

# **THE COOPERATIVE SOCIETIES ACT, 2003**

## **ARRANGEMENT OF SECTIONS**

*Section*

*Title*

### **PART I**

#### **PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Cooperative Societies to be registered in accordance with this Act.

### **PART II**

#### **THE OBJECTS AND PROTECTION OF COOPERATIVE SOCIETIES**

4. Societies which may be registered.
5. Duty of Government to cooperative societies.
6. Minister to encourage cooperative development.
7. Responsibilities of Minister.
8. Information on cooperation.
9. Persons required to furnish information to the Minister.

### **PART III**

#### **APPOINTMENT OF REGISTRAR, DEPUTY REGISTRAR AND ASSISTANT REGISTRARS**

10. Appointment of Registrar.
11. Functions of a Registrar.
12. Appointment of Deputy Registrar.
13. Appointment of Assistant Registrars.

### **PART IV**

#### **FORMATION AND ORGANIZATION OF SOCIETIES**

14. Structure of the Cooperative Societies.
15. Formation of Societies.
16. Societies may affiliate.
17. Registrar may advise primary societies.

18. Objects of Primary Societies.
19. Objects and Functions of Secondary Societies and Apexes.
20. Objects of the Federation.
21. Societies may form joint enterprises.
22. Types of Societies.

## **PART V**

### REGISTRATION OF SOCIETIES

23. Conditions for Registration.
24. Application for Registration.
25. Registration.
26. Refusal of Registration.
27. Certificate of Registration.
28. Evidence of Registration.
29. Societies to be body corporate.
30. Probationary Societies.
31. Cancellation of notice of deferment.
32. Pre-cooperative groups.
33. Appointment for pre-cooperative groups.
34. Recognition and Registration of pre-cooperative groups.

## **PART VI**

### RIGHTS AND LIABILITIES OF MEMBERS

35. Restriction regarding members and societies liabilities.
36. Vote of members.
37. Rights of minors.
38. Contract with minors.
39. Restriction regarding shares.
40. Liability of a member.
41. Liability of past members.
42. Liability of the estates of deceased member.
43. Membership of companies.

## **PART VII**

### DUTIES OF REGISTERED SOCIETIES

44. Duties of Registered Societies.
45. Power to make by-laws.
46. Amendment of the by-laws of registered society.
47. By-laws of a registered society to bind members.

- 48. Accounts and Audit.
- 49. Registrar may require bank to produce information.
- 50. Communications of defects in the operations of a registered society.
- 51. Returns to be made by registered societies.

### **PART VIII**

#### PRIVILEGES OF REGISTERED SOCIETIES

- 52. Defect in the constitution not to render act of a registered society invalid.
- 53. Disposal of produce to or through a registered society.
- 54. Creation of charges in favour of registered societies.
- 55. Charges and set-off in respect of share or interest of members.
- 56. Shares or interest not liable to attachment.
- 57. Transfer of interest on death of a member.
- 58. Proof of entries in societies books.
- 59. Exemption from compulsory registration of instruments relating to shares and debentures of registered society.
- 60. Power to exempt from duty or tax.

### **PART IX**

#### MANAGEMENT OF REGISTERED SOCIETIES

- 61. General meeting.
- 62. Establishment of Board.
- 63. Constitution of the Board.
- 64. Powers of the Board.
- 65. Restriction relating to members of Board.
- 66. Suspension and election of the new Board.
- 67. Powers of the Registrar.
- 68. Powers of persons appointed under section 67.

### **PART X**

#### PROPERTY AND FUNDS OF REGISTERED SOCIETIES

- 69. Revenue of Registered Societies..
- 70. Management of the revenue and funds of registered societies.
- 71. Restriction on loans.

- 
- 72. Restriction on borrowing from non-members.
  - 73. Investment of funds.
  - 74. Inspection Fund.
  - 75. Financial Provisions.
  - 76. Dividends and Bonus.
  - 77. Reserve Fund.
  - 78. Distribution of Balances.
  - 79. Contribution for charitable, educational and medical purposes.

### **PART XI**

#### CREATION AND REGISTRATION OF CHARGES

- 80. Registration of charges.
- 81. Duty of society to register charges created by society.
- 82. Duty of society to register charges existing on property acquired.
- 83. Register of Charges.
- 84. Endorsement of certificate of registration on debentures.
- 85. Entry of satisfaction and rectification of register.
- 86. Enforcement of Security.
- 87. Copies of instrument creating charges to be kept by society.
- 88. Society's register of charges.
- 89. Right to inspect copies of instruments creating mortgages, charges and society's register of charges.

### **PART XII**

#### INSPECTION OF AFFAIRS

- 90. Enquiry by Registrar.
- 91. Inspection.
- 92. Costs of Inquiry.
- 93. Surcharge.

### **PART XIII**

#### AMALGAMATION AND DIVISION

- 94. Amalgamation of Societies.
- 95. Defects or irregularity in notice, etc.
- 96. Division of Societies.

**PART XIV**

## DISSOLUTION OF SOCIETIES

- 97. Dissolution.
- 98. Cancellation of registration of society.
- 99. Appeal against cancellation of registration.
- 100. Effects of cancellation of registration.
- 101. Winding up.
- 102. Powers of the liquidator.
- 103. Powers of the Registrar to control liquidation.
- 104. Power to stay or restrain proceedings against society.
- 105. Avoidance of disposition of property, after cancellation.
- 106. Avoidance of attachment, etc.
- 107. Power of Registrar to assess damages against delinquent promoters.
- 108. Power to arrest absconding promoter, officer, etc.
- 109. Debts of all description may be proved.
- 110. Where society is insolvent.
- 111. Preferential payments.
- 112. Fraudulent preference.
- 113. Liabilities and Rights of certain fraudulent preferred persons.
- 114. Effects of floating charge.
- 115. Disclaimer of onerous property in case of society wound up.
- 116. Restriction of rights of creditor as to execution or attachment in case of society being wound up.
- 117. Duties of court as to goods taken in execution.
- 118. Courts not to have jurisdiction in dissolution of societies.
- 119. Preservation of books and records.

**PART XV**

## OFFENCES

- 120. Offences.
- 121. Penalty for soliciting violation of contracts.
- 122. Offences by officer of society being wound up.
- 123. Prohibition of use of the word "Co-operative"

**PART XVI**

## MISCELLANEOUS

- 124. Prosecutors.
- 125. Code of conduct.

- 126. Power to exempt societies from conditions of registration.
- 127. Appointment of special members to committees.
- 128. Terms of appointment and powers of special members.
- 129. Fees.
- 130. Recovery of sums due to Government.
- 131. Rules.
- 132. Power of Registrar to make regulations.
- 133. Certain laws not to apply.
- 134. Transitional Provisions.

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**SCHEDULE**

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No. 20 OF 2003

I ASSENT,  
*Benjamin W. Mkapa*  
 President  
 30<sup>th</sup> January, 2004.

**An Act to make better provisions for the formation, constitution, registration and operation of cooperative societies, and for other matters incidental to or otherwise connected with those purposes.**

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I  
 PRELIMINARY

1. This Act may be cited as the Cooperative Societies Act, 2003 and shall come into operation on such date as the Minister may, by notice published in the *Gazette*, appoint.

Short title  
 and  
 commence-  
 ment

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

Interpreta-  
 tion

“agricultural inputs” means supplies needed for agricultural production and includes building materials, fertilizer, dip, veterinary preparations, seed, animal feeding stuffs, breeding stock, draft animals, planting material, farm implements, land tools, fencing material, petroleum products and other supplies and equipment normally used in agricultural production;

“agricultural produce” means the produce of farms, gardens orchards, greenhouses and forests, poultry, beekeeping and other animal products and includes dairy produce and all the products of fish and fishing;

"agricultural society" means a society whose principal object is the business of supplying inputs for agricultural crop production, the purchasing, processing, marketing and distribution of agricultural produce;

"apex" means a society the membership of which is restricted to secondary societies and which is established to facilitate the operations of all primary and secondary societies;

"annual net surplus" means such portion of the total income received or accrued during any year, as remains after deductions have been made from it in respect of all recurrent expenditure incurred during that year and after adequate provisions have been made for bad debts, depreciation, taxation and losses;

"annual net balance" means such portion of the net surplus for any year as remains after deductions have been made from it in respect of the reserve fund, the share transfer fund and such other appropriations as it may be necessary or desirable to make for the proper conduct of the society's business, and after a dividend (if any) has been paid on the share capital;

Act No. 1  
of 1995

"the Bank" means the Bank of Tanzania established under the Bank of Tanzania Act;

"bank" means a cooperative bank registered at the secondary or tertiary Society level;

"basic units" means localities within the area of operation of a society from which delegates to the General Meeting can be drawn;

"Board" means the governing body of a registered society to whom the management of its affairs is entrusted;

"bonus" means such portion of the annual net balance as may be distributed to members in consideration and on the basis of their 'patronage of the society's business or their participation in such business;

"common need" means the need which is common to all members of a registered society;

"company" means a company registered under the Companies Ordinance any successor legislation;

"cooperative financial institution" means a society registered to render financial service;

"Cooperative College" means any Institution which offers cooperative Education;

"cooperative society" means an association of persons who have voluntarily joined together for the purpose of achieving a common need through the formation of a democratically controlled organization and who make equitable contributions to the capital required for the



formation of such an organization, and who accept the risks and the benefits of the undertaking in which they actively participate;

"Corporation" means the Cooperative Audit and Supervision Corporation established under the Cooperative Audit and Supervision Act, 1982;

"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 individual members who is elected or appointed to attend and vote at a meeting of delegates; and

(b) in the case of a society which is itself a member of another society, the representative of the former elected or appointed to attend and vote at a meeting of the latter society;

"dividend" means the sum paid on the share capital invested in a society;

"economic viability" means the ability of society to conduct its affairs as provided for in the rules;

"Federation" means a cooperative society whose members are apexes, specialized primary and, secondary cooperative societies;

"Financial Cooperative" refers to a non bank financial institution whose primary activity is to furnish secured or unsecured loans to households, smallholder producers and small and micro-enterprises of rural and urban sectors;

"Fund" means the Inspection Fund established under section 74 of this Act;

"industrial society" means a registered society whose principal objectives are manufacturing or making or servicing or assembling of industrial goods and whose members are respectively manufacturers, craftsmen, artisans, industrial workers and apprentices;

"joint enterprise" means an association of two or more societies which join together for a purpose of operating an economic enterprise;

"member" includes a person or a registered society joining in the application for the registration of a society, and a person or a registered society admitted to membership after registration in accordance with the by-laws and rules made under this Act;

"Microfinance companies" also known in its acronym MFCs means non bank financial institutions with substantive core capital whose primary activity is to furnish secured and unsecured loans to households, smallholder producers and small and microenterprises both in rural and urban areas;

- Cap. 185 "Minister" means the Minister responsible for cooperatives;  
 "officer" means any officer of a society and includes chairman, vice-chairman, secretary, treasurer, member of a committee, general manager, chief accountant, or any other person empowered under the rules or the by-laws to act on behalf of registered society;  
 "Pre-cooperative groups" means organizations of an economic and social nature set up voluntarily by individuals having common interests and working together as a society;  
 "primary society" means a registered society whose members are individual persons or an association of such individual persons and any cooperative body other than a body registered under the Companies Act and includes a joint enterprise where all its members are primary societies;  
 "probationary societies" means the cooperative society which has not fulfilled the compliance of registration as specified under section. 30 of this Act;  
 Act No. 9 of 1985 "Prosecutor" means a government officer entrusted with duties of prosecuting cases originating from cooperative societies;  
 "registered society" means a cooperative society registered or deemed to have been registered under this Act and includes a probationary society;  
 "the Registrar" means the Registrar of cooperative societies appointed under section 10 of this Act, and includes, where appropriate, the Deputy Registrar or Assistant Registrars;  
 "savings and credit society" means a registered society whose principal objects are to encourage thrift among its members and to create a source of credit to its members at a fair and reasonable rate of interest;  
 "school society" means a society the membership of which is restricted to the pupils of a school;  
 "secondary society" means a registered society whose membership is open only to primary societies which are its members;  
 "society" means a cooperative society registered under this Act and includes a primary society, a secondary society, apex and the Federation;  
 "specialized skills" means an expertise possessed by any person in such particular field as may be described in the rules.

Coopera-  
 tive soci-  
 eties to be  
 registered  
 in accor-  
 dance  
 with this  
 Act

**3. Cooperative Societies shall be registered in accordance with this Act and the rules.**

**PART II**

## THE OBJECTS AND PROTECTION OF COOPERATIVE SOCIETIES

**4.-(1)** A society which has its objects in the promotion of the economic and social interests of its members by means of common undertaking, based upon mutual aid and which conforms to the cooperative principles or a society which is established for the purpose of facilitating operations of societies, may be registered as a cooperative society under this Act with or without limited liability.

Societies  
which  
may be  
registered

(2) Except as otherwise provided for in this Act, cooperative principles and methods used in the operation and administration of a society shall be-

- (i) voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination;
- (ii) democratic organizations controlled by their members who actively participate in setting their policies and making decisions, men and women serving as elected representatives are accountable to the membership. In primary cooperatives, members have equal voting rights, and cooperatives, at other levels are also organized in a democratic manner;
- (iii) members contribute equitably to, and democratically control the capital of their cooperative;
- (iv) autonomous self help organizations controlled by their members, if they enter into agreement with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy;
- (v) the organizations provide education and training for their members, elect representatives, managers and employees so they can contribute effectively to the development of their cooperatives;
- (vi) organizations inform the general public, particularly young people and opinion leaders about the nature and benefits of cooperation;
- (vii) organizations serve their members most effectively and strengthen the cooperative movement by working through local, national and international structures;
- (viii) organizations work for the sustainable development of their communities through policies approved by their members.

Duty of  
Govern-  
ment to  
coopera-  
tive soci-  
eties

5. The Government shall provide and create conducive social, economic and legal environment for the development and prosperity of cooperative societies.

Minister  
to encour-  
age coop-  
erative  
develop-  
ment

6. The Minister shall take such measures as he deems necessary for the encouragement generally of cooperative development for economic, social and cultural purposes and, human advancement on the basis of self-help and in particular, for the encouragement of the organization of cooperative societies as a means of-

- (a) improving the economic situation of their members;
- (b) contributing to the economy and increased measure of self- reliance and democratic control of economic activity;
- (c) increasing personal and national Capital sources by encouragement of thrift, the prevention of usury and the wise Use of credit;
- (d) raising the level of general and technical knowledge of members of societies.

Responsi-  
bilities of  
the  
Minister

7.-( 1) The Minister may for the purpose of encouraging cooperative development under section 6, take such measures which are not detrimental to the interests of the members as he deems necessary to-

- (a) assist the Organization of cooperative societies among persons or groups of persons who desire to provide themselves with, or to market, commodities or services or both, on a cooperative self help basis;
- (b) facilitate the financing of societies, where necessary for their establishment and operation;
- (c) provide for such advice as may be necessary to assist officers and members of societies to achieve their objects;
- (d) institute inquiry into and collect, classify, analyse information and statistics relating to societies and cooperative development;
- (e) establish or facilitate the establishment of a research service or services for enquiry generally into the operation of societies and analysis of economic, social and other problems as may, be deemed advisable to lead to the encouragement of new or improved methods of cooperative development including-
  - (i) production of agricultural or natural products and the processing and marketing of such products;

- (ii) industrial development, manufacturing and marketing and sale by retail or wholesale;
- (iii) credit, investment and business finance;
- (iv) wholesaling and retailing of goods and services;
- (v) community and welfare services on a cooperative basis;
- (f) issue from time to time such reports and other publications relating to societies and cooperative development as may be deemed advisable;
- (g) provide or authorize such other services as may be necessary in carrying out the provisions of this Act; and
- (h) give directions to the Registrar on matters relating to cooperative development.

(2) The Minister may -

- (a) make consultation with the Minister responsible for Regional Administration or Local Government as the case may be in carrying out some of his responsibilities;
- (b) delegate some of his powers in writing to a Regional Commissioner or Regional Commissioners for specific matters relating to cooperative societies.

(3) The Minister in consultation with the Minister responsible for Higher Education may direct the Cooperative College to teach, conduct research and offer consultancy services, and perform other relevant duties pertaining to cooperative development in the country.

8. The Minister shall disseminate or arrange for the dissemination of, information relating to cooperative and cooperative development in such manner and form as may be found best suited to promote interest in and understanding of cooperative principles and practices with a view to encouraging of the organization of cooperative societies based on self help.

Informa-  
tion on  
coopera-  
tion

9.-( 1) All officers of societies to which this Act applies shall upon request by him furnish the Minister with such information as he may from time to time require for the purposes of this Act.

Persons  
required  
to furnish  
informa-  
tion to the  
Minister

(2) An officer who fails to comply with a request of the Minister under subsection (1), or who knowingly makes a false statement, in relation to any material or information furnished to the Minister, shall be guilty of an offence.

**PART III****APPOINTMENT OF REGISTRAR, DEPUTY REGISTRAR AND ASSISTANT REGISTRAR**

Appoint-  
ment of  
the  
Registrar

**10.-(1)** The President shall appoint a public officer to be the Registrar of Cooperative Societies.

(2) The Registrar appointed under subsection (1) shall have a seal or such device as may be approved by the Minister.

Functions  
of the  
Registrar

**11.-(1)** The functions of the Registrar shall be-

- (a) to register, promote, inspect and advise cooperative societies in accordance with the provisions of this Act;
- (b) to advise the Minister on any matter relating to cooperative societies, and in particular in respect of any assistance, financial or otherwise, which may be required by cooperative societies;
- (c) to encourage the establishment of cooperative societies in all sectors of the economy and to assist cooperative societies to increase their efficiency;
- (d) to provide services designed to assist in the formation, organization and operation of societies and to give advice on cooperative management to all kinds of societies registered under this Act;
- (e) to perform such other functions in relation to the development and well being of cooperative societies such as he may, be directed by the Minister;
- (t) to promote, or facilitate education and training of members and staff of cooperative societies.

(2) The Registrar shall gradually delegate his duties of promoting, advising, educating and training of cooperative societies to the cooperatives on mutual agreement as provided for in the rules.

(3) The Registrar upon consultation with the Assistant Registrar in the region shall collaborate with the Regional Administrative Secretary on issues Pertaining to registration, de-registration and any other matters relating to cooperative societies as prescribed in this Act.

**12.-( 1 )** There shall be a Deputy Registrar who shall be appointed by the President from amongst public officers.

Appoint-  
ment of  
Deputy  
Registrar

(2) The functions of the Deputy Registrar shall be-

- (a) perform such functions and duties as may be directed by the Registrar or as may be required under this Act; or
- (b) upon due authorization exercise any of the functions of the Registrar.

**13.-( 1 )** There shall be such number of Assistant Registrars who shall be appointed by the Minister from amongst Principal Cooperative Officers.

Appoint-  
ment of  
Assistant  
Registrars

(2) Assistant Registrars shall have the duty to assist the Registrar in carrying out his duties and functions under this Act.

#### PART IV

##### FORMATION AND ORGANIZATION OF SOCIETIES

**14.-(1)** The structure of cooperatives shall be made up of Primary societies at the grass root level and the Federation at the top.

Structure  
of the  
Coope-  
rative  
societies

(2) Subject to the wishes of members, the structure may comprise middle societies such as Secondary societies and Apexes.

**15.-( 1 )** A Primary society may be formed by-

Formation  
of  
Societies

- (a) fifty or more persons for agricultural societies; or
- (b) twenty persons or more for savings and credit cooperatives; or
- (c) ten persons or more for specialized skill societies; or
- (d) ten persons or more for other types of cooperative societies.

(2) A person may not be a member of a Primary society unless he has the following qualifications, namely-

- (a) that he has attained the minimum age of eighteen years and is of sound mind;
- (b) that he is following a trade or occupation relevant to the society's object as defined in the by-laws;
- (c) that he has a common need which the society seeks to satisfy;
- (d) that he is capable of paying fees and acquiring shares.

(3) Notwithstanding the provisions of sub-section (2), a person who has the minimum age of fifteen years referred to as a minor may become a member of a cooperative society-

Provided that, such a person shall not be eligible to act as a member of a committee until he has attained the age of eighteen years.

(4) A person who has not attained the age of fifteen years but is attending school may be a member of a school society established for the school.

Societies  
may  
affiliate

**16.-(1)** Primary societies may form Secondary societies and Secondary societies may form Apex societies. A Federation may be formed by Apex societies. Where a Primary or Secondary cooperative society is unable to join into a Secondary or Apex society, due to its nature and/or desire of its members, it may be allowed to become a member of the Federation.

(2) A Financial cooperative society may be formed by savings and credit societies and other types of cooperative societies.

Registrar  
may  
advise  
societies

**17.** Where the Registrar considers that, a Secondary society or Apex society in relation to any area is economically viable, he may advise any Primary society or Secondary society or category of cooperative societies operating within that area to join the Secondary society or Apex society by notice in writing served on the society or category of cooperative societies as the case may be.

Objects of  
Primary  
Societies

**18.** The objects of a Primary society shall be-

- (a) to strive to raise the standard of living of its members;
- (b) to facilitate the operations of the individual members;
- (c) to provide services to its members, including supplying agricultural inputs, collecting, processing and marketing of the products of its members.

Objects  
and Func-  
tions of  
Secondary  
Societies  
and  
Apexes

**19.-(1)** The objects of Secondary societies shall be-

- (a) to facilitate the operation of member Primary societies;
- (b) to provide services to Primary societies as will be provided for in the by-laws of the Secondary societies;



- (c) to collect, process and sell products of member societies;
- (d) to provide consultative services to member societies.

(2) The objects of Apex societies shall be-

- (a) to facilitate the operation of Secondary societies which are its members;
- (b) to provide services to Secondary societies as will be provided for in the by-laws of the Apex societies;
- (c) to collect, process and sell products of member Secondary societies;
- (d) to provide consultative services to member Secondary societies.

**20.**-(1) Where the Federation is formed and registered, shall provide, organize and supervise effective centralized services for the member societies and for cooperative education and training and such other services as may be necessary or expedient for its members.

Objects of  
the  
Federa-  
tion

(2) Without prejudice to the generality of subsection (1), the Federation may perform any of the following functions-

- (a) to render services designed to ensure efficiency and uniformity in the business of its member societies;
- (b) to print, publish and circulate any newspaper or other publication designed to foster or increase interest in cooperative enterprises, principles and practices;
- (c) to coordinate the economic plans of the member societies and to forward them to the Minister for the incorporation in the national plan;
- (d) to carry on, encourage and assist educational and advisory work relating to cooperative enterprise, and without limiting the generality of the foregoing, to advice the government on cooperative education and operating methods and for that purpose may prepare and provide correspondence courses regarding cooperative principles and operating methods and may disseminate information on cooperative development, principles and practices;
- (e) to represent its member societies in international conferences;
- (f) to do any other thing which in its opinion is connected with or is ancillary to the above enumerated objects.

Societies  
may form  
joint  
enterpri-  
ses

**21.-(1)** Where it is necessary or desirable for the efficient operation of a business or economic enterprise that it be operated by two or more societies, such societies may join in an association and form a joint enterprise, subject to the approval and such limitations as the Registrar may generally or in relation to any association of societies or category of them impose, for the purpose of operating and carrying on such a business and the Registrar may register such a body under this Act.

(2) A cooperative society may join with private or public company in the interest of the parties concerned provided that the Registrar shall signify approval in writing; and the agreement shall be registered under this Act.

(3) The societies which form an association for the purpose of operating and carrying on a joint enterprise as provided for under subsection (1), may form a joint Board for the purpose of managing that joint enterprise but such an association shall have no right of separate representation either in the Secondary society or the Federation.

Types of  
Societies

**22.** The Registrar may register the following types of societies-

- (a) agricultural cooperatives which are designed to deal with crop production, purchasing, processing, marketing, distribution, and any such activity as may be provided for in the rules and by-laws;
- (b) savings and credit societies, Financial Cooperatives, Microfinance Institutions, and Cooperative banks whose primary activities are to mobilize savings and furnish secured and unsecured loans or credit to households, smallholder producers and market entrepreneur, micro-enterprises in rural and urban areas;
- (c) consumer cooperatives designed to deal with wholesale and retail business amongst members;
- (d) industrial cooperatives for production, manufacturing and sale of goods;
- (e) housing cooperative designed to deal with building, construction and housing programmes for members;
- (f) livestock cooperative societies designed to deal with the needs of members in animal husbandry, livestock keeping and diary farming;
- (g) fisheries cooperative societies designed to deal with fishing, processing and marketing of fish and other sea products;
- (h) producers' cooperatives for agricultural, forestry or other natural products;

- (i) mining cooperatives designed to deal with mining operations and mineral marketing; and
- 0) such other society as may be established.

## PART V

### REGISTRATION OF SOCIETIES

**23.**-(1) 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 the minimum number of persons each of whom is qualified for membership as provided for under section 15 of this Act.

Condi-  
tions for  
Registra-  
tion

(2) No Secondary society or Federation shall be registered under this Act unless it consists of at least twenty or ten respectively members as registered societies.

**24.**-(1) Application for registration shall be made to the Registrar in the prescribed form and shall be accompanied by -

Applica-  
tion for  
registra-  
tion

- (a) four copies of the proposed by-laws of the society, signed by the applicant;
- (b) a report of a feasibility study or project write-up indicating the viability of the society; and
- (c) such other information in regard to the society as the Registrar may require.

(2) The application forms shall be signed by-

- (a) if the application is for Primary society registration, the forms must be signed by fifty persons or such number of persons as the Registrar may approve, who are qualified in accordance with the requirement of section 15;
- (b) if the application is for Secondary society registration, the forms must be signed by authorized persons of at least twenty registered Primary societies;
- (c) if the application is for Apex society registration the forms must be signed by authorized persons of at least five Secondary societies and specialized primary societies;
- (d) if the application is for registration of the Federation, the forms must be signed by ten registered Secondary Apex or specialized Primary societies.

**25.**-(1) The Registrar shall after receiving applications under section 24 consider and decide on an application for registration within ninety days from the date of the application.

Registra-  
tion

(2) The Registrar may before effecting registration to any society or its by-laws require the society to amend the by-laws so as to conform with such directions as he may give in that behalf

(3) The society shall upon registration pay such registration fees as may be prescribed by the Registrar.

(4) No society shall be registered unless the Registrar is satisfied that-

- (a) the volume of business from members of the society is sufficient to cover its costs;
- (b) Proper provision has been made for the financing of the society;
- (c) no society exists in the same locality performing similar activities for people of the same class or occupation, and that the registration of another society would serve no useful purpose.

Refusal of  
registra-  
tion

**26.**-(1) The Registrar may, if he is satisfied that the society has failed to meet the prescribed requirements for registration, refuse to register the society.

(2) Any person who is aggrieved by the decision of the Registrar for refusing to register a society under subsection (1) shall within sixty days from the date of notification of the decision of the Registrar, appeal to the Minister whose decision shall be final.

Certificate  
of  
Registra-  
tion

**27.** Where the Registrar approves registration he shall issue a certificate of registration to the society, together, with the copy of the by-laws certified by him as having been approved and registered.

Evidence  
of  
Registra-  
tion

**28.** A certificate of registration signed by the Registrar shall be conclusive evidence that the society mentioned in that certificate is duly registered unless it is proved that the registration of the society is cancelled.

Societies  
to be  
body cor-  
porate

**29.**-(1) The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings, to do all things necessary for the purposes laid down in its constitution.

(2) All records or papers of the society, and seal shall not be removed from the premises of the society except in the accordance with the provisions of this Act.

**30.-(1)** Where by reason of non-compliance with any provision of this Act or of the rules or any direction given by him, the Registrar, is unable to register a society but is satisfied that measures can be taken by the applicants to comply with such provision or direction, he may, by notice in writing -

Probatio-  
nary  
Societies

- (a) defer the registration of that society pending compliance with such provision or direction;
- (b) transmit the notice of deferment to the persons by whom or on whose behalf application of registration is made.

(2) A notice of deferment shall, subject to the provisions of this section and any condition specified in that notice, entitle the society in respect of which it is issued to operate as a registered society.

(3) A society entitled to operate as a registered society under the sub-section (2), shall be termed as Probationary society and shall, while so entitled to operate, be deemed to be a body corporate with perpetual succession and common seal, and with power to hold movable and immovable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted:

Provided that, no Probationary society shall be entitled to operate as such society for a period exceeding two years and if after that period the Registrar is satisfied that a society registered under this section has failed to comply with any provision of this Act or any direction given under subsection (1), he shall cancel a notice of deferment of that Probationary society.

(4) Where a Probationary society is duly registered under section 25, its certificate of registration shall supersede its notice of deferment which shall thereafter cease to have effect and the society shall be deemed for all purposes to have been registered from the date on which the notice of deferment in respect thereof was issued by the Registrar.

**31.-(1)** The Registrar may cancel a notice of deferment by notice in writing to be addressed to the Probationary society concerned and such cancellation shall from the date thereof, operate as a refusal to register the society for the purpose of section 25.

Cancell-  
ation of  
notice  
deferment

Provided that, such cancellation shall not affect the validity of any transaction entered into by or with the society while notice of deferment was in force.

(2) Where the notice of deferment of a Probationary society is cancelled under subsection (1) of this section, the Registrar may appoint a competent person to be a liquidator of the society.

(3) The Provisions of section 3, section 35 subsection (3) and 4, section 23, 25, 28, subsection (2) and (3) of section 45, 51, 58, 76, 92, 95, 96, and 98 shall not apply to a Probationary society.

(4) A Probationary society shall cause the fact that it is Probationary society to be stated in legible Roman letters in all bill heads, letter papers, notices, advertisements and other official publications of the society and on a signboard in a conspicuous position outside any premises in which it operates.

(5) A Probationary society which contravenes any of the provisions of subsection (4) and every office of a Probationary society which contravenes any such provisions, commits an offence and shall on conviction be liable to a fine of ten thousand shillings and in the case of a continuing offence, to a fine of one thousand shillings for each day during which the default continues.

Pre-coo-  
perative  
groups

**32.**-(1) Pre-cooperative groups shall be formed by a declaration in writing during a constituent meeting of at least five persons, which shall be submitted to the Registrar.

(2) Pre-cooperative groups shall be the only representatives to act for and on behalf of their members who shall have exclusive rights to their services.

(3) Pre-cooperative groups shall adopt their by-laws, which shall be in writing and shall have Provisions providing for-

- (a) objects, main activities, area of jurisdiction, name, head office and duration of the groups;
- (b) duties, of its officials, duration of their term of office and their mode of appointment;

- (c) conditions for the admission and withdrawal of members;
- (d) the organization and functioning of the groups, in particular the appointment of officials, how decisions on loan applications are taken, investment decision, amendment of by-laws the dissolution of the groups or its change of legal status;
- (e) the extent of members' activities with the groups;
- (f) the liability of a member in respect of the debts of the groups and the basis on which it is calculated.

**33.-(1)** Each pre-cooperative group shall appoint a delegate in charge to represent it in all civil matters within the limits of the powers conferred on him by the regulations and discussions of the said groups;

Appoint-  
ment for  
pre-coop-  
erative  
groups

(2) Officials of each pre-cooperative group shall keep simplified accounts to permit the periodic assessment of the reserves of the said groups and justify any changes. The intervals between such assessments shall not exceed two years;

(3) Officials of each. pre-cooperative group shall keep a register of the members and accounts of individual contributions to the reserves of the said groups.

**34.-(1)** The Registrar shall upon being satisfied of the fulfillment of the conditions under section 33, issue a letter of recognition of the pre-cooperative group formation and register the pre-cooperative group for a term not exceeding three years.

Recogni-  
tion and  
Registra-  
tion of  
pre-  
coopera-  
tive  
groups

(2) A pre-cooperative group may become a cooperative society after fulfilling conditions of registration of a cooperative society-

Provided that, if the pre-cooperative group fails to fulfill conditions of registration within three years, the letter of recognition shall be cancelled.

(3) For the purpose of this Act, Savings and Credit Associations (SACAS) are recognized as pre-cooperative groups.

## PART VI

### RIGHTS AND LIABILITIES OF MEMBERS

**35.-(1)** No person shall exercise the rights of a member unless or

Restricti-  
on regard-  
ing mem-  
bers and  
societies  
liabilites

until he has made such payment to the society in respect of shares, entry fees and any other dues as may be prescribed by the rules or By-laws of the society.

(2) No person other than a registered society shall be a member of more than one registered society with similar objectives except with the sanction of the Registrar.

(3) The liability of a Primary society, joint venture, Secondary society, Apex and Federation shall be limited.

Vote of  
members

**36.** Every member of a registered society shall have one vote only as a member in the affairs of the society and shall be entitled to attend the general meeting of the society and to record his vote in regard to any matter for decision of such meeting.

Provided that, the by-laws of a Secondary society or a Federation may provide for the attendance at general meetings of delegates from the member societies or other bodies who are members of such societies or Federation and the member societies and such other bodies shall each be entitled to such number of votes and to vote in such manner, as may be prescribed by the rules and the by-laws of such societies or Federation.

Rights of  
minors

**37.**-(1) A society may receive money on share account, or on deposit account, from or for the benefit of a minor, and it shall be lawful for the society to pay such minor dividend or interest which may become due on such shares of deposits.

(2) Any payment or deposit made on behalf of a minor pursuant to subsection (1) may, together with any dividend or interest, be paid to the guardian of that minor for the use of the minor.

(3) The receipt of any minor or guardian for money paid to him under this section shall be sufficient discharge of the liability of the society in respect of that money.

(4) The Minister may make rules prescribing the rights that a minor may have in a society.

Contract  
with  
minors

**38.** Notwithstanding the provisions of this Act or of any other written law to the contrary that, any person being a minor who has been admitted as a member of a society shall not be prevented from executing any instrument or giving any acquaintance necessary to be executed or given under this Act or the rules, and any contract entered into by such

Cap. 433



person with the society, whether as principal or as surety, shall be enforceable at law as against such person.

**39.**-(1) No member other than a registered society shall hold more than one fifth of the share capital of any cooperative society.

Restricti-  
on regard-  
ing shares

(2) A member of a registered society shall not transfer any share held by him or his interest in the capital of the society or any part thereof unless-

- (a) such a member has held such share or interest for not less than five years;
- (b) the transfer is made to the society or to a member of the society or to a person whose application for membership has been accepted by the committee; and
- (c) such a person has ceased to have any of the qualification laid down in section 15.

(3) No transfer of a share or other interest shall be valid and effective unless -

- (a) such transfer and the name of the transferee has been registered on the directions of the committee of the society;
- (b) the valuation thereof has been done.

**40.**-(1) Except as provided for in subsection (2) of this section, the liability of a member, if any, unpaid on the shares held by him, and his liability shall be known as liability limited by shares.

Liability  
of a  
Member

(2) Where in the by-laws of the society the amount of liability of a member is expressed to be greater than the nominal value of the share held by him and such amount is expressly stated that the liability of such a member shall extend to such greater amount, and his liability shall be known as liability by guarantee.

**41.** The liabilities of a past member for the debt of a registered society as they existed at the time when he ceased to be a member shall, notwithstanding the provisions of any written law to the contrary, continue for such period as the by-laws of the society shall provide from the date of his ceasing to be a member.

Liability  
of past  
member

Provided that, in the case of a cooperative society with limited liability, if the first audit of the accounts of such society after ceasing to be a member discloses that the society is solvent, the financial liability of such past member shall cease forthwith.

Liability  
of estates  
of  
deceased  
member

**42.** The estate of a deceased member, shall, notwithstanding the provisions of any written law to the contrary be liable for a period of one year from the time of his death for the debt of the registered society as they existed at the time of his death;

Provided that, in the event a society is wound up immediately after a period of two years, the liability of such estates of the deceased or past member shall continue until the liquidation proceedings of the society are completed but such liability shall extend only to the debt of the society as at the time of his death or of his ceasing to be a member.

Member-  
ship of  
company

Cap. 212

**43.-(1)** No company incorporated or registered under the Companies Ordinance and no unincorporated or registered body of persons shall be entitled to become a member of a registered society except with the written permission of the Registrar and subject to such rules as may be made under this section.

(2) A company registered under the Companies Ordinance may, by a special resolution as defined in that Ordinance, and with the prior approval of the Registrar, determine to convert itself into a cooperative society.

## PART VII

### DUTIES OF REGISTERED SOCIETIES

Duties of  
registered  
societies

**44.** Every registered society shall -

- (a) have an address registered in accordance with the rules, to which all notices and communications shall be sent, and shall send to the Registrar a notice of every change thereof;
- (b) keep a copy of this Act, Rules and its by-laws open to inspection free of charge, at all reasonable times at the registered address of the society;
- (c) maintain a register of its members in such manner as may be prescribed by the rules and shall enter therein any particulars as prescribed by the rules.

Power to  
make by-  
laws

**45.-(1)** Every registered society shall have power to make by-laws for any such things as are necessary or desirable for the purpose for which such a society is established.

(2) Without prejudice to the generality of subsection (1), every registered society may make by-laws prescribing -

- (a) the name and registered address of the society;
- (b) the area of the operation of the society;
- (c) the object for which the society is established;
- (d) the purpose to which the funds of the society may be applied and the mode of custody and investment of such funds;
- (e) the qualifications for membership of the society, the terms of admission of members shares, the entrance fees, and the mode of election;
- (f) the nature and extent of the liability of members;
- (g) the withdrawal and expulsion, suspension of members and the payment, if any to be made to such members;
- (h) the transfer of shares or interest of members;
- (i) the manner of conducting meetings of the society and the powers of such meetings;
- (j) the appointment, suspension and removal of members of the Board and officers and the powers and duties of the Board and officers;
- (k) the authorization of an officer to sign documents and to use the seal on behalf of the society.

(3) Where the objects of the registered society include the creation of funds to be lent to the members, additional by-laws shall be made in respect of -

- (a) conditions on which loans may be made to members which shall include-
  - (i) the rate of interest;
  - (ii) the maximum period which can be granted for the repayment of a loan;
  - (iii) the maximum amount of money which may be lent to a member;
  - (iv) the purpose of loans;
  - (v) security for payment;
  - (vi) the consequences of default in payment of any sum due on account of shares or deposits or loans and the consequences of failure to use a loan for the purpose for which it was granted.
- (b) the disposal of the annual net surplus;

- (c) other matters consonant with regulations pertaining to Microfinance Companies and Financial Cooperatives.

(4) A by-law made under this section may empower a registered society to impose a fine upon a member of the society for the breach of the by-law which fine shall be recoverable by the society as a civil debt:

Provided that, no fine may be imposed under the by-laws, on any member unless-

- (a) the member on whom the fine is intended to be imposed has been served with a notice, in writing, of the intention to impose the fine; and
- (b) the member has failed to show cause within the time prescribed in the notice as to why the fine may not be imposed on him.

Amend-  
ment of  
the by-  
laws of a  
registered  
society

**46.-(1)** Any registered society may, subject to the provisions of this section amend its by-laws and submit the amendments to the Registrar for registration.

(2) The Registrar shall -

- (a) if he is satisfied that the amendments of the by-laws are not contrary to this Act, register the amendments; or
- (b) refuse to register the amendments and notify the society accordingly.

(3) Where the Registrar registers an amendment of the by-laws of a registered society, he shall issue to the society a copy of the amendments certified and sealed by him, and such copy so certified and sealed shall be conclusive evidence of the fact that the amendments have been duly registered.

(4) An amendment which changes the name of the society shall not affect any right or obligation of the society or any of its members or past members, and any legal proceedings pending may be continued by or against the society under its new name.

(5) No amendment of the by-laws of a registered society shall be valid until that amendment has been registered under this Act.

(6) A society may, within two calendar months from the date of notification to it by the Registrar of his refusal to register an amendment of any by-laws appeal to the Minister against that refusal.

47.-(1) Every by-laws of a registered society shall upon registration be binding upon the society and the members thereof to the same extent as if the by-law was signed by each member of the society and contained covenant by each such member to observe the provisions of the by-laws.

By-laws  
of a regis-  
tered soci-  
ety to  
bind  
members

(2) Any dispute arising out of the interpretation of a by-law of registered society shall be referred to the Registrar.

48.-(1) Every registered society other than a Primary society shall, with the approval of the general meeting, employ an Internal Auditor or such number of Internal Auditors as are necessary for the efficient checking of the accounts of the society.

Accounts  
and Audit

(2) Every registered society shall, keep proper accounts and other records in relation thereto and shall within three months prepare in respect of every year a statement of accounts in a form which conforms to the best accounting standards.

(3.) The accounts of every registered society shall be audited at least once in a year by the corporation or any such competent and registered auditor appointed by the general meeting and approved by the Registrar.

(4) As soon as the annual accounts of a registered society have been audited the society shall cause to be sent to the Registrar a copy of the audited balance sheet and statement of income and expenditure prepared in respect of that year together with any report made by the auditors thereon.

(5) The auditor's report referred to under subsection (4) shall include an examination of the balance sheet and related income statement and a valuation of assets and liabilities of the registered society.

(6) Where the accounts of a society have been audited and adopted by the general meeting of the society and approved in accordance with

sub- section (3), they shall be conclusive, except as regards any error discovered therein within six months following the date of such approval and except as regards any allegation of fraud, and whenever any such error is discovered within that period the accounts shall forthwith be corrected with the approval of the Registrar and thereafter shall be conclusive.

(7) In the event a society fails to prepare a statement of accounts within a period of three months in respect of the business of its previous financial year, the members of the relevant committee of the society shall lose their membership of the committee and shall not be eligible for re-election to the committee for the next six years.

(8) Without prejudice to the generality of subsections (1), (2), (3), (4), (5) and (6), the management board shall be held responsible for any loss occasioned to the society and every officer who is a part to the loss commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings and in addition shall be required to compensate the loss so occasioned.

Registrar  
may  
require  
bank to  
produce  
informa-  
tion

49. Notwithstanding anything in any other written law, the Registrar may, if he considers it necessary to do so require any bank-

- (a) to furnish any information regarding the transactions of any, registered society with the bank;
- (b) to produce a copy showing the accounts of the society with the bank from the ledger kept by the bank;
- (c) to produce any cheques paid to the credit of the society or endorsed by the society.

Communi-  
cation  
of defects  
in the  
operations  
of a regis-  
tered soci-  
ety

50.-(1) If any audit, inquiry or inspection made under this Act discloses any defect in the working of a registered society, the Registrar shall bring such defect to the notice of the society and if the society is affiliated to another registered society he shall bring such defect to the notice that other society as well.

(2) The Registrar may make an order directing the society or its officers to take such action as shall be specified in the order and within such time as he may direct in that order as will remedy any defect disclosed in the audit, inquiry or inspection and the society shall comply without delay.

**51.-(1)** The registered society shall submit an annual return to the Registrar.

Returns to be made by registered societies

(2) The Registrar may prescribe the returns to be submitted by registered societies to the Registrar and the persons who have to submit those returns and the form in which those returns are to be made.

## PART VIII

### PRIVILEGES OF REGISTERED SOCIETIES

**52.** No act of a registered society or of any persons purporting to act on behalf of the society in good faith, shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the registered society or of a committee of such registered society or in the appointment or election of an officer of such a society on the ground that such officer was disqualified for his appointment.

Defect in the constitution not to render act of a registered society invalid

**53.-(1)** A registered society which one of its objectives is the disposal of any article which is the produce of agriculture or animal husbandry, shall provide in its by-laws-

Disposal of produce to or through a registered society

- (a) that every such member who produces any such articles has entered into an implied contract to dispose of the whole or any specified amount, proportion or description thereof to or through the society; and
- (b) that any member who is proved or adjudged to be guilty of a breach of by-laws 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) A contract implied in the by-laws of a registered society under subsection (1)(a) shall create in favour of the registered society a first charge upon all articles as referred to under subsection (1) whether these articles have been produced or are about to be produced.

(3) In any legal proceedings arising out of a contract implied in the by-laws of a registered society under subsection (1)(a), it shall not be a defence that the contract is in restraint of trade.

(4) A member of a registered society shall be deemed not to have contravened the by-laws of the society which requires him to deliver any produce to the society if the failure to deliver such produce to the society was due to the fact that he had, prior to becoming a member of the society, contracted to deliver the produce to some other person.

(5) Every person who applied for membership of a registered society shall, if required so to do, disclose in his application particulars of all contracts made by him for the delivery of any produce to any other person.

Creation  
of charges  
in favour  
of regis-  
tered soci-  
eties

**54.-(1)** Subject to any prior claim of the government on the property of the debtor and to the lien or of claim of a landlord in respect of rent or any money recoverable as rent and in the case of immovable property to any prior registered charge thereon-

(a) any rent or outstanding demand payable to a registered society by any member or past member shall be a first charge on all produce of agriculture, animal husbandry, fisheries or any industry and generally all produce of labour and things used in connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given to him by the society:

Provided that, nothing herein contained shall affect the claim of any bonafide purchaser or transferee without notice;

(b) any outstanding demands or dues payable to a registered housing society by any member or past member in respect of rent, shares, loans or purchase money or any other rights or amounts payable to such society shall be first charge upon his interest in the immovable property of the society.

(2) No person shall transfer any property which is subject to a charge under subsection (1) except with the previous permission in writing of the cooperative society which holds the charge.

Charges  
and set-  
off in  
respect of  
share or  
interest of  
members

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

Shares or  
interest  
not liable  
to attach-  
ment

**56.** Subject to the provisions of section 55, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of



any debt or liability incurred by such member, and the official receiver under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest.

**57.**-(1) On the death or declaration of permanent insanity of a member, a registered society may transfer the share or other interest of the member to the person nominated in accordance with the by-laws of the society or if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the member or may pay to such nominee, heir or legal representative as the case may be, a sum representing the value of such member's share or interest, as ascertained in accordance with the rules or by-laws.

Transfer  
of interest  
on death  
of a mem-  
ber

Provide that-

- (a) in the case of a registered society with unlimited liability such nominee, heir, or legal representative, may require payment by the society of the value of the shares or interest of the deceased member ascertained as aforesaid;
- (b) in the case of a society with limited liability, the society may transfer the share or interest of the member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the society, or on his application within six months of the date of the death or declaration of permanent insanity to any person specified in the application who is so qualified.

(2) Any registered society shall pay other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.

(3) All transfer and payment made by a registered society in accordance with the provisions of this section shall be valid and effective against any demand made upon the society by any other person.

(4) The Registrar shall be consulted for arbitration in case of misunderstanding between a member and a society under this section.

**58.**-(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be presented by the rules, be received in any suit or legal proceedings civil or criminal as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters,

Proof of  
entries in  
societies  
books

transactions and accounts therein recorded in every case where and to the same extent as, the original entry is admissible.

(2) No officer of any registered society shall, in any legal proceedings to which the registered society is not a party be compelled to produce any of the society's books the contents of which can be proved under subsection (1) or to appear as a witness to prove any matter, transaction or accounts therein recorded unless the court for special reasons so directs.

Exemption from compulsory registration of instruments relating to shares and debentures of registered society

**59.** Subject to the provisions of Part XI, nothing in any written law requiring registration of instruments relating to shares and debentures shall apply to-

- (a) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or any part of immovable property; or
- (b) any endorsement upon or transfer of any debentures issued by any such society; or
- (c) any debentures issued by such society and not creating, declaring, assigning, limiting or extinguishing any right, title, or interest to or an immovable property except in so far as instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures.

Power to exempt from duty or tax

**60.-(1)** Notwithstanding the provisions of any law to the contrary, the President may, by notice in the Gazette, in the case of any registered society or class of registered societies reduce or remit-

- (a) the duty, tax or value added tax which under any laws for the time being in force may be payable in respect of the accumulated funds of the society or of the dividends or other payments received by the members of the society on account of the accumulated funds;
- (b) the stamp duty payable under the Stamp Duty Act, on instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society of any class of such instruments, are respectively chargeable;
- (c) any registration fee payable under any law.

(2) Nothing, in subsection (1) shall be construed as restricting or limiting any power conferred on any authority to grant exemption from any tax duty, stamp duty, value added tax or fee by the written law imposing the tax, duty, stamp duty, value added tax or fee.

Cap. 199

## PART IX

### MANAGEMENT OF REGISTERED SOCIETIES

**61.-(1)** The control of the affairs of a registered society shall be vested in the general meeting summoned in accordance with the by-laws of the society and the rules.

General  
meeting

(2) Without prejudice to the generality of the provisions of subsection (1), the general meeting shall have the following functions-

- (a) the election, suspension or removal of members of the Board
- (b) the consideration and adoption of the annual balance sheet;
- (c) the disposal of sums available for distribution;
- (d) determining the amount of honoraria, if any, for unsalaried officers and Board members;
- (e) receiving the report from the Board;
- (f) the acquisition or disposal by the society of all immovable property and of movable property of such value as provided for in the rules.

(3) Every society shall hold a general meeting at least once in a year.

(4) The Registrar or any other person authorized by him may summon a special general meeting of the society in such a manner and at such a time and place as he may direct. The Registrar may also direct what matters shall be discussed at the meeting. Such meeting shall have all the powers and subject to the same rules as meeting called in accordance with the by-laws of the society.

(5) A special general meeting shall be held by a society where -

- (a) at least one third of members signify in writing their intention to hold such meeting;
- (b) the Board may cause to be convened a Special General Meeting;

Provided that, where the procedure to hold a special general meeting under paragraph (b) above fails, an application to hold such a meeting shall be lodged to the Registrar.

(6) Notwithstanding the provisions of this Act, a registered society may owing to its size and scope provided in its by-laws for a constitution of a meeting of delegates in place of general meeting through the creation of basic units to attend general meeting of that society for and on behalf of members.

(7) Where for the purpose of this Act any question arises as to whether-

- (a) a person is following a relevant trade to the society;
  - (b) a person is a resident in the area of operation;
  - (c) two or more societies be considered to form a joint venture;
  - (d) a person has attained the apparent age of eighteen years;
- shall be decided by the members at a general meeting.

(8) Any person aggrieved by a decision of the members at a general meeting as given under subsection (7), may in writing appeal to the Registrar. If the party is not satisfied with the decision of the Registrar, he shall in writing appeal to the Minister whose decision shall be final.

Establish-  
ment of  
Board

62. Every registered society shall establish a Board to manage its day to day activities.

Constitu-  
tion of the  
Board

63.-(1) Every Board of a registered society shall consist of not less than five members and not more than nine members including the chairman and vice chairman.

(2) The members of the Board shall be elected by the general meeting of the society and shall hold office for a period of up to nine years provided that, in the case of those of members of the Board elected at the first general meeting of the society, one third of such members shall be voted out at the general meeting after the expiration of a period of 3 years from the date of their election, and one half of the remaining members shall be voted out after expiration of a period of 6 years from the date of election, and the remaining half shall leave office at the end of a period of nine years.

(3) For the purpose of the proviso to subsection (2), the general meeting shall vote one third of new Board members at the end of a period of 3, 6 and 9 years.

(4) For the purpose of the proviso to subsection (2), the expression "one third" shall mean, where the number of members is not three or multiple of three the nearest whole number below one third and the expression "one half" shall mean, where the number of the members is not an even number the nearest whole number below one half.

(5) Where any person is elected to the Board to fill a vacancy caused by death, resignation or removal of a member of the Board, such person shall hold office for the remainder of the term of office of his predecessor.

(6) No member of the Board shall serve for more than three consecutive terms but may be eligible for re-election after the expiration of one term of three years during which such member was not part of leadership.

**64.**-(1) The Board shall exercise all powers necessary to ensure the full and proper administration of the society subject to the by-laws of the society, the rules and any resolutions passed at the general meeting.

Powers of  
Board

(2) The Board may, appoint a suitable person to administer and manage affairs of the society and may employ such number of persons as the may think fit to assist such person in the discharge of his functions:

Provided that, such person shall not have a record of previous conviction on a criminal charge involving dishonesty or by a person who has in the past been dismissed from public service on ground of mismanagement or on any disciplinary ground.

(3) Where a person employed under subsection (2) is not performing his functions satisfactorily, the Board shall terminate the employment of that person subject to any law for the time being regulating termination of Employment.

**65.**-( 1) No member of the Board of a registered society shall hold any office of profit under the society.

(2) A member of the Board of a registered society may receive an honorarium from the society as determined and authorized by the general meeting, subject to the provision of subsection (4).

Restricti-  
on relat-  
ing to  
members  
of the  
Board

(3) A member of the Board or who is in the employment of a registered society other than the society to which he is a member and is in receipt of emoluments for such employment shall not be entitled to receive any honorarium as a member of the Board.

(4) The honorarium if any may be paid only by Primary and Secondary societies.

(5) No member shall be elected as a member to the Board if owns, controls or influences businesses or activities like that of the Cooperative society.

Suspension and election of the new Board

**66.**-(1) Where the Registrar after giving consideration to the inspection and audit report or after giving an order under section 50 is of the opinion that the Board of a registered society is not performing its duties properly he shall cause to be held a special general meeting by notice in writing and advise it as appropriate.

(2) Where the special general meeting resolves to suspend members of the Board, it shall-

- (a) elect a caretaker Board from amongst the delegates to administer the affairs of the society;
- (b) require the suspended member to state there objections if any in writing jointly and severally in the next general meeting.

(3) Where after giving an opportunity to the Board to state its objections, if any, of its suspension in the general meeting and the latter disapproves the objections, then a new management Board shall be elected to that effect by the general meeting. The Registrar shall publish in the Gazette the decision in favour any change made by the general meeting.

(4) Subject to subsection (1) where the special general meeting resolves to disagree with the advise of the Registrar on financial malpractices the effects of which the society is rendered unable to settle its liabilities the members shall be liable for the payment of the debts.

Powers of the Registrar

**67.**-(1) Subject to the provisions of sections 66, where the Registrar after consultation with the Minister is satisfied that it is in the interest of the members and the public, he shall remove the Board and appoint a care taker Board which shall have the duty to manage the affairs of a registered society and to comply with the directions which the special general meeting may give and the appointed caretaker Board shall, serve for the period of not exceeding three years.

(2) Where the Registrar removes the Board under subsection (1), the member of the Board so removed may appeal to the Minister and the decision of the Minister shall be final.

(3) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 98.

68. Subject to the general direction and control of the special general meeting any person or persons appointed under section 67 to assume the functions of the Board of any registered society shall have all the powers' rights and privileges of a duly constituted Board of the society.

Powers of persons appointed under section 67

## PART X

### PROPERTY AND FUNDS OF REGISTERED SOCIETIES

69.-( 1) The funds of registered society shall include -

- (a) all money derived from fees or charges specified by the by-laws of the society;
  - (b) all moneys derived from Payment of subscription where this is applicable;
  - (c) all moneys derived from issue of shares;
  - (d) all revenue accruing to the registered society from deposits and loans from persons who are not members as provided for under the by-laws of registered society;
  - (e) all revenue accruing to the registered society from savings and deposits made by its members;
  - (f) all moneys derived from the sale of any produce of the registered society;
  - (g) all moneys which a registered society may borrow from lending institutions or any other source under its general powers of raising money by borrowing;
  - (h) all moneys derived from fines imposed in respect of contravention of any by-law made by a registered society.
- (2) Any other money lawfully derived by a registered society from source not mentioned specifically in subsection (1) shall be and shall form part of the revenue and funds of that registered society.
- (3) All revenue of a registered society shall be paid into the general fund of the registered society.

Revenue of Registered Societies

Provided that, any receipt derived from any trade, industry, works, service or undertaking carried on or belonging to registered society may, be paid either in whole or in part into a separate fund.

70.-( 1) A registered society shall for the purpose of managing its revenues and funds ensure that -

Management of the revenue and funds of registered

- (a) an admission fee is not refundable except in the case where an application for membership has been rejected;
- (b) a regular obligatory deposit is made in accordance with the by-laws of the society and is not withdrawn except for purposes and in accordance with conditions specified in the rules or on termination of membership, or for the purposes of securing a loan taken by or a guarantee given by a member, voluntary deposits may be withdrawn, subject to any conditions or restriction specified in the by-law of the registered society;
- (c) deposit or loans from persons who are not members of the registered society are subject to the provisions of this Act and of the by-laws of the society;
- (d) a share shall not be redeemed except in accordance with the provisions of by-laws of the society where such by-laws allow such redemption and in which case the said by-laws shall also specify the minimum number of shares, a member shall hold while is a member.

(2) A society shall not issue bonds or debentures without the authority of the Registrar and shall in any such issue comply with any conditions prescribed by the general meeting.

(3) A registered society which under this Act is required to maintain a reserve fund shall maintain the fund in accordance with the provisions of this Act and of the by-laws of the registered society.

**71.**-(1) A registered society shall not make a loan to any person other than a member.

Restricti  
on on  
loan

Provided that, subject to the provisions of its by-laws a registered society may with the approval of the Registrar and in accordance with any conditions which the Registrar may prescribe, allow normal business credit to *bona-fide* persons to whom goods have been sold or services rendered by the registered society.

(2) Except with the permission of the Registrar, a society shall not lend money on the security of any movable property other than produce or goods in which the society is authorized to deal.

(3) The Registrar may by a general or special order, prohibit or restrict the lending of money by any society or class of societies on the security of immovable property.



(4) A registered society whose main object is to supply commodities to its members shall not make any loan nor allow any credit without the sanction of the Registrar who may impose such limits on loans or credit as he thinks fit.

(5) A registered society which markets the agricultural produce or handicrafts or mineral products of its members may make advances only up to a limit not exceeding 75 per centum of the local value as estimated by the committee of agricultural products or handicrafts or mineral products delivered to the society for marketing.

(6) A registered society may with the approval of the general meeting, make loans to another registered body.

Restrict-  
on on  
borrowing  
from non-  
members

72. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the rules or by this Act.

Investme-  
nt of  
Funds

73.-(1) A registered society may invest its funds-

- (a) in interest bearing deposit in a cooperative financial institution, or any financial institution as may be approved by the Registrar;
- (b) in the shares of any other registered society;
- (c) in government bonds and other securities; or
- (d) in such other investments as the Registrar may by order with approval of the Minister published in the *Gazette* declare to be authorized investments for the purpose of this section.

(2) The Registrar may advise any registered society to invest its funds or any portion of its funds in any one or more of the investments authorized by or under subsection (1).

(3) Where there is any loss occasioned, every officer who is a part to the loss commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings and in addition shall be required to compensate the loss so occasioned.

Inspection  
Fund Act  
No. 6 of  
2001

74. Every society shall contribute to a fund established by the Public Finance Act and be administered by the Registrar for the purpose of meeting the expenses of inspection and promotion of cooperative societies.

75.-(1) The by-laws of a registered society shall provide for the raising of funds to finance its activities either by the issue of shares or by imposing a cess or levy on agricultural or other produce or handicraft marketed through the society or by other means as may be approved by the Registrar.

Financial  
provisions

(2) A registered society shall where its funds to finance its activities are obtained by the issue of shares, ensure that -

- (a) the share capital shall not be reduced without the consent of the Registrar;
- (b) unless the Registrar otherwise in writing directs, a fund which shall be known as the share transfer fund shall be formed and maintained to meet expenditure which may be incurred by the society in purchasing the share of members whose membership has terminated with the consent of the committee;
- (c) no payment from the share transfer funds shall be made for the purchase of the share of any member who has terminated his membership without the consent of the committee;
- (d) no purchase of the shares of a member whose membership has been terminated by reason of any causes other than death shall be made except with monies then available in the share transfer fund;
- (e) the amount standing to the credit of a share transfer fund shall not exceed ten per centum of the subscribed share capital;
- (f) where the share of a member is purchased by the society under the foregoing provisions, the amount paid therefore shall not exceed the par value of the share, and it shall be lawful for the society to pay such less sum than the par value as it considers reasonable, regard being made to the financial position of the society at the time of purchase;

the shares of members purchased as aforesaid shall be re-issued before any new allocation of shares is made.

76.-(1) No society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been audited by a duly authorized auditor and approved by the general meeting.

Dividend  
and  
Bonus

(2) No society with unlimited liability which advances money or goods to any member in excess of the money or the value of the goods deposited by him shall pay a dividend during the period of ten years from the date of its registration.

Reserve  
Fund

**77.**-(1) Every society which derives a profit from its transaction shall maintain a reserve fund.

(2) A society with unlimited liability, which advances money or goods to any member in excess of the money or the value of goods deposited by him, shall carry one fourth of the annual net surplus to the reserve fund.

(3) All other societies shall carry to the reserve fund such portion or annual net surplus as may be prescribed by the rules and by-laws.

Distribu-  
tion of  
Balances

**78.** Subject to the provisions of this Act and of any rules made there under, a registered society may apply the annual net balance together with any sum available for distribution from previous years to payment of bonus and to any staff incentive bonus scheme in such manner and in such proportion as may be prescribed by the rules or its by-laws.

Contribu-  
tion for  
charitable,  
education-  
al and  
medical  
purposes

**79.** A registered society may, by resolution in general meeting appropriate from its funds and expend on any charitable, educational or medical purposes or such other objects.

## PART XI

### CREATION AND REGISTRATION OF CHARGES

Registrati-  
on of  
charges

**80.**-(1) A cooperative society may from time to time, charge the whole or any part of its property, if its by-laws expressly empower it to do so, subject to approval by the annual general meeting.

(2) Subject to the provisions of this Part, every charge to which this section applies created by a registered society, shall so far as any security on the society's property is thereby conferred, be void against the liquidator and any creditor of the society unless the prescribed particulars of the charge, together with the instrument if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are delivered to the Registrar for registration within thirty days after the date of the creation of the charge, but without prejudice to any contract or obligation for payment of the money thereby secured, and when the charge becomes void under this section, the money secured thereby shall immediately become payable.

(3) This section applies to the following charges-

- (a) a charge for the purpose of securing any issues of debentures;
- (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration under the Chattels Transfer Ordinance;
- (c) a charge on immovable property, wherever situate, or any interest therein;
- (d) a charge on book debt of the society;
- (e) a floating charge on the property of the society;
- (f) any other document which may be used as a security.

(4) Where a negotiable instrument has been given to secure the payment of any book debts of a registered society, the deposit of the instrument for the purpose of securing an advance to the society shall not for the purpose of this section be treated as a charge on those book debts.

Cap. 210

(5) The holding of debentures entitling the holder to a charge on immovable property shall not for the purposes of this section be deemed to be an interest in immovable property.

(6) Where a series of debentures containing or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of the series are entitled *pari passu* is created by registered society, it shall, for the purposes of this section be sufficient if there are delivered to or received by the Registrar, within forty five days after the execution, of the deed containing the charge, or, if there is no such deed after the execution of any debentures of the series, the following particulars-

- (a) the total amount secured by the whole series;
- (b) the date of any resolution authorizing the issue of the series and the date of the covering deed, if any by which the security is created or defined;
- (c) a general description of the property charged; and
- (d) the names of the trustees, if any of the debenture holders together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series;

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue but an omission to do this shall not affect the validity of the debentures issued.

(7) In this and the succeeding provisions of this Part "charge" includes a mortgage and a letter of hypothecation, and references to the property and assets of a registered society include property and assets which the registered society is authorized to charge.

**81.(1)** It shall be the duty of the registered society to send to the Registrar the particulars of every charge created by the society to which section 80 applies, but registration of any such charge may be effected on the application of any person interested therein.

Duty of  
society to  
register  
charges  
created by  
society

(2) Where registration is effected on the application of some person other than the society, that person shall be entitled to recover from the society the amount of any fees properly paid by him to the Registrar on registration

(3) Where any registered society makes default in sending to the Registrar the particulars of any charge for registration to which section 80 created by the society then unless the registration has been effected by some other person, the society and every officer thereof who is knowingly party to the default shall be liable, on conviction to a fine not exceeding ten thousand shillings for every day during which the default continues.

**82.-(1)** Where a registered society acquires any property which is subject to a charge to which section 80 would apply if the charge had been created by the society after the acquisition of the property, the society shall cause the prescribed particulars of the charge, together with a certified copy of the instrument, if any, by which the charge was

Duty of  
society to  
register  
charges ex-

created or is evidenced to be delivered to the Registrar for registration within forty-five days after the date of which the acquisition is completed.

(2) Where the default is made in complying with the provisions of this section, the society and every officer thereof who is knowingly a party to the default, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings for every day during which the default continues.

Register of  
Charges

**83.**-(1) The Registrar shall keep, with respect to each registered society a register in the prescribed form of all charges requiring registration under the provisions of this Part, and shall on payment of the prescribed fee, enter in the register with respect to any such charge the following particulars-

- (a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (6) of section 80;
- (b) in the case of any other charge-
  - (i) if the charge is a charge created by the society, the date of its creation, and if the charge was a charge existing on the property acquired by the society, the date of the acquisition of the property;
  - (ii) the amount secured by the charge;
  - (iii) short particulars of the report charged; and
  - (iv) the persons entitled to the charge.

(2) The Registrar shall issue a certificate of registration of any charge registered in pursuance of the provisions of this Part, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Part as to registration have been complied with.

(3) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, as may be determined from time to time by the Registrar.

(4) The Registrar shall keep a chronological index, in the prescribed form and containing the prescribed particular, of the charges entered in the register.

**84.-** (1) Every registered society shall cause a copy of every certificate of registration given under section 84 to be endorsed on every debenture certificate of debenture stock which is issued by the society, and the payment of which is secured by the charge so registered-

Endorsement of certificate of registration of debentures

Provided that, nothing in this subsection shall be construed as requiring a society to cause a certificate of registration of any charge so given to be endorsed on any debenture or certificate of debenture stock issued by the society before the charge was created.

(2) If any person knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it, a copy of a certificate of registration without the copy being so endorsed on it, commits an offence and shall without prejudice to any other liability, be liable on conviction to a fine not exceeding ten thousand shillings.

**85.-**(1) The Registrar may, on evidence being given to his satisfaction that, the debt for which any registered charge was given has been paid or satisfied, or that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the society with a copy thereof.

Entry of satisfaction and rectification of register

(2) The Registrar, on being satisfied that, the omission to register a charge within the time required by this Part, or that the omission or misstatement of any particular matter with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the society or that on other grounds it is just and equitable to grant relief may, on the application of the registered society or any person interested and in such terms and conditions as seen to him just and expedient, order that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified..

**86.-**(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, given notice of the fact to the Registrar and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charge.

Enforcement of security

(2) Where any person appointed receiver or manager of the property of a registered society under the powers, contained in any instrument ceases to act as such receiver or manager, he shall on so ceasing, give the Registrar notice to that effect, and the Registrar shall enter the notice in the register of charges.

(3) Where any person makes default in complying with any of the requirements of this section, he shall be liable on conviction to a fine not exceeding five thousand shillings for every day during which the default continues.

Copies of  
instrument  
creating  
charges to  
be kept by  
society

**87.**-(1) Every registered society shall cause a copy of every instrument Creating any charge requiring to be registered under the provisions of this part to be kept at the registered address of the society.

(2) Where any registered society fails to comply with the provisions of subsection (1), the society and every officer thereof who is knowingly a party to the default shall be liable on conviction to a fine not exceeding one thousand shillings for every day during which the default continues.

Society's  
register of  
charges

**88.**-(1) Every registered society shall keep at registered address of the society a register of charges and enter therein all charges specifically effecting property of the society and all floating charges on the property or assets of the society giving in each case a short description of the property charged, the amount of the charge and the names of the persons entitled thereto.

(2) Where any officer of the society knowingly and willfully authorizes or permits the omission of any entry required to be made in pursuance of this section in any such register he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings.

Right to  
inspect  
copies of  
instru-  
ments  
creating  
mortgages,  
charges  
and  
society's  
register of  
charges

**89.**-(1) The copies of the instrument creating any charge required to be registered with the Registrar under the provisions of this Part and the registered society in pursuance of section 83 shall be open during business hours subject to such reasonable meeting restrictions as the society in general meeting may impose, for the inspection of any creditor or members of the society without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee as may be determined by the general meeting.

(2) Where inspection of the said copies or register is refused, any officer of the society refusing inspection or who knowingly and willfully



permits such refusals commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings for every day during which such refusal continues and any court may by order, compel an immediate inspection of the copies or register.

## PART XII

### INSPECTION OF AFFAIRS

**90.**-(1) The Registrar may, in his own motion, or, on the application of the majority of the members of the Board of not less than one-third direct and authorize some persons in writing to hold an inquiry into the constitution, activities and financial affairs of the registered society.

Enquiry by  
Registrar

(2) All officers and members of the society shall produce such books and documents of the society and furnish such information in regard to the affairs of the society, as the person authorized by the Registrar may required.

(3) The general meeting may decide to hold an enquiry into the affairs of their registered society.

**91.**-(1) The Registrar shall make or cause to be made a continuous inspection on the constitution, activities and financial affairs of a registered society.

Inspection

(2) Without prejudice to the generality of subsection (1), the Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order, in writing in his behalf to inspect the books of the society-

Provided that, no inspection under subsection (2) shall be carried out or directed unless-

- (a) the creditor satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfactory explanation within a reasonable time; and
- (b) the creditor deposits with the Registrar such sum as security for costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any inspection carried out under subsection (2) to the creditor.

Costs of  
Enquiry

**92.**-(1) Where an inquiry is held under section 90 or an inspection is made under section 91, the Registrar may, by a certificate under his hand and seal, make an award apportioning the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officer or former officers of the society.

Act No. 49  
of 1966

(2) The Registrar may lodge a certified copy of a certificate issued by him under subsection (1) in a Court of a Resident Magistrate or a District Court and upon being so lodged such certificate shall be deemed to be a decree passed by such Court for the payment by the person named in the certificate to the Registrar of the sum specified in the certificate and such sum may be recovered in any manner prescribed by the Civil Procedure Act, for the enforcement of decrees and the provisions of that Act relating to executions of decrees shall apply, *mutatis mutandis*, to proceedings for the recovery of costs awarded under this Act.

Surcharge

**93.**-(1) Where upon an inquiry under section 90 or upon an inspection under section 91 or upon audit under section 48 the Registrar is satisfied that a past or present officer or member has made or authorized an unlawful payment or has by negligence or misconduct caused a deficiency or a loss or failure to bring to account or has by negligence or misconduct caused loss of or damage to any property of the registered society, the Registrar shall surcharge such person with the unlawful payment, deficiency or loss, or the sum which ought to have brought to account or the value of the property lost or damaged or portion of such unlawful payment, deficiency, loss, sum, value or cost as the Registrar may consider reasonable having regard to all the circumstances of the case.

(2) The Registrar shall give notice in writing to every person surcharged under the provision of subsection (1) of the amount surcharged and the ground upon which the surcharge is made and every such person may, not later than thirty days from the receipt of such notice, appeal to the Minister.

(3) Where a person surcharged-

- (a) fails to pay such amount within thirty days after the service of the notice upon him in accordance with subsection (2); or
- (b) has appealed to the Minister and he fails to pay the amount of the surcharge, if any, decided upon by the Minister on appeal within fifteen days from the date of the decision of the Minister,

the Registrar shall issue a certificate under his hand and seal specifying the name and address of the person who has been surcharged and the amount of the surcharge and such certificate or a certified copy thereof shall be lodged in a Court of Resident Magistrate or a District Court and upon being so lodged it shall be deemed to be a decree passed by such a Court be for the payment by the person named in the certificate to the Registrar of the sum specified in the certificate and such sum shall be recovered in any manner prescribed by the Civil Procedure Act, for the enforcement of decree and the provisions of that Act relating to execution of decrees shall apply, *mutatis mutandis*. to proceedings for the recovery of such amount specified in the certificate.

Act No.49  
of 1966

### PART XIII

#### AMALGAMATION AND DIVISION

94.-(1) Any two or more registered societies may, resolve, by a resolution approved at a general meeting of each of the societies at which not less than two thirds of the members or delegates of the society are present and held after reasonable notice given of the place and time of the meeting and of the intention to move such resolution thereto, to amalgamate as a single society.

Amalgam-  
ation of  
Societies

(2) Where the Registrar is satisfied that-

- (a) two or more registered societies have resolved to amalgamate as a single society in accordance with the provisions of subsection (1);
  - (b) the proposed by-laws of the proposed amalgamated society are unobjectionable; and
  - (c) the proposed amalgamation is not against the interest of the members of the societies proposing to amalgamate or against the public interest, he may, by order published in the *Gazette*, amalgamate the societies.
- (3) Every order made under subsection (2), shall specify-
- (a) the date on which the societies shall amalgamate (hereinafter referred to as "the effective date");
  - (b) the names of the amalgamating societies; and the name of the amalgamated society and may contain such directions as the Registrar may consider necessary for the purpose of giving effect to the amalgamation or for safeguarding the interests of any person.

(4) Where an order is made under subsection (2)-

- (a) all the assets and liabilities of the amalgamating societies shall, by virtue of such order and without further assurance, vest in the amalgamated society;
- (b) the Registrar shall cancel the registration of the amalgamating societies and such cancellation shall be effective as from the effective date; and
- (c) the Registrar shall, notwithstanding the provisions of sections 24 and 25, register the amalgamated society and the by-laws of the amalgamated society.

(5) Notwithstanding subsection (1), the Registrar may by notice in writing advise to amalgamate two or more societies if he is satisfied that, it is in the interest of the societies to do so:

Provided that, where the society does not agree with the advice of the Registrar on amalgamation, the Registrar may dissolve that society under section 99.

Defects or  
irregularity  
in notice,  
etc.

**95.** No amalgamation of registered societies or division of a registered society shall be invalid by reason only of defect or irregularity in any notice or order required to be given or made under this Part.

Division  
of  
societies

**96.-(1)** An existing registered society (hereinafter referred to as "existing society") may, resolve, by a resolution approved at a general meeting at which not less than two thirds of the members or delegates of the society are present and held after reasonable notice given of the place and time of the meeting and of the intention to move such resolution thereat, to divide itself into two or more registered societies (hereinafter referred to as "new societies").

(2) A resolution passed under subsection (1) shall contain proposals for the division of the assets and liabilities of the existing society among the proposed new societies, and may prescribe the area of operation of, and specify the members who shall constitute each of the proposed new societies.

(3) The Registrar may by notice in writing advise on voluntary division if is satisfied that-

- (a) an existing society has resolved to divide itself into two or more new societies in accordance with subsection (1);

- (b) such resolution complies with the provisions of subsection (2);
  - (c) the proposed new societies shall be economically viable when registered;
  - (d) the proposed division is not against the interests of the members of the existing society or against the public interest, he may, by order published in the *Gazette*, divide the existing society into the proposed new societies.
- (4) Every order made under subsection (3) shall specify-
- (a) the date on which the existing society shall be divided into the new societies (hereinafter referred to as "the effective date");
  - (b) the name of the existing society and the names of the new societies into which it is divided;
  - (c) the manner in which the assets and liabilities of the existing society shall be divided among the new societies; and
  - (d) where necessary, the area of operation of each of the new societies, and may contain such directions as the Registrar may consider necessary for the purpose of giving effect to the division or for safeguarding the interests of any person.
- (5) Where an order is made under subsection (3)-
- (a) the assets and liabilities of the existing society subsisting on the effective date shall, by virtue of such order and without further assurance, vest in the new societies in the manner specified in such order;
  - (b) the Registrar shall cancel the registration of the existing society and such cancellation shall be effective as from the effective date; and
  - (c) the Registrar shall, notwithstanding the provisions of sections 24 and 25, register the new societies and their respective by-laws:

Provided that, where the society does not agree with the advice of the Registrar on division, he may dissolve that society under section 97.

**PART XIV**  
DISSOLUTION OF SOCIETIES

Dissolu-  
tion

**97.** Where the Registrar after an inquiry has been held under section 90 or after an inspection has been made under section 91 or on receipt of an application made by three-fourths of the members of a registered society or failure to comply with the proviso of sections 94 and 96, is of the opinion that, the society ought to be dissolved he may, by order in writing and after notifying the general meeting of the Federation if any, cancel the registration of the society.

Cancellation  
of  
registration  
of society

**98.-(1)** Where it is a condition of the registration of a society that it should consist of at least required minimum members, the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that, the number of the members has been reduced to less than the required minimum as per section 15 of this Act.

(2) Where the Registrar has reasonable cause to believe that a registered society has not commenced within six months of registration, or has ceased to carry on business, he may, after the expiry of three months from the date of publishing a notice to that effect in the *Gazette*, by order in writing, cancel the registration of such society and such cancellation shall be *Gazetted*.

Act No. 1  
of 1995

(3) The Registrar shall cancel the registration of any savings and credit societies that fail to comply with the requirement to present audited accounts as required by section 48 of the Bank of Tanzania Act, unless sufficient evidence is given to the effect that, any such savings and credit societies have established a technical and financial assistance linkage with a professionally managed financial services institution or program.

A p p e a l  
against  
cancell-  
ation of  
registra-  
tion

**99.-(1)** Where the registration of a society is cancelled under the provisions of section 97 or 98, any member of the society the registration of which is cancelled may, within thirty days from the date of the order canceling the registration, appeal against such order to the Minister.

(2) Where no appeal is presented within thirty days from the making of an order canceling the registration of a society, the order shall take effect on the expiry of that period.

(3) Where an appeal is presented within thirty days, the order shall not take effect until it is confirmed by the Minister.

(4) Where an appeal has been presented within thirty days, the Minister may proceed to consider the same and confirm the order notwithstanding that thirty days have not elapsed and where an order is so confirmed no further appeal shall be allowed against such order.

**100.** -(1) Where the registration of a society is cancelled, the cancellation shall take effect and the society shall, except for the purposes of the winding-up of its affairs, cease to exist as a corporate body from the date when the order of cancellation takes effect.

Effect of  
cancellation  
of  
registration

(2) Where the Registrar cancels the registration of a society under any of the provisions of this Act, he shall make such order as he may deem fit respecting the custody of the books and documents and for the protection of the assets of the society until the order canceling the registration of the society takes effect.

**101.** Where the registration of a society is cancelled under any of the sections 97 or 98, the Registrar shall-

Winding  
up

- (a) appoint by order in writing a custodian of assets and liabilities of the society immediately after cancellation is effected;
- (b) within forty days appoint a competent person or persons to be liquidator of the society's assets and liabilities;

Provided that, the persons appointed under paragraph (a) and (b) shall be *Gazetted*.

**102.**-(1) A liquidator appointed under section 101 shall have the power, subject to the guidance and control of the Registrar, and to any limitations imposed by the Registrar-

Powers of  
the liquidator

- (a) to institute and defend suits and other legal proceedings by his name or office and to appear in Court as a litigant in person on behalf of the society;
- (b) to refer disputes to arbitration;
- (c) to determine the contribution to be made by the members and past members and by the estates of deceased members of the society respectively to the assets of the society;

- (d) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (e) to determine by what persons and in what proportion the costs of the liquidation are to be borne;
- (f) to examine and investigate any claim which the society may have against any person;
- (g) to take possession of the books, documents and assets of the society; and
- (h) to give such directions in regard to the collection and distribution of the assets of the society and the disposal of the books and documents of the society as may appear to him to be necessary for winding-up the affairs of the society.

(2) Subject to any rules made under section 130, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purpose of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and in the same manner as is provided in the case of a Court under the Civil Procedure Act.

(3) The rules may provide for an appeal to a court of a resident magistrate having jurisdiction over the area in which the headquarters of the society are situated from any decision made by a liquidator under this section and may provide for further appeal to the High Court.

Powers of  
the  
Registrar  
to control  
liquidation

**103.** -(1) A liquidator shall exercise his powers subject to control and revision by the Registrar, who may-

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of the society;
- (d) by order in writing limit the powers of the liquidator under the provisions of the foregoing 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 or order for the remuneration of the liquidator;
- (h) refer any subject of dispute between a liquidator and any third party to settlement if that party shall have assented in writing to be bound by the decision to be given on the dispute.

(2) Decisions made under this section may be enforced as follows-

- (a) when made by a liquidator, by any Court of Resident Magistrate having jurisdiction in the same manner as the decree of such court;
- (b) when made by High Court or a Court of Appeal, in the manner of any such appeal as aforesaid in the same manner as a decree of such Court in any suit pending therein.

**104.** At any time after the cancellation of a registered society takes effect, the liquidator, or any creditor member of the society, may, where any suit or proceedings against the society is pending in any court, apply to the court in which the suit or proceedings is pending for a stay of proceedings therein and the court to which such application is made may stay the proceedings accordingly on such terms as it thinks fit.

Power to stay or restrain proceedings against society

**105.** Any disposition of the property including things in action of a registered society and any transfer of shares or alteration in the status of the members of the society made after the cancellation of the registered society takes effect shall, unless such disposition, transfer or alteration is made by the liquidator, be void.

Avoidance of disposition of property, after cancellation

**106.** Where, the registration of a society is cancelled, any attachment, distress or execution put in force against the assets of the society after such cancellation takes effect, shall be void.

Avoidance of attachment, etc

**107.-(1)** Where, in the case of the winding-up of a society, it appears that any person who has taken part in the organization or management of the society or any past or present chairman, secretary member of the committee or other officer of the society has disappplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeance or breach of trust in relation to the society,

Power of Registrar to assess damages against delinquent promoters

the Registrar may, on the application of the liquidator or of any creditor or contributor, investigate the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof as the case may be with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeance or breach of trust as the Registrar thinks just.

(2) Where the Registrar has ordered payment of any money or delivery of any property under subsection (1), such money or property may be recovered on production of such order to the District Court or the Court of a Resident Magistrate having jurisdiction over the person from whom the money or property is claimable in the same manner as if such order were the decree of that Court.

Power to  
arrest  
absconding  
promoter,  
officer

**108.** Any Court of a Resident Magistrate may, on the application of the Registrar or of the liquidator and on proof of probable cause for believing that any person or officer of the society mentioned in subsection (1) of section 107 is about to quit the United Republic or otherwise to abscond or remove any of his property for the purpose of evading calls or of avoiding investigation of his conduct or of avoiding examination by the liquidator or by the Registrar respecting the affairs of the society or of avoiding compliance with any order made by the Registrar under the said subsection (1) of section 107, cause him to be arrested and his books and papers and movable property to be detained until such time as the court may order.

Debts of  
all descri-  
ption may  
be proved

**109.** In every winding-up of a registered society, all debts payable on a contingency, and all claims against the society, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the society, a just estimate being made so far as possible, or the value of such debts or claims as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

Where  
society is  
insolvent

**110.** In the winding-up of a registered society which is insolvent the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and realize dividends out of the as-

sets of the society may come in under the winding upon and make such claims against the society as they respectively are entitled to by virtue of this section.

**111.-(1)** In the winding-up of a registered society there shall be paid in priority to all other debts-

Preferential  
payments

- (a) all government taxes and local rates due from the society at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment;
- (b) all government rents not more than one year in arrears;
- (c) all wages or salary (whether or not earned wholly or in part by way of commission) of services rendered to the society during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered; and
- (d) unless the society has, immediately prior to the relevant date, under any contract with insurers, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation under any law for the time being in force in Tanzania relating to compensation of workman. being amounts which have accrued before the relevant date.

(2) Notwithstanding anything in paragraph (c) of subsection (1), the sum to which priority is to be given under that paragraph shall not, in the case of one claimant, exceed one hundred thousand shillings:

Provided that, where a claimant under the said paragraph (c) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, a part thereof, as the liquidator may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under any law for the time being in force in Tanzania relating to compensation of workmen is a weekly payment, the amount due in respect thereof shall, for the purpose of

paragraph (d) of subsection (1) be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under such law.

(4) Where any payment has been made to any clerk, servant, workman or labourer in the employment of the society, on account of wages or salary out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a winding-up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the clerk, servant, workman or labourer, would have been entitled to priority if the winding-up has been diminished by a reason of the payment having been made.

(5) The debts referred to in subsection (1) shall-

- (a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions, and
- (b) so far as the assets of the society available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by society, and be paid accordingly out of any property comprised in or subject to that charge.

(6) For the purposes of this section-

- (a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the society during the period;
- (b) the expression "the relevant date" means the date on which the cancellation of the registration of the society takes effects.

Fraudulent  
preference

**112.-** (1) Any transfer, conveyance, mortgage, charge, delivery of good, payment, execution or other act relating to property made or done by or against a registered society within six months before the date on which the cancellation of its registration takes effect which had it been made or done by or against an individual within six months before presentation of bankruptcy petition on which he is adjudged bankrupt, would be deemed in his bankruptcy a fraudulent preference, shall in the

event of the society being wound-up be deemed fraudulent preference of its creditors and be void accordingly.

(2) Any transfer, conveyance or assignment by a society of all its property to trustees for the benefit of all its creditors shall be void to all intents.

**113.**-(1) Where anything made or done is void under section 112 as a fraudulent preference of a person interested in property mortgaged or charged to secure the society's debt then without prejudice to any rights or liabilities arising apart from this provision the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the mortgage or charge on the property or the value of his interest, whichever is the less.

Liabilities  
and Rights  
of certain  
fraudulent  
preferred  
persons

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the society's debt was then subject.

(3) On any application made to the liquidator with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the liquidator shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purpose of the winding-up.

(4) Subsection (3) shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to such payments.

**114.** Where a registered society is being wound-up, a floating charge on the undertaking or property of the society created within six months of the cancellation of the registration of the society taking effect shall, unless it is proved that the society immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the society at the time of or subsequently the creation of, and in consid-

Effect of  
floating  
charge

eration, for the charge, together with interest on that amount at the rate of six percent per annum or such other rate as may be prescribed.

Disclaimer  
of onerous  
property in  
case of  
society  
wound up

**115.-(1)** Where any part of the property of a registered society which is being wound up consists of land of any tenure burdened with onerous covenants, of shares or stock in companies of profitable contracts or of any property that is un saleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to payment of any sum of money, the liquidator, notwithstanding that he has endeavored to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Registrar and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the cancellation of the registration of the society taking effect or such extended period as may be allowed by the Registrar, disclaim the property.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the society in or in respect of the property disclaimed but shall not, except so far as is necessary for the purpose, of releasing the society and the property of the society from liabilities of any other person affect the rights or the liabilities of any person.

(3) The Registrar, before or on granting leave, to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as he thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and the liquidator has not, within a period of twenty eight days after the receipt of the application or such further period as may be allowed by the Registrar, given notice to the applicant that he intends to apply for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application or such further period as may be allowed by the Registrar, given notice to the applicant that he intends to apply for leave to disclaim, and, in the case of a contract, if the liquidator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, he shall be deemed to have adopted it.

(5) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the society to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

**116.-(1)** Where a creditor has issued execution against the movable or immovable property of registered society or has attached any debt due to the society, and the society is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the society unless he has completed the execution or attachment before the date on which the cancellation of the registration of the society takes effect:

Restriction  
of rights of  
creditor as  
to  
execution  
or attach-  
ment in  
case of  
society  
being  
wound up

- (a) a person who purchases in good faith under a sale by bailiff on an order of a court any movable property of a society of which an execution has been levied shall in all cases acquire a good title thereto against the liquidator; and
- (b) the rights conferred by this subsection on the liquidator may be set aside by the Registrar in favour of the creditor to such extent and subject to such terms as the Registrar may think fit.

(2) For the purpose of this section, the execution against movable property shall be taken to be completed by seizure and sale, and an attachment of a debt shall be deemed to be completed by receipt of the debt, and an execution against immovable property shall be deemed to be completed by seizure and, in the case of an equitable interest, by the appointment of a receiver.

(3) In this section and in section 113, the expression "movable property" includes all chattels personal, and the expression "bailiff" includes any officer charged with the execution of a writ or other process.

(4) The right conferred upon the liquidator by this section may be enforced by him by a civil suit in any court of competent jurisdiction.

**117.-(1)** Where any movable property of a registered society is taken in execution and, before the sale thereof or the completion of the execution by receipt of recovery of the full amount of the levy, notice is served upon the court which issued the execution that the registration of the society has been cancelled, the court shall require the bailiff to deliver

Duties of  
court as to  
goods  
taken in  
execution

the movable property including any money seized or received in part satisfaction of the execution to the liquidator and the bailiff shall forth-with comply with such requirement.

(2) Where the bailiff on being required by the court under subsection (1) delivers the movable property including the money, if any, seized or received by him, the costs of the execution shall be a first charge on the goods or money so delivered and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

Courts not  
to have  
jurisdiction  
in dissolution  
of  
societies

**118.** Save so far as is expressly provided for in this Act, no court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society.

Preserva-  
tion of  
books and  
records

**119.** On the completion of his duties, the liquidator shall hand over to the Registrar all the books and records of the society, and the Registrar may after the period of two years from the removal of the name of the society from the register cause such books and records to be preserved in an archive.

## PART XV OFFENCES

Offences

**120.-(1)** It shall be an offence under this Act if-

- (a) a registered society or an officer or a member thereof willfully neglects or refuses to do any act or to furnish any information required for the purpose of this Act by the Minister, the Registrar or any other person duly authorized in that behalf by the Minister or the Registrar, as the case may be; or
- (b) a registered society or an officer or member thereof willfully makes a false return or furnishes false information; or
- (c) any person willfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Act, or



- (d) any person acts or purports to act as a board member when not entitled to do so; or
- (e) a registered society, or an officer or a member thereof, willfully performs any act which requires the consent or approval of the Registrar without first having obtained such consent or approval;
- (f) a registered society, or an officer or a member thereof willfully omits to do or to cause to be done an act or thing which is required by or under this Act to be done;
- (g) a registered society or an officer or a member thereof willfully does or causes to be done any act or thing prohibited by or under this Act.

(2) Every registered society, officer or member of a society or other person guilty of an offence under this section shall, on conviction be liable to a fine not exceeding one hundred thousand shillings and, where such offence has been committed by an individual, to imprisonment for a term not exceeding six months in addition to or in lieu of such fine.

**121.-** (1) Any person, firm or company having knowledge or notice of the existence of a registered society which has one of its objects the disposal of any article as part of its business, who solicits or persuades any person to sell or deliver produce in violation of the by-laws of that cooperative society, shall be liable to a fine not exceeding five hundred thousand shillings for an individual and one million shillings for a firm or company for each offence, and shall in addition pay to the society concerned the market price of such produce as at the date of such offence.

Penalty for  
soliciting  
violation  
of  
contracts

(2) Any person, firm or company, as aforesaid, shall be deemed to have knowledge or notice of the existence of such cooperative society if the said society has notified the existence of such cooperative society and the relevant by-laws thereof in the *Gazette* or a registered society which has one of its objects the disposal of any article which is the product of agriculture or animal husbandry, in any newspaper circulating in Tanzania.

Offences  
by officer  
of society  
being  
wound up

**122.** Where any person, being a past or present officer or member of a registered society the registration of which has been cancelled and in respect of which a liquidator has been appointed-

- (a) does not, to the best of his knowledge and belief, fully and truly disclosed to the liquidator all the property, movable and immovable, of the society;
- (b) does not deliver to the liquidator, or as he directs all such part of the movable or immovable property of the society as is in his custody or under his control;
- (c) does not deliver up to the liquidator or as he directs, all books and papers belonging to the society; or
- (d) fraudulently, parts with, conceals, destroys, falsifies, mutilates or alter or is privy to the fraudulent parting with, concealment, destruction, falsification, mutilation or alteration, any book or paper relating to or affecting the property or affairs of the society,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

Prohibition  
of use of  
the word  
"Coopera-  
tive"

**123.-(1)** No person other than a registered society shall trade or carry on business under any name or title of which the word "Cooperative" or its equivalent in any other language is part without the sanction of the Registrar.

(2) No person other than a *bonafide* savings and credit society shall trade or carry on business under any name or title of which the words "Saving and Credit Society" or their equivalent in any other language is part without the sanction of the Registrar.

(3) Every person who contravenes any of the provisions of this section shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding forty thousand shillings and in the case of a continuing offence to a further one thousand shillings for each day on which the offence is continued after conviction thereof.

## PART XVI

## MISCELLANEOUS

**124.** The Director of Public Prosecutions shall, by notice, published in the Gazette appoint Prosecutors who shall be responsible for prosecution of cases involving cooperative societies.

Prosecu-  
tors

**125.-(1)** There shall be a code of conduct of for management of cooperative societies provided under the schedule to this Act, subject to the amendments by the Minister from time to time;

Code of  
conduct

(2) The appointment and performance of duties by society employees, committee members shall be subject to the code of conduct.

**126.** Notwithstanding anything contained in this Act, the Minister may, in the interest of members, by order published in the Gazette and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Act as to registration.

Power to  
exempt  
societies  
from  
conditions  
of  
registration

**127.-(1)** Notwithstanding any other provisions of this Act, the Registrar may, subject to the provisions of this section, appoint special members to the board of any registered society in receipt of financial assistance from the government or if the Registrar considers such appointments to be necessary in the public interest or in the interest of the society.

Appoint-  
ment of  
special  
members  
to  
committees

(2) The number of special members appointed to a committee under this section shall not exceed one third of the number of ordinary members, including the Chairman and Vice-Chairman (if any) of the committee.

(3) For the purposes of this section-

(a) a society shall be deemed to be in receipt of financial assistance from the Government-

- (i) if within the immediately proceeding two years the society has received any grant of money from the Government;
- (ii) if any money has been lent to the society by the Government and the loan has not been repaid; or
- (iii) if any loan made to the society has been guaranteed by the Government and either the guarantee is still outstanding or the guarantee has been honoured by the

Government and the society has not paid to the Government all sums (including interests, if any, thereon) paid by the Government under the terms of the guarantee; and

- (b) the expression "one-third" shall mean, where the number of members is not three or a multiple of three, the nearest whole number below one-third.

Terms of  
appoint-  
ment and  
powers of  
special  
members

**128.**-(1) A special member of a board appointed under section 127 shall remain a member of the committee until his appointment is determined by the Registrar.

(2) Where the Registrar has appointed special members to a board any such special member may require that any decision taken by such board shall not have effect until the approval of the Registrar has been obtained and, where any such requirement is made in respect of any such decisions, the decision shall be of no force or effect and shall not in any way be acted upon until the Registrar has signified approval thereof.

(3) In exercising powers conferred by subsection (2), a special member appointed to a board shall, unless the Registrar otherwise directs, have all the powers of an ordinary member of that board.

Fees

**129.**-(1) Fees as may be prescribed shall be charged in respect of the following matters-

- (a) Issue of registration certificate and by-laws;
- (b) the registration of amendments to by-laws;
- (c) a search in the registration register;
- (d) inspection of documents;
- (e) certified or uncertified copies of documents;
- (f) the registration of charges;
- (g) the inspection of registers of charges;
- (h) any other matter in respect of which a fee is chargeable under the provisions of this Act.

Provided that, the Registrar may in his discretion vary or waive any of the said fees in the case of a Primary society.

(2) Different fees may be prescribed for different types or kind of societies.

(3) The fee provided for under subsection (1) may be used by the Registrar for regulatory purposes under the law for the time being in force.

**130.** All sums due from a registered society or from an officer or member or past member of a registered society as such to the Government and other recognized financial organization may be recovered in the manner provided for the recovery for debts due to the Government under the law for the time being in force.

Recovery  
of sums  
due to  
Govern-  
ment

**131.-(1)** The Minister may after consultation with the Registrar make rules in relation to any registered society for proper implementation of this Act.

Rules

(2) Without prejudice to the generality of subsection (1), the Minister may make rules -

- (a) prescribing the maximum number of shares or portion of the capital of a society which may be held by a member;
- (b) prescribing the forms to be used and the conditions to be complied with in the making of applications for the registration of society and the procedure in the matter of such applications;
- (c) prescribing the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the payment to be made and the interest to be made and the interest to be acquired before the exercise of the right of membership and to provide for the termination of membership;
- (d) prescribing the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members, and the payment to be made and the interest to be acquired before the exercise of the right of membership and to provide for the termination of membership;
- (e) regulating the manner in which funds may be raised by means of shares or debentures or otherwise and the form in which

- any application for financial assistance from Government, any bank or any financial institutions shall be made;
- (f) providing for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings and for the methods of summoning members to such meetings and giving notice of such meetings to members;
  - (g) providing for the appointment, remuneration and terms of service of employees of a society;
  - (h) providing for the suspension and removal of members of society, committee members and supervisory committee and other relevant officers, and describe procedure of meetings of the committee and supervisory committee, and define the powers to be exercised and the duties to be performed by the committee and supervisory committee and other relevant officers, and provide for the delegation of the powers of the committee and supervisory committee;
  - (i) providing for the submission of annual estimates for the approval of the Registrar;
  - (j) providing for the periodical publication, of a balance sheet showing the assets and liabilities of a society;
  - (k) providing for the persons by whom and the form in which copies of entries in books of societies may be certified;
  - (l) providing for the form of the register of members and for the particulars to be entered therein;
  - (m) providing for procedures for dispute settlement;
  - (n) providing for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;
  - (o) providing for the mode in which the value of a deceased members interest shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
  - (p) providing for the mode in which the value of the interest of a member who has become of unsound mind and incapable

of managing his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;

- (q) prescribing the payments to be made and the conditions to be complied with by members applying for loans; the period for loans, the period for which loans may be made and amount which may be lent, to an individual member and the manner in which such loans shall be repaid;
- (r) providing for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;
- (s) prescribing the extent to which a society may limit the number of its members;
- (t) prescribing the conditions under which accumulated funds may be distributed to the members of a society with unlimited liability and the maximum rate of dividend which may be paid by societies;
- (u) prescribing the procedure for amalgamation and division of societies and conditions subject to which such amalgamation or division may be affected;
- (v) prescribing the procedure to be followed by a liquidator appointed under section 101 and the case in which an appeal shall lie from any order of such liquidator;
- (w) providing for the powers to be exercised and the duties to be performed by and the remuneration and other terms of service of a supervising manager;
- (x) providing for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and prescribe for the administration for such a fund; and
- (y) prescribing anything that may be, or is required to be prescribed under this Act.

(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 shall cause such rules to be translated into Swahili, and additionally to be made known in such manner as is customary for the community concerned, but in the event of any dispute the English version shall be deemed to be the correct version.

(4) The rules made by Minister, as well as the Registrar in accordance, with this Act for savings and credit societies and banks incorporated under section 22(b) shall as much as possible be similar to regulations pertaining to Microfinance Companies and Financial Cooperatives.

Power of  
Registrar  
to make  
regulations

**132.** The Registrar after consulting the chief executive of the federation shall make regulations prescribing-

- (a) the accounts and books to be kept by a society;
- (b) the returns to be submitted by a society to the Registrar and the persons by whom and the form and language in which such returns shall be submitted;
- (c) the maximum amount which a society may without the prior consent of the Registrar borrow either from members or from non-members;
- (d) any form to be used for any purpose under this Act;
- (e) anything for ensuring the proper administration of the affairs of registered societies.

Certain  
laws not to  
apply

**133.** The provisions of the Companies Act and the Business Names (Registration) Act, shall not apply to societies registered under this Act.

Transi-  
tional  
provisions  
Act No. 15  
of 1991  
repealed

**134.**-( 1) The Cooperatives Societies Act, 1991 is hereby repealed.

- (2) Notwithstanding the provisions of section 127-
- (a) every society, and all by-laws of a society and any amendments thereof, deemed to have been registered under this Act;
- (b) every board of a registered society lawfully constituted under the provisions of the Act shall be deemed to have been constituted under this Act;



- (c) any register kept in pursuance of the Act shall be deemed to have been kept, and shall continue to be kept in accordance with the provisions of this Act;
- (d) any document referring to provisions of the Act shall be construed as referring to the corresponding provisions of this Act;
- (e) all orders, directions, appointments and other acts and things lawfully made or done under any of the provisions of the Act and in force immediately before the commencement of this Act shall be deemed to have been made or done under the corresponding provisions of this Act and shall continue to have effect accordingly;
- (f) all rules and regulations made under the Act and in force immediately prior to the date upon which this Act comes into operation shall remain in force as if they had been made under this Act.

(3) Subject to this Act, where the registration of any society was cancelled, any immovable property which prior to the cancellation of that society vested in that society, and where subsequent to the cancellation of that society another society with similar objects is formed in the area of operation of the society which is so cancelled; then such immovable property as has not been disposed off as at the time when that other society is formed, shall vest in that other society:

Provided that, where any property so vested in that other society is subject of any mortgage, charge liability or any encumbrance whatsoever, then the liability to satisfy the mortgage, charge, liability or the encumbrance as the case may be, shall vest in that other society, and the name of that other society shall be substituted for that of the former society or for that of the liquidator in any contract or instrument where the property is the subject matter and such contract shall continue as if it has been entered into between that other society and the other party to the contract;

Provided further that, any vesting of property under this paragraph shall be subject to any directions that the Minister may give under this Act.

(4) The Minister may, by notice published in the Gazette, at any time before the expiry of twelve months from the commencement of this Act, make such consequential, transitional or supplementary provisions as he may consider necessary consequent upon the enactment of this Act.

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## SCHEDULE

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*(Made under section 125)*

### CODE OF CONDUCT

Title	1. This Code shall be known as "A Code of Conduct for Management of Cooperative Societies"
Interpre- tation	<p>2.-(I) In this Code of Conduct, unless the context otherwise requires:</p> <p>"Act" shall mean the Cooperative Societies Act;</p> <p>"active member" means a member of the cooperative society who is fulfilling his or her obligations as a member as provided for in the Act, Cooperative Rules, By-laws and other cooperative guidelines as they may be issued, from time to time, by the cooperative general meeting;</p> <p>"Cooperative rules" shall mean cooperative societies rules made under the Act;</p> <p>"management board" means the governing body of a registered society, elected by members at the General Meeting to whom the management of its affairs is entrusted;</p> <p>"election supervising officer" means a cooperative officer or any other officer designated by the Registrar under section 23 of this Code;</p> <p>"executive Staff" means officers of a society appointed by the management board and vested with powers to manage and supervise the day to day affairs of the society and shall include the general manager or secretary, accountant or treasurer, heads of departments and cashier;</p> <p>"ICA" means International Cooperative Alliance;</p> <p>"vetting" means conducting an investigation with a view of scrutinizing the integrity of applicants to a post in the management of Cooperative Societies in accordance to section 17(3) of this Code of Conduct.</p> <p>(2) All words not specifically defined shall have meanings as defined in the Act, Cooperative Rules and By-laws.</p>

### PART II GENERAL PROVISION

Manage- ment of Cooperative societies	3. In managing cooperative societies, provisions in the Act and cooperative rules concerning cooperative management shall be strictly observed.
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4. Cooperative Societies shall be managed according to the ICA Cooperative principles which are-

- (a) voluntary and open membership;
- (b) democratic -ember control;
- (c) member economic participation;
- (d) autonomy and independence;
- (e) education training and information;
- (f) cooperation among cooperatives;
- (g) concern for community.

Coopera-  
tive  
Principles

5. A cooperative member aspiring to become a member of the management board or a person applying for a post in the executive staff shall have to prove to the satisfaction of the appointing or electing body or authority, as the case may be, that, he understands and is prepared to enforce the Act and the Cooperative rules.

Member of  
the  
manage-  
ment board

6. cooperative leadership shall be of a high integrity and any cooperative member aspiring to become a member of the management board or any person applying for a post in the executive staff shall have to prove to the satisfaction of the appointing or electing body or authority that-

Coopera-  
tive  
leadership

- (a) has good education, sufficient to enable that person to handle the relevant responsibilities;
- (b) has ability to manage the affairs of the cooperative society;
- (c) has records of honesty of the highest level;
- (d) is participating fully in cooperative society's membership affairs;
- (e) has never been disqualified from cooperative leadership at any level of the cooperative system .

7-(1) The cooperative general meeting, being the highest decision making body of a cooperative society, shall be respected and given its appropriate importance.

(2) The cooperative management shall make efforts to ensure that all members are informed of the General Meeting, as required by the Act, Cooperative rules and by-laws and also shall facilitate the attendance of members to that meeting.

Manage-  
ment to  
ensure  
members  
attendance  
to the  
cooperative  
general  
meeting

### PART III COOPERATIVE MANAGEMENT BOARD

8.-(1) All members of the management board shall be elected by the members at the general meeting.

Manage-  
ment board  
to be  
account-  
able to the  
general  
meeting

2. Members elected under subparagraph (1) shall be, accountable to the members in accordance to the Act, cooperatives rules and by-laws.

9.-(1) Subject to the provisions of this Act and Cooperative rules, the election of members to the management board shall be free and democratic and no member shall be elected to the management board through illegal means.

Election to  
the  
manage-  
ment  
board

(2) Every election of the management board, shall be made in the presence of the election supervising officer.

(3) The election supervising officer shall immediately report to the Registrar any irregularity or suspicion thereof in the manner of which members to the management board were elected.

(4) For the purpose of this section words-

"illegal means", means acts of corruption, coercion, intimidation or nepotism.

Condition  
for board  
members  
to fill  
forms

**10.** Every member aspiring to be elected to the management board shall have to fill a relevant form disclosing the following information -

- (a) personal details or personal history and experience in cooperative leadership;
  - (b) cooperative membership records indicating performance, records in fulfilling membership obligations provided in the Act, rules and by-laws;
  - (c) anticipated contribution to the development of the cooperative society after becoming a cooperative leader;
  - (d) level of education;
  - (e) cooperative education (if any) already acquired;
  - M** type of business or activities being undertaken by that member;
  - (g) any other information deemed relevant for being elected as a management board member;
- and shall submit forms to the election supervising officer.

Forms to  
indicate  
Property  
owned

**11.-(1)** Every member of the management board shall, for each year he or she is in the management board, fill relevant forms to be submitted to Registrar declaring property or business he or she owns or controls.

(2) The forms filled under sub-paragraph (1) of this paragraph shall be read at the annual General Meeting by the Registrar or his/her representative.

No  
conflict  
of Interests

**12.** Subject to the relevant provisions in this Act and Cooperative rules, no member shall be elected as a member to the management board if she or he owns, controls or influences businesses or activities like that of the cooperative society.

No  
duplicity  
of Roles  
Committee  
Members  
to attend  
Seminar

**13.** Committee members shall observe their roles and responsibilities provided in this rules and by-laws and no committee member shall interfere with responsibilities reserved for the executive staff of the cooperative society.

**14.** Before assuming the responsibilities of a committee, every elected committee member shall attend a seminar on cooperative management, which shall be organized by the Cooperative Society concerned.

#### **PART IV**

##### **COOPERATIVE EXECUTIVE STAFF**

Executive  
Staff to be  
Account-  
able to the  
Manage-  
ment  
Board

**15.** Cooperative Executive Staff are appointed by the management board, and shall be accountable to the management board in accordance to the Act, Cooperative rules and by- laws.

16.-(1). Executive staff of cooperatives shall be appointed on the basis of their competence in running day to day activities of the cooperative society and no executive staff shall be appointed for other reasons-

Executive staff to be appointed on competence basis

(2) The following reasons or grounds shall not be considered when appointing an executive staff-

- (a) relation with some of the members of the management board (nepotism);
- (b) colour or tribe;
- (c) wealth;
- (d) illegal means to induce a decision for appointment;
- (e) any other reason which under the provisions of the Act, Rules and by-laws warrant such an appointment to be null and void.

17.-(1). Subject to provisions of section 170), Cooperative rules and by-laws the vacancy for the executive staff shall be made known to the public thirty days before holding on interview.

Executive Staff to be interviewed and vetted

(2) Every appointment for filling any vacancy for executive staff, shall be done on the basis of the highest points or marks scored in any interview conducted for such purposes.

(3) In addition to an interview, officers seeking for appointments in executive staff positions in cooperatives of the secondary and other upper levels, shall be vetted through the Registrar.

18. Subject to the relevant provisions in the Act, cooperative rules and by-laws, no member shall be elected as a member to the executive staff position if he or she owns, controls or commands influence of businesses or activities like that of the cooperative society.

No conflict of interest

19. Application for an executive staff position, shall be accompanied by relevant forms which shall indicate the following details-

Application forms

**A. Executive staff of the Primary Society:**

- (i) level of education;
- (ii) understanding of both Kiswahili and English languages;
- (iii) capacity to be trained (trainability);
- (iv) names and addresses of at least two referees;
- (v) names and addresses of at least two guarantors;
- (vi) type of business or activities being undertaken by the applicant;
- (vii) any other information deemed relevant.

**B. Executive Staff of the Secondary and Upper Level Societies:**

- (i) academic qualification relevant for the position applied for;
- (ii) knowledge and experience of cooperative society movement and its relevance to the members;
- (iii) knowledge and understanding of the culture and norms of the society or community of the members of the relevant cooperative society;

- (iv) names and addresses of at least two referees;
- (v) names and addresses of at least two guarantors;
- (vi) type of business or activities being undertaken by the applicant;
- (vii) any other information deemed relevant.

Additional  
Require-  
ments to  
Executive  
staff of  
upper  
Level  
societies

20.-(1) In addition to the information disclosed under paragraph 20, persons applying for an executive staff position at the Secondary and Upper Level Societies shall, for each year of which they are in the executive staff positions, fill relevant forms to declare property and business they own or control.

(2) The forms filled under sub-paragraph (1) of this paragraph shall be read at the Management board Meeting by the Registrar or his/her representative.

#### PART V

##### MISCELLANEOUS PROVISIONS

Hono-  
rarium or  
bonus

21.-(1). Subject to the relevant provisions in the Act and Cooperative rules and in recognition of outstanding performance, cooperatives shall establish a system of reward, by way of honorarium or bonus, to members of the management board or executive staff whose performance in the cooperative management is of outstanding quality.

(2) The honorarium or bonus may be given on a group or individual basis.

Registrar  
to desig-  
nate elec-  
tion  
supervising  
officers

22. The Registrar shall appoint officers from the civil service or cooperative movement and designate them as election supervising officers.

Cease to  
hold a  
leadership

23.-(1) A person may voluntarily cease to hold a leadership position of cooperative society.

(2) If before ceasing to hold a relevant position as provided for under the provision of sub-paragraph (1) of this paragraph, the person concerned, due of negligence or fraudulent behaviors, performed acts which as a result of his acts, the cooperative society suffered loss, that person together with his or her guarantors shall be liable and shall, in respect of cooperative societies, compensate fully the cooperative society for the loss occasioned.

Automatic  
loss of  
positions  
in the  
coopera-  
tive  
systems as  
a result  
of breach  
of Code

24. In addition to the penalties provided for under section 120 of this Act, any person who contravenes the provisions of this Code, shall automatically lose all leadership positions he or she was holding in the cooperative system before that contravention.

Passed in the National Assembly on 10<sup>th</sup> November, 2003

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*Clerk of the National Assembly*