) the State union with the membership of the county unions at the level of the State;
  - (d) the Southern Sudan Co-operatives Federation at the Government of Southern Sudan Level with the membership of the States unions.
- (2) Notwithstanding the provisions of sub-section, (1) (a), (b) and (c) of this section, persons in any special field of work may form a co-operative society.
- (3) Amalgamation of primary societies and unions shall be encouraged where the economic and social interest deems it fit.
- (4) Co-operative societies or unions may invest or join in a joint venture with other public or civil society organizations to form a corporation, trust or any form of business.
- (5) The Minister shall prescribe, by regulation, the manner in which amalgamations, investments or participating in joint ventures under subsections (2) and (4) under this section, may be done.

##### **9. Subscription to the Unions.**

- (1) A primary or functional co-operative society or union shall subscribe to a county co-operative union.
- (2) A county co-operative union shall subscribe to the State co-operative union.
- (3) A State co-operative union and a union at the State level shall subscribe to the Southern Sudan Co-operatives Federation.
- (4) The manner of subscription, contribution and representation of a primary or functional co-operative society in the county union, of a county union in the State

union, and States union in the Southern Sudan Cooperative Federation shall be prescribed by regulations.

**10. Southern Sudan Co-operatives Federation.**

- (1) The Southern Sudan Co-operatives Federation shall be the apex body of all co-operatives societies in Southern Sudan.
- (2) The Southern Sudan Co-operatives Federation shall, subject to the regulations and by-laws and any directions issued by the general meeting of the Federation—
  - (a) consider and make recommendations to the Government on matters of policy relating to the co-operative movement;
  - (b) make representations to the Government as it may think fit in relation to any matter affecting registered co-operative societies in general or any particular registered society which those societies generally or any such society may request the Federation to bring to the notice of the Government; and
  - (c) carry out any other duty assigned to it under this Act and the regulations.

## **CHAPTER IV**

### **DIRECTOR GENERAL, STATE DIRECTOR, DEPUTY AND ASSISTANTS**

**11. Appointment of Director General, Deputy and Assistant Registrars.**

- (1) There shall be appointed, at the Government of Southern Sudan level, a Director General for Co-operative Development, his or her deputy and assistants, whose offices shall be offices in the public service.
- (2) The Director General and his or her deputy shall be responsible for the growth and development of co-operative societies in Southern Sudan, for their organization, registration, operation, advancement and dissolution and for administration of the provisions of this Act.
- (3) The Director General and his or her deputy shall be appointed by the President of the Government of Southern Sudan on recommendation of the Minister and with approval of the Council of Ministers.
- (4) The Ministry may, on the recommendation of the Director General for Co-operatives Development appoint assistants to the Deputy Director for Co-operatives Development.

**12. Appointment of State Directors, Deputies and Assistants Registrars.**

- (1) There shall be appointed, at the States level, State Directors for Co-operative Development and their deputies whose offices shall be offices in the public service.
- (2) The State Directors of Co-operative Development and their deputies shall be responsible for the growth and development of co-operative societies at the State level, for their organization, registration, operation, advancement and dissolution and for administration of the provisions of this Act.
- (3) The State Director of Co-operative Development and his or her deputy shall be appointed by the Governor of a State on the recommendation of the State Minister concerned and with approval of the State Council of Ministers.
- (4) The State Minister may, on recommendation of the State Director of Co-operative Development appoint assistants to the State Deputy Director for Co-operatives Development.

**13. Conferment and Delegation of Powers.**

- (1) The Deputy Director for Co-operatives Development may, subject to the terms of his or her appointment, exercise all the powers of the Director General for Co-operative Development under this Act.
- (2) The Minister may, by order in writing, confer any of the powers of the Director General for Co-operative Development under this Act, to an Assistant Registrar except—
  - (a) the powers to suspend execution of a resolution passed by a Committee under section 39(1;) and
  - (b) the powers to dissolve a co-operative society under section 69.
- (3) The Director General for Co-operative Development may delegate all or any of his or her powers under this Act to his or her deputy or any of his or her assistants except the powers under sections 39(1) and 69.
- (4) The State Deputy Director for Co-operatives Development may, subject to the terms of his or her appointment, exercise all the powers of the State Director for Co-operative Development under this Act.
- (5) The State Director for Co-operative Development may delegate all or any of his or her powers under this Act to his or her deputy or any of his or her assistants except the powers under sections 39(1) and 69.

- (6) The responsible State Minister may, by order in writing, confer any of the powers of the Director, Co-operatives Development, under this Act, to an Assistant Registrar except –
  - (a) the powers to suspend execution of a resolution passed by a Committee under section 39 (1); and
  - (b) the powers to dissolve a co-operative society under section 69.

## **CHAPTER V**

### **REGISTRATION OF CO-OPERATIVE SOCIETIES**

#### **14. Societies Which May be Registered.**

- (1) Subject to the provisions of this Act, a society which has as its objects—
  - (a) the promotion of the welfare and economic interests of its members; and
  - (b) has incorporated in its by-laws the following co-operative principles –
    - (i) voluntary and open membership;
    - (ii) democratic member control;
    - (iii) economic participation by members;
    - (iv) autonomy and independence;
    - (v) education, training and information;
    - (vi) co-operation among co-operatives;
    - (vii) concern for community in general; and
    - (viii) protection and preservation of environment,may apply to be registered as a co-operative society under this Act.

#### **15. Essentials for Registration.**

- (1) A primary society shall consist of not less than twenty persons all of whom shall be qualified for membership of the co-operative society under section 21.
- (2) A co-operative union shall have at least two registered societies as its members.
- (3) The Director General may fix a maximum number of members in a society, in special cases, for social and geographical considerations.
- (4) Membership shall be open to all persons irrespective of race, religion, gender or ethnic origin.
- (5) The persons who subscribe to the establishment of a society shall be its founder members.
- (6) Founder members shall be jointly responsible for all the funds of the co-operative society until the co-operative society is handed over to the Committee.

- (7) Founder members may select from among themselves a provisional committee which shall sign the documents relating to the registration of the society and under-take the preparation of its by-laws.

## **16. Application for Registration.**

- (1) The following documents shall be required for the registration of a co-operative society –
- (a) an application which shall provide information about –
    - (i) the name, area of operation and objectives of the society;
    - (ii) the value of each share and paid up capital; and
    - (iii) the names, age, place of residence, occupation, profession and signature of the founder members of a society, and signature of the provisional committee members,
  - (b) resolution of the meeting of the founder members;
  - (c) the by-laws of the society which shall contain the following information –
    - (i) the function of the society, its system of work and areas of operation;
    - (ii) the manner of raising its capital, the value of one share, the maximum possession of one member, how to transfer or refund capital and the minimum limit of paid up capital;
    - (iii) the number of members of the Committee, their qualifications and tenure of office;
    - (iv) management of meetings and election of members;
    - (v) the functions of annual general meetings, procedure of its convening and the voting procedures;
    - (vi) determination of the financial year, books of accounts, method of preparation, auditing and ratification of the accounts;
    - (vii) formation of a reserve fund, distribution of net surplus and adjustment of losses;
    - (viii) procedure for the amendment of the by-laws; and
    - (ix) any other details not inconsistent with the provisions of this Act or the regulations.
- (2) Where the application satisfies the conditions for registration, the Registrar shall register the co-operative society and its by-laws.
- (3) Where a co-operative society fails to satisfy the full conditions for registration, the Registrar may grant in writing, the status of probationary society to a co-operative society, to act as such for a period of up to one year.
- (4) A co-operative society that is granted probationary status under subsection (3) shall enjoy all the conditions set out under section 19 of this Act after which it may be terminated in writing if it fails to meet the full conditions of registration.

- (5) Where the Registrar rejects an application for registration, he or she shall notify the applicants in writing, giving the reasons for refusal, within thirty days from the submission of the application to the Registrar or his or her representative.
- (6) The applicants affected by the decision made under subsection (5) of this section may appeal to the Minister against the refusal of registration or probationary registration.
- (7) Any party aggrieved by the decision of the Minister may appeal against the decision to the High Court within thirty days of the decision.

**17. Registration Procedure.**

- (1) Where the Registrar approves the registration of the society, such society shall be entered into the Register of Co-operative Societies and the word “Cooperative” shall be added to its name if it was not contained in the documents for registration.
- (2) The registration of the society shall be published in the official Gazette and a newspaper of wide circulation in the respective State.
- (3) Any alteration in the name or address of the society shall at once be notified to the Registrar for registration.
- (4) Any alteration under subsection (3) shall not affect any right nor shall it affect any obligations of its present or past members, and any pending legal proceedings may be continued by or against such a society under its new name.

**18. Registration Certificate.**

- (1) Upon registration, the Registrar shall issue to the society a registration certificate, and such certificate together with a copy of its by-laws as approved and certified under his or her hand and seal, shall be the conclusive evidence that the society mentioned in the certificate is duly registered or granted probationary registration unless it is proved that the registration of the society has been cancelled or has been terminated.
- (2) The Registrar shall, assign a registration number to each society so registered and every society shall indicate its registration number on all its official documents.
- (3) If the Registrar is satisfied that a society’s original certificate of registration has been lost or destroyed, he or she may issue a duplicate certificate.

**19. Effect of registration.**

A society shall upon registration under this Act, become a body corporate by the name under which it is registered, having limited liability, with perpetual succession and a common seal, and may own and dispose of property, enter into contracts, institute and defend suits in its name, and do all acts for the achievement of its objectives in accordance with its by-laws.

**20. Evidence of Registration.**

- (1) A certificate of registration or of a certificate of probationary registration signed by the Registrar shall be conclusive evidence that the society mentioned in the certificate is duly registered or registered on probation, unless it is proved that such registration of the society has been cancelled or has been terminated.
- (2) The certificate of registration bearing the number and date of registration shall be displayed at the head office of every co-operative society.
- (3) A copy of the by-laws of a co-operative society or of an amendment of such by-laws certified by the registrar shall be prima facie evidence for all purposes of the registration of such by-laws or such amendment.

**CHAPTER VI  
RIGHTS AND LIABILITIES OF MEMBERS**

**21. Qualifications for Membership.**

- (1) A primary society shall keep its membership open to every person who satisfies the following conditions—
  - (a) he or she is of sound mind and not less than eighteen years of age;
  - (b) he or she is resident or has interest or ties in the area in which the society carries on its activities; and
  - (c) he or she contributes effectively, materially or physically in the function of the society.
- (2) Membership of a union shall be open to registered co-operative societies, corporate bodies and public agencies.

**22. Maximum Limit of Shareholding.**

- (1) No member of a society shall own more than ten percent of its paid-up capital unless such member falls under subsection (2) of section 21 in which case the percentage to be owned shall be subject to the provisions of the union's by-laws.



- (2) A member may exceed the proportion prescribed in sub-section (1) of this section by reason of inheritance, upon approval of the Registrar.

**23. Membership Subject to Authorization by Annual General Meeting.**

A company incorporated or registered under the Companies law or an unincorporated body of persons may become a member of a co-operative society where a written authorization through a resolution by a general meeting of that co-operative society is made.

**24. Rights of Members.**

A member of a co-operative society shall have the right to—

- (a) attend and participate in decisions taken at all general meetings of the society and vote;
- (b) be elected to organs of the society, subject to its by-laws;
- (c) enjoy the use of all the facilities and services of the society subject to the society's by-laws; and
- (d) all legitimate information relating to the society, including: internal regulations, registers, minutes of general meetings, supervisory committees, reports, annual accounts, inventories and investigation reports at the society's head office.

**25. Members Obligations vis-a-vis the Co-operative Society.**

A member of a co-operative society shall have the obligation to—

- (a) observe and comply with all the society by-laws and decisions taken by the relevant organs of the co-operative society in accordance with the by-laws of that society;
- (b) buy and pay up for shares or make any other payments provided for in the by-laws of the society; and
- (c) meet the debts of the society in case of insolvency in accordance with the provisions of this Act and the by-laws of the society.

**26. Voting Rights of Members.**

- (1) Every member of a primary cooperative society shall have only one vote irrespective of the number of shares owned by him or her and such member shall cast that vote in person.
- (2) The system of election of the delegates to a union and the principles and procedures of voting in its meetings shall be laid down in the union's by-laws.

**27. Loss of Membership.**

A Member shall lose his or her membership in the following cases –

- (a) upon losing any of the qualifications for membership prescribed by section 21 of this Act;
- (b) upon withdrawal from the society in accordance with the provisions of the regulations and the by-laws;
- (c) upon being expelled by a vote of two-thirds of the members present at a general meeting provided the intention was put or included in the agenda of the general meeting before the date of the meeting;
- (d) upon being convicted of an offence related to dishonesty and moral turpitude in respect of the society; or
- (e) upon death.

## **CHAPTER VII**

### **DUTIES OF CO-OPERATIVE SOCIETIES**

#### **28. Address of the Co-operative Society.**

- (1) Every registered society shall have an address to which notices and communications may be sent and shall send to the Registrar notice of every change of address within one month of the change.
- (2) Every registered society shall display its name and address on a sign board in a conspicuous position outside its place of business.
- (3) Any society which fails to comply with the provisions of this section commits an offence and is liable on conviction to a fine not exceeding one five hundred Sudanese Pounds.

#### **29. Society to Keep Copy of Law, Regulations, By-laws, etc Registered Office.**

Every registered society shall keep the following documents at its registered offices and shall make them available for perusal by the Registrar or his or her representatives, and for inspection, by any person, free of charge, at all reasonable times during business hours—

- (a) a copy of this law;
- (b) a copy of the regulations;
- (c) the certificate of registration;
- (d) a copy of the by-laws;
- (e) a list of names of all the members; and
- (f) a copy of the last approved balance sheet.

#### **30. Audit, Annual Returns and Accounts.**

- (1) Every co-operative society shall keep proper books of accounts which shall -
  - (a) be prepared in accordance with international accounting standards;
  - (b) reflect the true and fair state of the co-operative society's affairs; and
  - (c) explain the co-operatives' transactions including –

- (i) all sums of money received and paid by the co-operative society and the reasons thereto;
  - (ii) all sales and purchases of goods and services by the co-operative society; and
  - (iii) all assets and liabilities of the co-operative society.
- (2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.
- (3) It shall be the duty of every co-operative society to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4).
- (4) The auditor shall be appointed at the annual general meeting from a list of auditors approved by the Registrar, in consultation with the relevant authority responsible for approving auditors and accountants in Southern Sudan.
- (5) Where at an annual general meeting no auditor is appointed, the Registrar may appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society.
- (6) The accounts referred to in subsection (3) shall –
  - (a) conform with international financial reporting standards;
  - (b) include the following records –
    - (i) a balance sheet;
    - (ii) an income and expenditure account; and
    - (iii) a cash flow statement,
  - (c) be approved by the Committee; and
  - (d) be authenticated by at least three Committee members including the Chairman of the co-operative society.
- (7) No auditor shall present the accounts of a co-operative society to the members at a general meeting unless the accounts have previously been submitted to the Registrar in such a form as may be prescribed.
- (8) The auditor shall submit the audited accounts to a general meeting within four months after the end of the accounting period and shall include his or her opinion as to whether or not the co-operative society's business has been conducted –
  - (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and
  - (b) in accordance with the co-operative society's objectives, by-laws and any other resolutions made by the society at a general meeting.

- (9) The auditor shall have the right to –
- (a) attend any general meeting of the co-operative society and be heard on any matter which concerns him or her as an auditor;
  - (b) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive;
  - (c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his or duties as an auditor and may at the time of his or her audit –
    - (i) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs;
    - (ii) require the production of any book, document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities; or
    - (iii) demand such other information or explanation from any officer of the co-operative society as may be necessary for the performance of his duties as an auditor.
- (10) Every co-operative society shall, at such time and in such form as may be prescribed, file with the Registrar an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.
- (11) Where a co-operative society fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, members of the Committee shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Registrar is satisfied that the failure was due to circumstances beyond their control.
- (12) For the purposes of this section, "international accounting standards" and "international financial reporting standards" means the accounting and financial standards established by law.

### **31. Estimates of Income and Expenditure.**

For each financial year, the Committee of a co-operative society shall cause to be prepared estimates of the societies' income and expenditure including recurrent and capital estimates for approval by the general meeting at least three months before the end of the proceeding financial year.

## **CHAPTER VIII**

### **MANAGEMENT OF A CO-OPERATIVE SOCIETY**

#### **32. General Meeting.**

- (1)** The supreme authority of a co-operative society shall be vested in the general meeting at which members shall have the right to attend, participate and vote on all matters.
- (2)** Subject to subsection (3), below, a co-operative society shall hold an annual general meeting within three months after the end of every financial year.
- (3)** In the first year after registration of a co-operative society, the general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall—
  - (a)** elect the co-operative society's office bearers for the ensuing year;
  - (b)** determine the maximum borrowing powers of the co-operative society;
  - (c)** consider and approve estimates of income and expenditure for the ensuing financial year or part thereof;
  - (d)** appoint the co-operative society's bankers and auditors; and
  - (e)** receive reports and decide upon such other matters as may be necessary for the conduct of the co-operative society's business.
- (4)** A general meeting of a co-operative society shall be convened by giving at least fifteen days written notice to the members.
- (5)** At the annual general meeting of a co-operative society, the members shall—
  - (a)** consider and confirm the minutes of the last general meeting;
  - (b)** consider any reports of the Committee or the Registrar;
  - (c)** consider and adopt audited accounts;
  - (d)** determine the manner in which any available surplus is to be distributed or invested;
  - (e)** elect the co-operative society's office bearers for the ensuing year;
  - (f)** determine, where necessary, the maximum borrowing power of the society;
  - (g)** approve annual estimates for the ensuing year;
  - (h)** appoint an auditor for the ensuing year; and
  - (i)** transact any other general business of the co-operative society, of which notice has been given to members in the manner prescribed in the by-laws of the co-operative society.
- (6)** A special general meeting of a co-operative society may be convened—

- (a) by the Committee for the purpose of discussing any urgent matter which in the Committee's opinion is in the interest of the co-operative society; or
  - (b) on receipt of a written notice for such meeting signed by such number of the members of the co-operative society as may be prescribed in the regulations and stating the objects and reasons for calling the meeting.
- (7) If the Committee fails to convene a meeting within fifteen days of receiving the notice under subsection (6) (b), the members demanding the meeting may themselves convene the meeting by giving notice to the other members of the co-operative society, stating the objects and reasons for the meeting and the fact that the Committee has failed to convene the meeting.
- (8) The Registrar may convene a special general meeting of a society at which he or she may direct the matters to be discussed at the meeting.
- (9) The chairperson or in his or her absence the vice-chairperson or such other person as may be prescribed in the by-laws of the co-operative society shall preside at a general meeting of a co-operative society.
- (10) The registrar may preside at any meeting convened under subsection (8).
- (11) A registered society may make rules of procedure for the proper conduct of its general meeting.

### **33. Quorum of General Meeting.**

- (1) The quorum at any general meeting of a registered society shall be laid down in the by-laws of the society.
- (2) Where a special general meeting is convened by the Registrar under the provisions of subsection (8) of section 32 above, the members present at such meeting shall constitute a quorum.

### **34. Management Committee.**

- (1) Every society shall have a Management Committee consisting of at least five persons elected at the general meeting in accordance with its by-laws.
- (2) The Committee shall be the governing body of the society and shall, subject to any direction from a general meeting or the by-laws of the co-operative society, direct the affairs of the co-operative society.
- (3) The members of the Committee shall elect a Chairperson and Vice-Chairperson from among their number.

- (4) The members of the Committee shall hold office for the term prescribed by the by-laws.
- (5) Twenty five percent of the members of the Committee shall be female.
- (6) The Committee may delegate any of its duties under this Act to an officer or officers of the co-operative society but nothing in this subsection shall absolve the Committee from its responsibility to run the affairs of the co-operative society in a proper and business like manner.

**35. Qualification for Membership of the Committee.**

- (1) To qualify for membership of the Committee, a member must not–
  - (a) be an undercharged bankrupt; or
  - (b) have a previous conviction of an offence involving dishonesty, immorality or personal integrity.
- (2) An officer in the Committee must have the experience to safeguard proper recording and book keeping of the accounts of the society.

**36. Restriction Regarding Conflicting Business Interests.**

No member shall be elected to the Committee or be allowed to remain as a member of the Committee if he or she defaults to the society and if he or she carries out, whether on his or her own or on behalf of another, any activity which conflicts with the interests of the society.

**37. Remuneration to Committee Members.**

Subject to approval of the general meeting of the society, members of the Committee may be granted remuneration.

**38. Supervision of Societies.**

- (1) A registered society shall be supervised by the Ministry through the Registrar or his or her representative.
- (2) The supervisory role shall include–
  - (a) causing regular examination of accounts, records and affairs of the society; and
  - (b) reviewing the actions of the Committee to ensure that the committee conforms to the provisions of this Act, the regulations and the by-laws of the society.
- (3) A registered society shall, on the request of the Registrar or his or her subordinates and nominees, provide the necessary information required.

**39. Suspension of Execution of Committee's Resolutions.**

- (1) The Registrar may suspend the execution of any resolution passed by the Committee, if such resolution contravenes the provision of this Act, the regulations or the by-laws.
- (2) Where the Registrar suspends the execution of any resolution passed by the Committee, he or she shall notify the Committee about the decision in writing, and within fourteen days, giving the reasons for the suspension.
- (3) The society against which the Registrar passes an order under subsection (1) above may, within thirty days of receipt of such orders, appeal to the Minister or responsible State Minister, against the order of the Registrar.
- (4) Any party aggrieved by the decision of the Minister may appeal against the decision to the High Court, within the jurisdiction where the society is registered, within thirty days of the decision.

**40. Investigation by the Registrar.**

The Registrar may direct, in writing, an investigation into the affairs of a society where—

- (a) after reasonable consideration, he or she deems it necessary;
- (b) the majority of members of the Committee so demand;
- (c) an application is made by two fifths of the members of the society; or
- (d) a person holding a decree against the society, from a civil court or an arbitrator, whose decree has not been satisfied by the society, makes an application to the Registrar.

**41. Removal of Committee or Member.**

- (1) The result of investigation under section 40 above shall be submitted to the Registrar.
- (2) The Registrar, after reasonable consideration, may remove the Committee or any of its members and may request the society to elect a temporary committee pending election of a new Committee in accordance with the regulations.
- (3) The Committee or the member directly affected by the decision made under subsection (2) of this section may appeal to the Minister or responsible State Minister against the decision of the Registrar within thirty days of receipt of such decision.



- (4) Any party aggrieved by the decision may appeal against the decision to the High Court within thirty days of the decision.

## **CHAPTER IX**

### **AMALGAMATION AND DIVISION OF CO-OPERATIVE SOCIETIES**

#### **42. Amalgamation of Co-operative Societies.**

- (1) Any two or more co-operative societies (hereinafter referred to as amalgamating societies) may, by special resolution (in this section referred to as the preliminary resolution), resolve to amalgamate as a single society (hereinafter referred to as the amalgamated society).
- (2) A copy of the preliminary resolution shall be sent to all the members and creditors of each of the amalgamating societies, and to all other persons whose interests in any of the amalgamating societies will be affected by the amalgamation.
- (3) Any member of any of the amalgamating societies may, notwithstanding any by-law to the contrary, by notice in writing given to his or her society at least one month before the date specified as the date of amalgamation, intimate his or her intention not to become a member of the amalgamated society.
- (4) Any creditor of any of the amalgamating societies may, notwithstanding any agreement to the contrary, by notice in writing given to such society at least one month before the date specified as the date of amalgamation, intimate his or her intention to demand the payment of any money due to him or her.
- (5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the concerned amalgamating society, not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his or her claim is satisfied.
- (6) A further special general meeting of each of the amalgamating societies shall be held, not less than three months after the date of the meeting at which the preliminary resolution is passed, to consider the preliminary resolution and any notices received under this section.
- (7) At the special general meeting held under subsection (6), provision shall be made by a further resolution of the society (in this section referred to as the secondary resolution) for –
  - (a) the repayment of the share capital of any member who has given notice under subsection (3);
  - (b) the satisfaction of any claims by creditors who have given notice under subsection (4); or

- (c) the satisfaction of the claims of such other persons who have given notice under subsection (5), securing their claims in such manner as determined or directed by the Registrar.
- (8) Notwithstanding subsection (7), no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (9).
- (9) Each amalgamating society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.
- (10) Where, within such time as the Registrar considers reasonable, the Registrar is satisfied that the secondary resolutions of each of the societies amalgamating comply with the provision of this section, he or she may register the amalgamated society and its by-laws and thereupon —
  - (a) each of the amalgamating societies shall stand dissolved and its registration cancelled;
  - (b) 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;
  - (c) the remaining members of the amalgamating societies shall become members of the amalgamated society and will be subjected to its by-laws; and
  - (d) any share holders of the amalgamating societies or any other persons who have claims against the amalgamating societies and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against the amalgamated society.
- (11) Where the Registrar refuses the amalgamation of the amalgamating societies under subsection (10), he or she shall notify the applicants in writing giving reasons for the refusal, within thirty days from the submission of the application to the Registrar.
- (12) Any society aggrieved by the decision of the Registrar may appeal against such refusal to the Minister or responsible State Minister within thirty days of the communication.
- (13) Any party aggrieved by the decision of the Minister under subsection (12), may appeal against the decision to the High Court within thirty days of the decision.

#### **43. Division of Co-operative Societies.**

- (1) A co-operative society (hereinafter referred to as the existing society) may, by special resolution (in this section referred to as the preliminary resolution), resolve to divide itself into two or more co-operative societies (hereinafter referred to as the new societies).

- (2) The preliminary resolution shall contain proposals of the society to divide itself among the new societies in which it is proposed to be divided and may prescribe the area of operation and specify the members who will constitute each of the new societies.
- (3) A copy of the preliminary resolution shall be sent to all the members and creditors of the existing society, and to all other persons whose interests will be affected by the division of the existing society.
- (4) Any member of the existing society may, notwithstanding any by-law to the contrary, by notice, in writing given to the society within two months of the receipt of the copy of the preliminary resolution, intimate his or her intention not to become a member of any of the new societies.
- (5) Any creditor of the existing society may, notwithstanding any agreement to the contrary, by notice in writing given to the existing society within two months after his or her receipt of the copy of the preliminary resolution, intimate his or her intention to demand the payment of any money due to him or her.
- (6) Any other person whose interest will be affected by the division may, by notice in writing given to the existing society within two months of receipt of the preliminary resolution, object to the division.
- (7) After the expiry of three months after the date of the preliminary resolution, a further special general meeting of the existing society shall be held to consider the preliminary resolution, and any notices received under this section.
- (8) At the special general meeting held under subsection (6), provision shall be made by a further resolution of the society for –
  - (a) the repayment of the share capital of any member who has given notice under sub-section (3);
  - (b) the satisfaction of any claims by creditors who have given notice under sub-section (4);
  - (c) the satisfaction of the claims of such other persons who have given notice under subsection (5); or
  - (d) the securing of their claims as the Registrar may determine, or direct.
- (9) Notwithstanding subsection (8), no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (10).
- (10) The society may, by further resolution passed by a two- thirds majority of the members present and voting, confirm the preliminary resolution, with or without changes considered by the Registrar as not substantial.

- (11) Where the Registrar is satisfied within such time as he or she considers reasonable that the provisions of the secondary resolution and the provisions of this section have been complied with, he or she may register the societies into which the existing society has been divided and the by-laws of such societies.
- (12) Upon registration of the societies under subsection (11) –
- (a) the registration of the existing society shall stand dissolved;
  - (b) the registration of the new societies shall be sufficient to vest the assets and liabilities of the existing society in the new societies in the manner specified in the preliminary resolution, as confirmed;
  - (c) the remaining members of the existing society shall become members of one or other of the new societies, as is provided by the preliminary resolution, as confirmed; and
  - (d) any share holders or creditors of the existing society and any other persons who have claims against the existing society and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims against one or other of the new societies, as is provided by the preliminary resolution, as confirmed.
- (13) Where the Registrar refuses to approve the division of an existing society under sub-section (11), he or she shall notify the applicants in writing giving reasons for the refusal, within thirty days from the submission of the application to the Registrar.
- (14) Any society aggrieved by the decision of the Registrar may appeal against such refusal to the Minister or responsible State Minister within thirty days of the communication.
- (15) Any party aggrieved by the decision of the Minister made under sub-section (14) may appeal against the decision to the High Court within thirty days of the decision.

## **CHAPTER X**

### **RIGHTS AND OBLIGATIONS OF CO-OPERATIVE SOCIETIES**

#### **44. Obligation to Keep Proper Accounts.**

- (1) A society must keep up to date books and registers of accounts in the manner prescribed by the Registrar.
- (2) The Committee shall undertake preparation of the final accounts for the past financial year and shall present the same with supporting vouchers to the auditors for verification at anytime after thirty days from the expiry of the financial year.

**45. By-laws to Bind Members.**

- (1) The by-laws of a registered society shall, when registered, bind the society and its members to the same extent as if they were signed by each member, and contain obligations on the part of each member, his or her heirs, executors, administrators and assignees, to observe all the provisions of the by-laws.
- (2) It shall not be competent for a member of a registered society to contest any suit, claim, action or proceedings between that member and the society or any other member of the society on the ground that any by-law of the society constitutes a contract in restraint of trade.

**46. Contract with Members to dispose of Produce.**

- (1) A registered society, having as one of its objects the disposal of any agricultural produce, may contract with its members either in its by-laws or by a separate document that they shall dispose of all their produce or of such amounts or descriptions as may be stated in those by-laws or that document, to or through the society, and may in the contract provide for payment of a specific sum per unit of weight or other measure as liquidated damages for infringement of the contract; and that sum shall be a debt due to the society.
- (2) A contract mentioned in subsection (1) shall create in favour of the society a first charge upon all produce mentioned in the contract, whether existing or future.
- (3) The covenants or obligations imposed by a contract as is mentioned in subsection (1) shall run with any lands, trees, buildings or other structures mentioned in it and shall be binding on all assignees and transferees; and any transfer or conveyance of property subject to the contract shall be taken to operate as a transfer or assignment of the contract.
- (4) A contract entered into under this section shall not be contested in any court on the ground that it constitutes a contract in restraint of trade.

**47. Imposition of Fines upon Members.**

- (1) The by-laws of a registered society may, subject to any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its by-laws; but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason for it has been transmitted to him or her and he or she has had an opportunity of showing cause against the imposition of the fine and, if he or she so desires, of being heard with or without witnesses.
- (2) Any such fine may be recovered by suit in any competent court.
- (3) The whole or any part of such fine may be set off against any monies due to such member in respect of produce delivered by him or her to the society.

- (4) A member shall not be deemed to have infringed the by-laws of a registered society by reason of his or her having failed to deliver produce to the society if that failure was due to the fact that before becoming a member of the society the member had contracted to deliver the produce to some other person.
- (5) Every person applying for membership of a registered society shall disclose to the society particulars of all such contracts as are mentioned in subsection (4).

**48. Charge on Agricultural Produce and Certain other Materials and Articles.**

Subject to the prior claims of the Government on property of its debtors and of landlords in respect of rent or any money recoverable as rent, or to any prior charge duly registered under this Act, or under any other law for the time being in force, a registered society shall have a first charge—

- (a) upon agricultural produce of a member or past member, at any time within two years from the date when seed or manure was advanced, or agricultural services were supplied, or money was lent to the member or past member in respect of the unpaid portion of the advance, supplied services or loan; or
- (b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw material for manufacture or building or for the loan of money for the purchase of any of the animals or things to be supplied or purchased in whole or in part from any such loan or on any articles manufactured from raw materials supplied or purchased.

**49. Charge and Setoff in Respect Interest of Members.**

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

**50. Member's Interest in Society not Liable to Attachment.**

- (1) Except in the interest of satisfaction of a fine under section 47, the interest of a member in the capital of a registered society –
  - (a) shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by the member; and
  - (b) shall not entitle a trustee under the law relating to insolvency for the time being in force to have any claim on that interest.
- (2) Where a society is dissolved, the property in the shares of any member who has been adjudicated insolvent under the law on insolvency shall vest in the trustee.

**51. Liability of Past Member.**

The liability of a past member for the debts of a registered society as they existed at the time when he or she ceased to be a member shall continue for two years from the date of

his or her ceasing to be a member; except that in the case of a society with limited liability, if the first audit of the accounts of the society after his or her ceasing to be a member discloses a credit balance in favour of the society, the financial liability of the past member shall forthwith cease.

**52. Liability of Estate of Deceased Member.**

The estate of a deceased member shall, for one year from the time of his or her death, be liable for the debts of a registered society as they existed at the time of his or her death; but in the case of a society with limited liability, if the first audit of the accounts of the society after his or her decease discloses a credit balance in favour of the society, the financial liability of the estate shall immediately cease.

**53. Transfer of Interest on Death of Member.**

- (1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with any regulations made under this Act or, if there is no person so nominated, to such person as may appear to the Committee of the society to be the legal personal representative of the deceased member or may pay to that nominee or legal personal representative, as the case may be, a sum representing the value of the member's share or interest, ascertained in accordance with any regulations made under this Act or the by-laws of the society; except that the society shall transfer the share or interest of the deceased member to the nominee or legal personal representative, as the case may be —
  - (a) being qualified in accordance with any regulations made under this Act and the by-laws for membership of the society; or
  - (b) on his or her application, within one month of the death of the deceased member, to any person specified in the application who is so qualified.
- (2) A registered society shall pay all other monies due to the deceased member from the society to the nominee or legal personal representative, as the case may be.
- (3) All transfers and payments made by a registered society in accordance with this section shall be valid and effectual against any demand made upon the society by any other person.

**54. Registers and Books of Societies and Copies Thereof shall be Received in Evidence in Certain Circumstances.**

- (1) Any register or list of members or their interests in the society which is kept by any registered society shall be prima facie evidence of any of the following particulars entered in it —
  - (a) the date on which the name of any person was entered in the register or list as member; and
  - (b) the date on which any such person ceased to be a member.
- (2) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in accordance with any regulations made under this Act, be received in any suit or legal proceedings as prima facie evidence of the

existence of the entry, and shall be admitted as evidence of the matters, transactions and accounts recorded in it in every case where and to the same extent as the original entry itself is admissible.

**55. Restriction on the Production of a Society's Books.**

An officer of a registered society shall not, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under section 54 above or to appear as a witness to prove the matters, transactions and accounts recorded in those books unless by order of the court made for special cause.

## **CHAPTER XI**

### **PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETIES**

**56. Types of Funds.**

The funds of the society shall be composed of the following –

- (a) ordinary shares paid by the members;
- (b) donations from civil authority agencies and corporations;
- (c) deposits and loans from members;
- (d) grants and subsidies from Government; or
- (e) grants from charitable and non-governmental organizations.

**57. Loans.**

- (1) The society may grant loans to its members under such sureties, and conditions as its by-laws prescribe.
- (2) A society shall not grant loans to its members against the security of movable property other than the product in which it is authorized to deal.
- (3) A society shall not give loans to a non-member unless the by-laws of the society provide for giving of loans subject to a resolution passed at the general meeting of the society to that effect.

**58. Reserve Fund and Other Funds.**

- (1) A society shall establish a reserve fund and shall in every year transfer to it at least twenty five percent of its annual surplus as ascertained by the annual audit.
- (2) Where the fund reaches fifty percent of the paid-up capital, the percentage of the net surplus transferable to it shall be reduced to five percent.



- (3) The reserve fund shall be indivisible and it shall be used in accordance with the regulations made under this Act.
- (4) A society shall contribute an amount not exceeding ten percent of its annual net surplus to a development and services fund.
- (5) The extent and manner of allocation of this amount to those activities shall be determined by the regulations.

**59. Investment of the Reserve Fund.**

Subject to the provisions of section 58 of this Act, a society may deposit all or part of its reserve fund and other funds in any bank or invest them for the purchase of shares of any other society or invest in any other manner approved by the Registrar.

**60. Disposal of Surplus after Audit.**

- (1) No society shall make any payment as interest on shares or as proceeds prescribed by sub-section (2) of this section or for any other purposes from its distributable funds except after the auditing of accounts in accordance with the provisions of this Act.
- (2) After allocation of the amounts specified under section 58 of this Act, the balance may be disposed of in the following manner –
  - (a) payment of the interest on the paid-up shares;
  - (b) dividend calculated on the basis of production work, or all of the above; or
  - (c) allocation to any other funds to which the society may be required to contribute under this Act, the regulation or the by-laws.

**61. Mortgage or Charge by Society.**

- (1) A society shall not mortgage or create a charge against any of its movable or immovable property without the consent of all members and the Registrar.
- (2) Every society shall keep a register of mortgages and charges so created.

**62. Audit of Society.**

- (1) The Ministry shall be responsible for auditing the accounts of co-operative societies, at least once every financial year.
- (2) The Committee of each co-operative society shall ensure that within four months after the end of each financial year, the accounts and audits in section 30 are submitted to the Ministry for auditing.

- (3) The auditors of the accounts shall have access to all books of accounts, vouchers and other records of a co-operative society and shall be entitled to any information and explanation required in relation to those records.
- (4) The auditors shall deliver to the Committee and to the Minister a copy of the audited accounts together with the report on the audit.

## **CHAPTER XII**

### **PRIVILEGES OF SOCIETIES**

#### **63. Right of Society to Seize Products.**

- (1) Subject to any prior claims of the Government or the holder of a registered charge or claims resulting from liquidation, a society shall have a first charge on the products, implements and appliances belonging to its members.
- (2) A society shall have a lien upon the shares or interests in the capital and on the deposits of its members, past members, deceased members and upon any dividend, bonus, any repayment to the society and any debt owing to it.

#### **64. Exemption of Shares from Attachment.**

Notwithstanding any provisions to the contrary under any other law in force, the shares of any member of a society shall not be attached or otherwise taken in execution except for enforcement of the provisions of sections 63 above and section 78(2) of this Act.

## **CHAPTER XIII**

### **INQUIRY AND INSPECTION**

#### **65. Inquiry by Registrar.**

- (1) The Registrar may, of his or her own accord, and shall on the direction of the Minister, as the case may be, or on the application of not less than one-third of the members present and voting at a meeting of the society which has been duly advertised, hold an inquiry or direct any person authorized by him or her in writing, to hold an inquiry into the by-laws, management and working and financial conditions of any co-operative society.
- (2) All officers and members of the co-operative society shall produce such cash, accounts, books, documents and securities of the society, and furnish such information in regard to the affairs of the society, as the person holding the inquiry may require.

- (3) The Registrar shall report the findings of his or her inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report.
- (4) Where the Registrar is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, he or she may –
  - (a) dissolve the Committee; and
  - (b) cause to be appointed an interim Committee consisting of not more than five members from among the members of the society for a period not exceeding ninety days.
- (5) A person who contravenes subsection (2) shall be guilty of an offence and shall be liable to a fine not exceeding twenty Sudanese Pounds for each day during which the offence continues.

**66. Inspection of Books of Indebted Society.**

- (1) The Registrar may, if he or she thinks fit, on the application of a creditor of a co-operative society, inspect, or direct some persons authorized by him or her in writing to inspect, the books of the society, if –
  - (a) the creditor satisfies the registrar that the debt is a sum then due, and that he or she has demanded payment thereof and has not received satisfaction within a reasonable time; and
  - (b) the applicant deposits with the Registrar, such sum as security for the expenses of the inspection as the Registrar may require.
- (2) The Registrar shall inform the creditor of the results of the inspection.

**67. Expenses of Inquiry.**

- (1) Where an inquiry is held under section 65 or an inspection is made under section 66 of this Act, the Registrar may, by a certificate under his or her hand, make an order apportioning the expenses, or such part of the expenses as he considers proper, between the society, the members or creditor demanding the inquiry or inspection, and the officers or former officers of the society; and the decision of the Registrar thereon shall be final.
- (2) Any sum awarded by way of expenses under sub- section (1) shall be a civil debt recoverable summarily on production of the certificate referred to in that sub-section.

**68. Routine Inspection.**

Notwithstanding the provisions of sections 65 and 66, the Registrar may from time to time carry out impromptu inspection into the affairs of a co-operative society.

## **CHAPTER IV**

### **DISSOLUTION AND LIQUIDATION OF SOCIETIES.**

#### **69. Cancellation of Registration after Inquiry or Inspection.**

- (1) Where the Registrar, after holding an inquiry under section 65 or making an inspection under section 66 of this Act, or on receipt of an application made by at least two thirds of the members of a co-operative society, has reasonable cause to believe that the society ought to be dissolved, he or she may, in writing, order the dissolution of the society and subsequent cancellation of registration.
- (2) Where the Registrar makes an order under subsection (1) he or she shall make such further order as he or she considers reasonable for the custody of the books and documents and the protection of the assets of the society.
- (3) A co-operative society shall not be dissolved or wound up save by an order of the Registrar.

#### **70. Cancellation for Other Reasons.**

- (1) The Registrar may, on his or her motion, by order in writing, cancel the registration of any society, if satisfied that –
  - (a) the registration was obtained by fraud or mistake;
  - (b) the society exists for an illegal purpose;
  - (c) the society has willfully, after notice by the registrar, contravened any of the provisions of this Act, the regulations or the by-laws;
  - (d) the society is no longer operating in accordance with co-operative principles;
  - (e) the number of the members of the society has fallen below the minimum required by this Act;
  - (f) the society has not commenced operations or has ceased to operate for two consecutive years;
  - (g) the society which was recognized as a probationary society in accordance with the provision of this Act, has not been given the regular registration before the expiry of the probationary period;
  - (h) the capital of the society is completely or partially so exhausted as to make continuation of the society impossible; or
  - (i) the society has merged with another society.

**71. Appeal Against Registrar's Order of Dissolution.**

- (1) Any member of a co-operative society or any society against which an order is made under section 69 or 70 may, within two months after the making of such order, appeal against the order to the Minister.
- (2) Any member of a co-operative society or a society aggrieved by the decision of the Minister may appeal to the High Court within thirty days of notification of the Minister's decision.
- (3) Where no appeal is filed within the prescribed time, the order shall take effect on the expiry of that period, but where an appeal is filed within the prescribed time the order shall not take effect unless it is confirmed by the Minister or by the High Court, as the case may be.

**72. Effect of Cancellation.**

Where the registration of a society is cancelled, the society shall cease to exist as a corporate body as from the date of dissolution.

**73. Copy of Order to be Filled by the Registrar.**

On the making of an order to cancel the registration of a society, a copy of the order shall be placed in the file maintained by the Registrar in respect of the society and published in the *Gazette* and at least one of the newspapers of wide circulation in Southern Sudan.

**74. Appointment of a Liquidator.**

Where the registration of a co-operative society is cancelled under section 69 or 70 of this Act, the Registrar shall either wind up its affairs or appoint a liquidator or liquidators who shall be under the direct supervision of the Registrar.

**75. Powers of the Liquidator.**

- (1) A liquidator appointed under section 74 of the Act shall exercise the following powers –
  - (a) take possession of the books, documents and assets of the society;
  - (b) to fix a date in a manner prescribed by regulations made under this Act, before which the creditors whose claims against the society are not already recorded in the books of the society, shall produce such claims for admission, or be excluded from any distribution made before they have proved them;
  - (c) fix a period for winding up, not exceeding six months from the date of his or her appointment, and he or she may extend this period subject to the consent of the Registrar;

- (d) refer major disputes to the Registrar or for arbitration in a manner prescribed by regulations under this Act;
  - (e) institute or defend suits and other legal proceeding by or on behalf of the society before the court of law;
  - (f) call such general meetings of members as may be necessary for the conduct of liquidation;
  - (g) give such direction in regard to assets as maybe necessary in the course of winding up the society;
  - (h) carry on the business of the society so far as if may be necessary for winding it up, but shall not borrow or issue loans from the funds of the society, but can open a special account with any bank;
  - (i) investigate all claims against the society, and subject to this Act, decide any question of priority which may arise between creditors;
  - (j) decide the sharing of any losses among the members and past members, and by the estates of deceased members of the society;
  - (k) to compromise, with the approval of the Registrar, any claim by, or against the society;
  - (l) determine from time to time, by what persons and in what proportions the costs of the liquidation are to be borne; or
  - (m) to apply to the registrar for his or her discharge from the duties of liquidator after completion of the liquidation process.
- (2) The liquidator shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and so far as may be necessary, in the same manner as is provided in the case of a court under the law on civil procedure, in so far as such powers are necessary for carrying out the purposes of this section.

## **76. Power of the Registrar during Liquidation.**

- (1) A liquidator shall exercise his or her powers subject to guidance and control of the Registrar, and the Registrar may —
- (a) rescind or vary any order made by a liquidator and make any new order as required;
  - (b) remove a liquidator from office and appoint a new liquidator;
  - (c) call for all books, documents and assets of the society;
  - (d) by order in writing, limit the powers of a liquidator under section 75;
  - (e) require accounts to be rendered to the registrar by the liquidator at the registrar's discretion;
  - (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;
  - (h) grant a discharge to the liquidator on application by him or her after completion of the liquidation proceedings;
  - (i) require any member of a society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer

immediately, or within such time as he or she shall direct, to the liquidator any money, property or books and papers in his or her hands to which the society is prima facie entitled;

- (j) appoint a special manager of the business of a society whose registration has been cancelled and determine his or her remuneration and what, if any, security he or she shall give for the proper performance of his or her duties; or
- (k) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator.

- (2) The decision of an arbitrator that is made on any matter referred to him or her under subsection (1)(k) shall be binding upon the parties and shall be enforceable in a like manner as an order made by the registrar under subsection (1)(a).

#### **77. Appeal Against an Order of a Liquidator or the Registrar.**

- (1) A person aggrieved by an order of a liquidator or the Registrar given under section 75 or 76(1)(a) above may, within two months after the making of such order, appeal against the order to the Minister.
- (2) A member of a co-operative society or a society aggrieved by the decision of the Minister may appeal to the High Court within thirty days of notification of the Minister's decision.

#### **78. Closure of Liquidation.**

- (1) Where liquidation of a society whose registration has been cancelled, has been completed, the funds, including the reserve fund, shall be applied first to the costs of liquidation, including the remuneration of the liquidator, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, if the by-laws of the society so permit, to the payment of a dividend at a rate not exceeding ten percent per year for any period for which no disposal of the net surplus was made.
- (2) When the liquidation of a society has been closed, the claim of any creditor of that society who has not received what is due to him or her under the approved scheme of distribution shall be barred by prescription on the expiry of one year from the date of the order cancelling the registration of the society.
- (3) Any surplus remaining after the application of the funds for the purposes specified in subsection (1) and any sums unclaimed under subsection (2) shall—
  - (a) be distributed among the members at the time of dissolution, or their legal personal representatives, in proportion to the value of the business of each such member with the society during the three years immediately preceding the date of dissolution or, if the society has not existed for such

period, during the existence of the society or if the society has done no business during these three years, then in proportion to the share capital held by them at such date;

- (b) if it is impracticable to make a distribution in accordance with paragraph (a) whether through insufficiency of funds or otherwise, be paid, either in whole or as to any residue of a partial distribution, into a central fund as the Registrar may determine.

#### **79. Commission of Offences.**

- (1) Where the liquidator of a society whose registration has been cancelled alleges that any of offences under subsection (2) of this section has been committed, he or she shall make a report of the facts to the Registrar who shall forward a copy of the report to the Director of Public Prosecutions for the institution of such proceedings as may be necessary.
- (2) The offences under subsection (1) include –
  - (a) offences by officers of societies in liquidation.
  - (b) fraudulent preferences;
  - (c) falsification of books;
  - (d) fraud by officers of societies which have gone into liquidation;
  - (e) officers of societies who fail to account for loss of the societies' property;
  - (f) liability where proper accounts are not kept; and
  - (g) fraudulent trading by concerned persons.
- (3) Any person who commits any of the offences under this section is liable on conviction to imprisonment for a period not exceeding two years.

#### **80. Convicted Officers not to be Officers of a Society.**

- (1) A person convicted of an offence under this Chapter shall not be an officer of a registered society or in any way, whether directly or indirectly, be concerned in or take part in the management of a society for five years from the date he or she is released from prison or he or she pays a fine.
- (2) Any person acting in contravention of this section commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

#### **81. Liability of Officers, Employers and Publication of Accounts.**

- (1) Where in the course of an audit, investigation or dissolution of a society, it is found that any person who is or was entrusted with the organization and management of such society, or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the provisions of the by-laws or has caused any deficiency in the assets of the society by breach of trust



or has other property or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar shall order investigation in the conduct of such person.

- (2) Where the defaulter is found criminally liable, the registrar shall order repayment or refund of the money or restitution of property.
- (3) The registrar may charge interest or compensation to such an extent as he or she may consider just and equitable.
- (4) The Registrar shall publish to the public, the final accounts on liquidation for computation and closure.
- (5) Notwithstanding the provision of sub-sections (1) and (2) above, the Registrar may refer the case to the Director of Public Prosecutions for prosecution.

## **CHAPTER XV**

### **SETTLEMENT OF DISPUTES**

#### **82. Settlement of Disputes.**

- (1) Where any dispute concerning the affairs of a society arises –
  - (a) between members, past members and persons claiming through the members, past members and deceased members;
  - (b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its Committee or any officer or past officer of the society;
  - (c) between the society or its Committee and any officer or past officer of the society; or
  - (d) between the society and any other registered society,the dispute shall be referred to the Registrar.
- (2) The Registrar, after making necessary inquiries, shall refer the matter to an arbitrator or arbitrators for decision.
- (3) The decisions of the arbitrator shall be executed as a decree before a civil court.
- (4) A claim by a registered society for any debt or demand or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether the debt or demand be admitted or not, shall be deemed to be a dispute within the meaning of subsection (1).
- (5) The parties to a dispute may agree upon an arbitrator or arbitrators for purposes of

deciding the dispute.

- (6) Where there is failure of agreement upon an arbitrator or arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator to decide the dispute.
- (7) Where a party fails to appoint an arbitrator as required under subsection (6) within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on a third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of either party, by the Registrar.
- (8) Where an appointed arbitrator refuses or neglects to act, or is incapable of acting or dies or is removed, the parties shall fill the vacancy.
- (9) Where the parties fail to fill the vacancy under subsection (6) within seven days from the date the vacancy occurs, either party may apply to the Registrar to fill the vacancy which he or she shall do after giving the other party an opportunity of being heard.
- (10) The provisions of the law on arbitration shall, to the extent that they are not inconsistent with this Act, apply to arbitration under this Act.
- (11) Any party aggrieved by an award made under this section may appeal from it to the High Court within two months from the date of the award.
- (12) An arbitrator appointed under this section may—
  - (a) summon witnesses and call for any accounts, books, documents or any information which he or she considers relevant to the matter in question;
  - (b) administer an oath or affirmation to any witness giving evidence before him or her;
  - (c) refer any point of law to the High Court for its decision; and
  - (d) amend the terms of the order of reference with the consent of the two parties to the dispute.
- (13) When an arbitrator has made an award, he or she shall sign it and shall give notice to the parties of the making of the award and of the amount of the fees and charges payable to him or her in respect of the arbitration and award.
- (14) An arbitrator or arbitrators shall, at the request of any party to the arbitration or any person claiming under him or her, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award or a signed copy of it to be filed in the court; and notice of the filing shall be given to the parties by the arbitrator.
- (15) Where an arbitrator or arbitrators refer a case to court on a point of law under

subsection (11)(c), the court shall make its decision; and if the decision affects the amount of the award, it shall be increased or reduced, as the case may be, and the court shall execute the award as soon as possible.

(16) The award of an arbitrator or arbitrators under this section shall, if no appeal is preferred to the Court under subsection (11) or if an appeal is abandoned or withdrawn, be final and shall not be called in question in any court and shall be enforced in the same manner as if the award had been a judgment of a court.

(17) Notwithstanding this section, any debt arising out of embezzlement, loss of cash or misappropriation of a cooperative society's funds shall not be the subject of settlement by arbitration, but shall be referred by an arbitrator to a competent court for settlement.

**83. Protection of an Arbitrator.**

A decision or thing done by an arbitrator or arbitrators under section 82 above shall, if it is done bona fide for the purpose of executing any provisions of that section, subject the arbitrator to any civil liability.

**84. Legal Representative not Allowed Before an Arbitrator.**

A party to a dispute under section 82 shall not engage a legal representative before an arbitrator or arbitrators except on a reference to the court on a point of law, on an appeal from a decision of the Minister under section 77 or at the filing of the award to the court.

## **CHAPTER XVI**

### **MISCELLANEOUS PROVISIONS.**

**85. Minister to Make Regulations.**

(1) The Minister shall in consultation with the Registrar make regulations for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, those regulations may –

- (a) prescribed the procedure to be followed and the forms to be used when applying for registration of a society;
- (b) provide the general meeting, the appointment, suspension and removal of members of the Committee and officers and for the power to be exercised and any duties to be performed by such general meeting, Committee and officer;
- (c) regulate the manner in which funds may be raised by means of shares, debenture, charges and mortgage or otherwise and manner in which the maximum liability so incurred shall be fixed and discharged;

- (d) regulate the manner in which charges may be created by a member in favour of the society to secure any loan, provision for registration of such charges and for their assignment by the society;
  - (e) regulate the manner in which loans may be issued to members and securities that may be accepted;
  - (f) regulate the manner of formation and maintenance of funds and reserves and manner of investment of funds under the control of the society;
  - (g) regulate the manner of distribution of the profits and the funds distributable to members of the society;
  - (h) regulate manner of withdrawal of members and the payment to be made to such members, and the limit of liability to past members;
  - (i) regulate the manner of affiliation, amalgamation, separation and probation of society;
  - (j) regulate the manner of transfer and the sale of shares of past members;
  - (k) prescribe the form in which entries and record of society shall be certified for legal purposes;
  - (l) regulate the manner of auditing societies and consequential charges;
  - (m) regulate the manner of formation of societies, the unions and Federations;
  - (n) regulate the manner of secondment of civil authority employees for work in cooperative societies and recruitments plus training of employees of societies; and
  - (o) regulate the manner of proportional allocation of the development and services fund prescribed under sub-section (4) of section 58 of this Act; or
  - (p) prescribe anything required by this Act to be prescribed.
- (3) In any case where the Registrar is satisfied that a substantial number of members of any society are unacquainted with the English language, he or she may cause any regulations made under this section to be translated into a language with which those members are acquainted and to be made known to them in a manner customary for the community to which those members belong; but on any matter of interpretation the English version of the regulations shall prevail.

#### **86. Minister to Prescribe Fees.**

The Minister shall after consultation with the Minister of Finance and Economic Planning, prescribe the registration fees, contribution to be made by societies to any special development fund, fee for change of name, of the address, or obtaining copies of the regulation, or for creation of charge and transfer of loan.

#### **87. Exemption and Preferential Treatment to Societies.**

- (1) The Minister may, by order exempt any society from any of the provisions of this Act or regulations.

- (2) The Ministry of Finance and Economic Planning may, by law, on the recommendation of the Minister, exempt any co-operative society from total or partial payment of duties, taxes, levies or rates on goods or surplus.
- (3) The Government of Southern Sudan, State and County authorities and public sector corporations, as the case may be, may give priority to societies in the allocation of land and transport, in the purchase, sale and distribution of commodities, in the assignment of work contracts and in any other matters related to their function.

**88. Registrars to submit information to Director General and Chief Registrar.**

- (1) All registrars shall submit information in form of returns to the Director General about the registered, amalgamated, divided or dissolved co-operative societies in their area.
- (2) The Director General shall ensure that all details referred to in subsection (1) above are transmitted to the Chief Registrar of Companies, Business Names, Non-Governmental Organizations and Associations.

**89. Appeal.**

Save as is otherwise provided under this Act, any person aggrieved by any decision made under this Act may appeal within fourteen days against such decision to the High Court within the jurisdiction of which the society is registered.

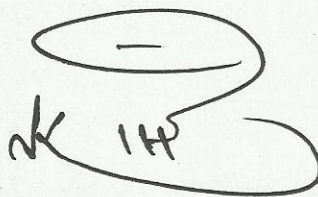
**90. Certain laws not to apply.**

Save as is otherwise provided under this Act, the provisions of the companies' law, the insolvency law and the registration of business names law shall not apply to a registered co-operative society.

**Assent of the President of the Government of Southern Sudan**

In accordance with the provision of Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, I, Gen. Salva Kiir Mayardit, President of the Government of Southern Sudan, hereby Assent to the Co-operative Societies Act, 2011 and sign it into law.

Signed under my hands in Juba, this 7<sup>th</sup>-----day of the month of July-----  
-in the year 2011.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line through the middle, and the letters 'K' and 'M' written below it.

**Gen. Salva Kiir Mayardit  
President  
Government of Southern Sudan  
GoSS/ Juba.**