

## CHAPTER 112

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## CHAPTER 112

### THE COOPERATIVE SOCIETIES ACT.

*Commencement:* 15 November, 1991.

**An Act to amend and consolidate the law relating to the constitution and regulation of cooperative societies and for other matters connected therewith.**

#### PART I—INTERPRETATION.

##### 1. Interpretation.

In this Act, unless the context otherwise requires—

- (a) “agricultural produce” means the produce of farms, gardens, orchards and forests, including all dairy produce and all products of animal husbandry, and shall be deemed to include all the products of fishes and fishing and peasant handicrafts;
- (b) “apex society” means a registered society under this Act, the membership of which is restricted to cooperative unions and includes a society established to serve the cooperative movement by providing facilities for banking, insurance and the supply of goods or services;
- (c) “board” means the Board of Directors of the Uganda Cooperative Alliance Ltd.;
- (d) “bonus” means a share of the surplus of a registered society divided among its members in proportion to the volume of business done with the society by them from which the surplus of the society was derived;
- (e) “byelaws” means the registered byelaws made by a society in the exercise of any power conferred by this Act, and includes a registered amendment of those byelaws;
- (f) “commissioner” means the commissioner for cooperative development and includes the deputy commissioners for cooperative development when acting for the commissioner;
- (g) “committee” means the governing body of a registered society to which the management of its affairs is entrusted and includes a board of directors;
- (h) “cooperative union” means a registered society under this Act, the membership of which is restricted to primary societies;

- (i) “court” in relation to a registered society means a court presided over by a chief magistrate or magistrate grade I, and in relation to a union of two or more registered societies means the High Court;
- (j) “date of dissolution” means the date on which the registrar’s order cancelling the registration of a society takes effect;
- (k) “dividend” means a share of surplus of a registered society divided among its members in proportion to the share capital held by them;
- (l) “member” includes a person or a registered society joining in the application for the registration of a society to membership after registration in accordance with the byelaws;
- (m) “Minister” means the Minister responsible for cooperatives and marketing;
- (n) “officer” includes a chairperson, secretary, treasurer, member of a committee, employee, or other person empowered under any regulations made under this Act or the byelaws of a registered society to give directions in regard to the business of a registered society;
- (o) “primary society” means a registered society under this Act, the membership of which consists of individual persons and includes other bodies approved by the registrar under section 15;
- (p) “probationary society” means a society registered provisionally under section 6(1);
- (q) “registered society” means a cooperative society registered or deemed to be registered under this Act;
- (r) “registrar” means the registrar of cooperative societies and includes the deputy registrars of cooperative societies;
- (s) “winding up” means all proceedings subsequent to the cancellation of the registration of a society.

## PART II—REGISTRATION.

### **2. Registrar, deputy registrars and assistant registrars.**

(1) There shall be a registrar for cooperative societies who shall also be the commissioner for cooperative development for the purposes of this Act.

(2) The registrar shall be a public officer responsible for providing and administering the services required by societies for their formation,

organisation, registration, operation and advancement and for carrying out the provisions of this Act.

(3) There shall be three deputy registrars who shall be deputy commissioners, one of whom shall be responsible for the administration of cooperative societies, while the other shall be responsible for the implementation of the legal provisions of this Act.

(4) All officers of the rank of assistant cooperative officer and above shall be assistant registrars of cooperative societies for the purpose of this Act.

(5) The Minister may, by statutory order, confer or impose on any assistant registrar of cooperative societies all or any of the powers and duties conferred or imposed on the registrar of cooperative societies by this Act.

### **3. Societies which may be registered.**

Subject to this Act, a society which has for its object the promotion of the economic and social interests of its members in accordance with cooperative principles and which, in the opinion of the registrar, is capable of promoting those interests may be registered under this Act with or without limited liability; except that a cooperative union or any apex society shall be registered with limited liability.

### **4. Conditions of registration.**

- (1) No society shall be registered under this Act unless—
  - (a) it consists of at least thirty persons all of whom are qualified for membership of the society under section 13;
  - (b) in the case of a secondary society, it consists of at least two registered primary societies among its registered members;
  - (c) in the case of a tertiary society, it consists of at least two registered secondary societies among its registered members; or
  - (d) in the case of an apex society, it consists of two or more secondary societies.

(2) The Uganda Cooperative Alliance Ltd. shall be the apex body for all registered cooperative societies.

- (3) Notwithstanding subsection (1), registered societies which are not

affiliated to any secondary society may be admitted as associate members to a tertiary society.

## **5. Application for registration.**

(1) For the purpose of registration, an application to register shall be made to the registrar.

(2) The application shall be signed—

- (a) in the case of a primary society, by at least thirty persons qualified for membership of the society under section 13; and
- (b) in the case of a secondary, tertiary or apex society, by a person duly authorised for that purpose by each registered society, who is a member of that society.

(3) The application shall be accompanied by three copies of the proposed byelaws of the society in English, and the persons by whom or on whose behalf the application is made shall furnish such information in regard to the society as the registrar may require.

## **6. Registration of a probationary society.**

(1) If the registrar is satisfied that a society has complied with this Act and regulations made under it and that its proposed byelaws are not contrary to the provisions of this Act, he or she shall register the society and its byelaws on probation for a period not exceeding twenty-four months.

(2) If at the expiration of twenty-four months the registrar is satisfied with the performance of the society, he or she shall register the society permanently.

(3) If at the expiration of twenty-four months the registrar is not satisfied with the performance of the society, he or she may either cancel the registration or extend the probationary period by a period not exceeding twelve months; and if after the extension he or she is still not satisfied with the performance of the society, he or she shall cancel the registration of the society.

(4) If the registrar cancels the registration of a society under subsection (3), then the provisions of sections 62 and 63 concerning the appointment of a liquidator and his or her powers shall apply.



(5) Any society registered under subsection (1) shall become a body corporate by the name under which it is registered probationary, with perpetual succession and a 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 of its constitution; and any reference in any written law to a registered society shall include a society which is registered under this section.

#### **7. Indication of probationary registration.**

A society which is registered under section 6(1) shall state in legible letters in all its receipt heads, letter-papers, notices, advertisements or other official publications that it is registered probationary and shall indicate the same on a signboard in a conspicuous position outside any premises or office in which it carries on its business.

#### **8. Cancellation of registration.**

(1) At any time during the period of registration of a society under section 6(1), the registrar may, by notice in writing to the person responsible for the running of the society, cancel the probationary registration of the society stating reasons for the cancellation; and the society shall, from the date of service of the notice, cease to be a registered society.

(2) The cancellation referred to in subsection (1) shall be gazetted and published in at least one of the English newspapers in Uganda.

(3) If a society registered under section 6(1) contravenes or fails to comply with section 7, that society and any officer or person who purports to act on its behalf commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings and in the case of a continuing offence to a further fine not exceeding one thousand shillings for each day on which the offence is continued after conviction of the offence.

#### **9. Amendment of the byelaws of a registered society.**

(1) Any registered society may, subject to this Act, amend its byelaws, including a byelaw which declares the name of the society.

(2) No amendment of the byelaws of a registered society shall be valid until the amendment has been registered under this Act, for which purpose a copy of the amendment shall be forwarded to the registrar.

(3) If the registrar is satisfied that an amendment of the byelaws is not contrary to the provisions of this Act, he or she shall register the amendment.

(4) An amendment which changes the name of a registered 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) When the registrar registers an amendment of the byelaws of a registered society, he or she shall issue to the society a copy of the amendment certified by him or her which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) If it appears to the registrar that an amendment of the byelaws of a society is necessary or desirable in the interest of the society, he or she may call upon the society, subject to any regulations made under this Act, to make the amendment within the time as he or she may specify.

(7) If the society fails to make the amendment within the time specified, the registrar may, after giving the society an opportunity of being heard, himself or herself make and register the amendment and issue to the society a copy of that amendment, certified by him or her.

(8) With effect from the date of registration of an amendment under subsection (7), the byelaws shall be deemed to have been duly amended accordingly; and the byelaws as amended shall, subject to any appeal made in accordance with this Act, be binding on the society and its members.

(9) Any society aggrieved by an amendment of its byelaws made and registered by the registrar under subsection (7) may appeal against that amendment to the board in writing within two months of the date of issue of the copy of the amendment.

(10) The decision of the board on an appeal under subsection (9) shall, subject to section 75, be final.

(11) In this section, “amendment” includes the making of a new byelaw and the variation or revocation of a byelaw.

#### **10. Appeal to the board.**

From every refusal of the registrar to register a society or its byelaws or any amendment of its byelaws, an appeal shall lie, in accordance with any regulations made under this Act, to the board whose decision, subject to section 75, shall be final.

#### **11. Provisions regarding name of a registered society.**

(1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely in the opinion of the registrar to mislead the members of the public as to its identity.

(2) The word “Cooperative” shall form part of the name of every society registered under this Act, and the word “Limited” shall be the last word in the name of every society with limited liability registered under this Act.

#### **12. Evidence of registration.**

(1) A certificate of registration signed by the registrar shall be conclusive evidence that the society mentioned in it is duly registered unless it is proved that the registration of the society has been cancelled.

(2) If the registrar is satisfied that a society’s original certificate of registration has been lost or destroyed, he or she may issue a duplicate certificate.

### **PART III—RIGHTS AND LIABILITIES OF MEMBERS.**

#### **13. Qualifications for membership.**

(1) In order to be qualified for membership of a registered society, a person, other than a registered society or a company incorporated under the Companies Act or an unincorporated body of persons permitted to become a member under section 15, shall—

(a) have attained the age of eighteen years; and

(b) be a resident within or in occupation of land within the society's area of operation as prescribed by the relevant byelaw.

(2) A person above the age of twelve years may become a member of a society, but such a person shall not be eligible to act as a committee member of the society until he or she has reached the age of eighteen years.

(3) When, for the purpose of this section, any question arises as to the age of any person, that question shall be decided by the registrar, whose decision shall be final.

#### **14. Restriction on shareholding.**

No member, other than a registered society, shall hold more than one-third of the paid-up share capital of any cooperative society.

#### **15. Restriction on membership.**

No company incorporated or registered under the Companies Act and no unincorporated body of persons shall be entitled to become a member of a registered society, except with the written permission of the registrar.

#### **16. Member not to exercise rights until due payment made.**

No member of a registered society shall exercise any of the rights of a member until he or she has made such payment to the society in respect of membership or has acquired such interest in the society as may be prescribed by any regulations made under this Act or by the byelaws of the society.

#### **17. Restriction on membership in more than one society.**

No person shall be a member of more than one registered society with unlimited liability, and except with the written consent of the registrar, no person shall be a member of more than one registered society having the same or similar objects.

#### **18. Votes of members.**

(1) Each member of a registered society shall have one vote only as a member in the affairs of the registered society.

(2) A registered society, a cooperative union or an apex society which is a member of any other registered society shall have as many votes as may be prescribed by the byelaws of the other society, and may, subject to those byelaws, appoint any number of its committee members, not exceeding the number of those votes, to exercise its voting power.

**19. Restrictions on transfer of share or interest.**

(1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to the conditions as to maximum holding for which provision is made in section 17.

(2) In the case of a society registered with unlimited liability, a member shall not transfer or charge any share held by him or her or his or her interest in the capital of the society or any part of it, unless—

- (a) he or she has held the share or interest for not less than one year; and
- (b) the transfer or charge is made to the society or to a member of the society.

PART IV—DUTIES OF REGISTERED SOCIETIES.

**20. Address of society.**

(1) Every registered society shall have a registered address to which notices and communications may be sent and shall send to the registrar notice of every change of address within one month of the change.

(2) Every registered society shall display its name and address on a signboard in a conspicuous position outside its place of business.

**21. Copy of the Act, regulations, byelaws, etc. to be open for inspection.**

Every registered society shall keep a copy of this Act and of the regulations made under it and of its byelaws and a list of its members open to inspection by any person, free of charge at all reasonable times during business hours at the office of the society.

## **22. Audit, annual returns and accounts.**

(1) Every registered society shall cause its accounts to be audited at least once in every year by an auditor appointed by the annual general meeting and approved by the registrar, and the cost of the audit shall be borne by the society; except that—

- (a) no auditor chosen by a registered society to audit its books shall perform that function for more than three annual audits in succession unless authorised by the registrar;
- (b) where the registered society is unable to appoint its own auditors, the registrar may appoint the auditors.

(2) Audits shall be conducted in accordance with generally accepted professional audit standards and, in addition, include audit of management efficiency.

(3) The auditor shall at all times have access to all books, accounts, papers and securities of a registered society, and every officer of the society shall furnish such information in regard to the transactions and working of the society as the auditor may require.

(4) The auditor shall have power when necessary—

- (a) to summon at the time of his or her audit any officer, agent, servant or member of the society whom he or she has reason to believe can give information in regard to the transactions of the society or the management of its affairs; or
- (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant or member in possession of that book, documents, cash or securities.

(5) Every auditor appointed under subsection (1) shall submit a detailed audit report of the accounts and balance sheet to the committee and a true copy of the accounts and balance sheet to the registrar three months after its financial year prepared in compliance with generally accepted professional audit standards and, in addition, include the auditor's opinion on whether or not the business administration of the society has been conducted—

- (a) efficiently;
- (b) in accordance with cooperative principles and the auditing and accounting provisions of this Act; and

(c) in accordance with its objectives, byelaws and any other decisions made by the annual general meeting.

(6) The audited accounts and balance sheet referred to in subsection (5) shall be open for inspection by any member of the public upon payment of such fee as may be fixed by the registrar.

(7) Where a registered society fails to cause its accounts to be audited in accordance with subsections (1), (2) and (5), the committee of that society shall be deemed to have relinquished its office; and the registrar shall convene a special general meeting to elect a new committee unless the registrar is satisfied that the failure was due to circumstances beyond the committee's control.

### **23. Qualifications of auditors.**

(1) No person, not being a registrar or deputy or assistant registrar of cooperative societies as defined in section 2, shall be appointed or approved as an auditor for the audit of the accounts of a registered society unless that person, or in the case of a firm, is a member of a recognised accounting body.

(2) The Minister may, in consultation with the board and by statutory instrument, amend the qualifications of auditors specified in this section.

### **24. Estimates and expenditure.**

(1) Every committee of a registered society shall cause estimates of the society's income and expenditure of both revenue and capital to be prepared for the coming twelve months at least three months before the end of its financial year.

(2) A copy of those estimates shall be sent to the registrar for an opinion before they are submitted to the general meeting.

(3) Supplementary estimates may be prepared by a society during the financial year and submitted to the registrar for an opinion before they are submitted to the annual general meeting.

(4) No development capital expenditure shall be made by a registered society before the committee's estimates have been approved by a general meeting.

(5) If a society contravenes or fails to comply with any provision of this section, that society and any officer or person who purports to act on its behalf commits an offence, and the registrar shall impose upon the society or officer or person a fine not exceeding five thousand shillings and in the case of a continuing offence a further fine not exceeding five hundred shillings for each day on which the offence is continued.

## **25. Voluntary amalgamation of societies.**

(1) Any two or more registered societies may, with the prior approval of the registrar, amalgamate into a single society.

(2) An amalgamation referred to in subsection (1) shall not take place unless—

- (a) a general meeting of each of the societies has been called;
- (b) each member of the society has had a clear notice of fifteen days of the meeting; and
- (c) a preliminary resolution has been passed by a two-thirds majority of the members present at the meeting for the amalgamation.

(3) An amalgamation of registered societies into one society under this section may be effected without dissolution of the societies concerned or a division of the assets and liabilities of the amalgamated societies, and a resolution of the societies passed for the amalgamation shall be sufficient for the transfer of the assets and liabilities of the amalgamated societies to the new society.

## **26. Transfer of assets and liabilities to another society.**

(1) Any registered society may by a resolution passed under section 25(2)(c) transfer its assets and liabilities to any other society which agrees to accept them.

(2) The transfer of liabilities referred to in subsection (1) shall not be made to any society without giving a notice in writing of ninety days to the creditors of both or more societies concerned in the transfer of these liabilities.

(3) If a creditor objects to an amalgamation decided upon under section 25 or a transfer of liabilities under this section and gives a notice in



writing of one month before the date fixed for the amalgamation or transfer of liabilities to the society concerned, the amalgamation or transfer shall not take place until the dues of the creditor have been satisfied or until an agreement for payment of the dues has been made by the society and the creditor.

(4) Any creditor who is not satisfied with the dues paid to him or her or who does not accept to enter an agreement with the society concerned as provided under subsection (3) may appeal to the registrar within ninety days from the date of his or her disagreement with the society, and the decision of the registrar shall be final.

## **27. Voluntary division of a society.**

(1) Any registered society may, with the prior approval of the registrar, divide itself into two or more societies in accordance with the procedure laid down by regulations made under this Act.

(2) A division of a society referred to under subsection (1) shall not take place unless—

- (a) a general meeting of the members of the society has been called;
- (b) each member of the society has had a clear notice of at least fifteen days of the meeting; and
- (c) a resolution has been passed by a two-thirds majority of the members present at the meeting providing for the division.

(3) A resolution passed under subsection (2) (hereafter referred to as a preliminary resolution) shall contain proposals for the distribution of the assets and liabilities of the divided society among the societies in which it is proposed to be divided and shall prescribe the area of operation of, and specify the members who may constitute, each of the new societies.

(4) A copy of the preliminary resolution shall be sent to all the members of the society and its creditors, and any other person whose interests may be affected by the division shall be informed in writing by the society.

(5) Any member of the divided society may notify the society in writing, within three months from the receipt of the preliminary resolution, of his or her intention not to belong to any of the new societies, and any creditor may demand from the society within that period a return of the

amount due to him or her.

(6) Any other person whose interests are affected by the division of the society may submit his or her claim in writing to the society.

(7) After the period of three months from the sending of the resolution under subsection (4) to the members and creditors of the society, a special general meeting of the society shall be called to consider the preliminary resolution.

(8) A special meeting of the society shall not be called under subsection (7) unless each member of the society has had a notice of fifteen days in writing informing him or her of the meeting.

(9) If, at the meeting called under subsection (7), a preliminary resolution is confirmed by a two-thirds majority of the members present, either without any change or with changes which, in the opinion of the registrar, are not material, the registrar may register the new societies and their byelaws; and on that registration, the registration of the old society shall be deemed to have been cancelled, and the society shall be deemed to be dissolved from the date of the cancellation.

(10) The opinion of the registrar as to whether the changes made in the preliminary resolution made under subsection (9) are or are not material shall be final, and no appeal shall lie from it.

(11) At the special meeting of the society held under subsection (7), provision shall be made by another resolution for—

- (a) the repayment of the share capital of all the members who have given notice under subsection (5);
- (b) the satisfaction of the claims of all the creditors who have given notice under subsection (5);
- (c) the satisfaction of the claims of any other person who has given notice under subsection (6) as the registrar decided or securing their claims in the manner decided by the registrar,

except that no member, creditor or any other person shall be entitled to any repayment or satisfaction until the preliminary resolution is confirmed under subsection (9).

(12) The registration of new societies under subsection (9) shall be sufficient to vest the assets and liabilities of the divided society in the new

societies in accordance with the preliminary resolution.

PART V—DUTIES OF THE BOARD AND PRIVILEGES OF REGISTERED  
SOCIETIES.

**28. Societies to be bodies corporate.**

A society on registration shall become a body corporate by the name under which it is registered, with perpetual succession and a 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 of its constitution.

**29. Board of Directors of the Uganda Cooperative Alliance Ltd.**

The Board of Directors of the Uganda Cooperative Alliance Ltd. shall, subject to the byelaws and any directions issued by the general meeting of the alliance—

- (a) consider and make recommendations to the Government on matters of policy relating to the cooperative movement;
- (b) make representations to the Government as it may think fit in relation to any matter affecting registered cooperative societies in general or any particular registered society which those societies generally or any such society may request the board to bring to the notice of the Government;
- (c) carry out any other duty assigned to it under this Act.

**30. Byelaws to bind members.**

(1) The byelaws of a registered society shall, when registered, bind the society and its members to the same extent as if they were signed by each member, and contain obligations on the part of each member, his or her heirs, executors, administrators and assignees, to observe all the provisions of the byelaws.

(2) It shall not be competent for a member of a registered society to contest any suit, claim, action or proceedings between that member and the society or any other member of the society on the ground that any byelaw of the society constitutes a contract in restraint of trade.

### **31. Contract with members to dispose of produce.**

(1) A registered society, having as one of its objects the disposal of any agricultural produce, may contract with its members either in its byelaws or by a separate document that they shall dispose of all their produce or of such amounts or descriptions as may be stated in those byelaws or that document, to or through the society, and may in the contract provide for payment of a specific sum per unit of weight or other measure as liquidated damages for infringement of the contract; and that sum shall be a debt due to the society.

(2) Any such contract as is mentioned in subsection (1) shall create in favour of the society a first charge upon all produce mentioned in the contract, whether existing or future.

(3) The covenants or obligations imposed by any such contract as is mentioned in subsection (1) shall run with any lands, trees, buildings or other structures mentioned in it and shall be binding on all assignees and transferees; and any transfer or conveyance of property subject to the contract shall be deemed to operate also as a like transfer or assignment of the contract.

(4) No contract entered into under this section shall be contested in any court on the ground that it constitutes a contract in restraint of trade.

### **32. Imposition of fines upon members.**

(1) The byelaws of a registered society may, subject to any regulations made under this Act, provide for the imposition of fines on its members for any infringement of its byelaws; but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason for it has been transmitted to him or her and he or she has had an opportunity of showing cause against the imposition of the fine and, if he or she so desires, of being heard with or without witnesses.

(2) Any such fine may be recovered by suit in any competent court.

(3) The whole or any part of such fine may be set off against any monies due to such member in respect of produce delivered by him or her to the society.

(4) A member shall not be deemed to have infringed the byelaws of a registered society by reason of his or her having failed to deliver produce to the society if that failure was due to the fact that before becoming a member of the society the member had contracted to deliver the produce to some other person.

(5) Every person applying for membership of a registered society shall disclose to the society particulars of all such contracts as are mentioned in subsection (4).

**33. Charge on agricultural produce and certain other materials and articles.**

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

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

**34. Charge and setoff in respect of shares or interest of members.**

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

**35. Share or interest not liable to attachment.**

Subject to section 32, 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 the member, and a trustee in bankruptcy under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on that share or interest; but where a society is dissolved, the property in the shares of any member who has been adjudicated as bankrupt under any law relating to bankruptcy shall vest in the trustee in bankruptcy.

### **36. Liability of past member.**

The liability of a past member for the debts of a registered society as they existed at the time when he or she ceased to be a member shall continue for two years from the date of his or her ceasing to be a member; except that in the case of a society with limited liability, if the first audit of the accounts of the society after his or her ceasing to be a member discloses a credit balance in favour of the society, the financial liability of the past member shall forthwith cease.

### **37. Liability of estate of deceased member.**

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

### **38. Transfer of interest on death of member.**

(1) On the death of a member, a registered society may transfer the share or interest of the deceased member to the person nominated in accordance with any regulations made under this Act or, if there is no person so nominated, to such person as may appear to the committee of the society to be the legal personal representative of the deceased member or may pay to that nominee or legal personal representative, as the case may be, a sum representing the value of the member's share or interest, ascertained in accordance with any regulations made under this Act or the byelaws of the society; except that—

- (a) in the case of a society with unlimited liability, the nominee or legal personal representative, as the case may be, may require payment by the society of the value of the share or interest of the

deceased member ascertained in the manner mentioned in this subsection; or

- (b) in the case of a society with limited liability, the society shall transfer the share or interest of the deceased member to the nominee or legal personal representative, as the case may be, being qualified in accordance with any regulations made under this Act and the byelaws for membership of the society or, on his or her application within one month of the death of the deceased member, to any person specified in the application who is so qualified.

(2) A registered society shall pay all other monies due to the deceased member from the society to the nominee or legal personal representative, as the case may be.

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

**39. Registers and books of societies and copies of them shall be received in evidence in certain circumstances.**

(1) Any register or list of members or of shares which is kept by any registered society shall be prima facie evidence of any of the following particulars entered in it—

- (a) the date on which the name of any person was entered in the register or list as member;
- (b) the date on which any such person ceased to be a member.

(2) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in accordance with any regulations made under this Act, be received in any suit or legal proceedings as prima facie evidence of the existence of the entry, and shall be admitted as evidence of the matters, transactions and accounts recorded in it in every case where and to the same extent as the original entry itself is admissible.

**40. Restriction on the production of a society's books.**

No officer of a registered society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under section 39, or to appear as a witness

to prove the matters, transactions and accounts recorded in those books unless by order of the court made for special cause.

#### **41. Power to exempt from duty or tax.**

(1) The Minister responsible for finance may, by statutory order, in the case of a registered society or class of registered societies, reduce or remit—

- (a) the duty or tax which, under any law 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 accumulated funds;
- (b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of the society or any class of those instruments are respectively chargeable;
- (c) any fee payable under any law relating to registration for the time being in force.

(2) In the case of a division, an amalgamation or a transfer of some or all of the assets of a registered society, the Minister shall remit the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of the society or by an officer or member and relating to the business of the society or any class of those instruments are respectively chargeable.

#### **PART VI—PROPERTY AND FUNDS OF REGISTERED SOCIETIES.**

#### **42. Restrictions on loans.**

A registered society shall not make a loan to any person other than a member; except that—

- (a) with the general or special sanction of the registrar, a registered society may make loans to another registered society; and
- (b) subject to the prior approval in writing of the registrar and subject to such conditions as he or she may impose, a registered society may stand surety for a loan to be granted to an employee of that society where the loan is for the benefit of that society.



**43. Restrictions on borrowing.**

(1) A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as the registrar may, from time to time, in writing, authorise.

(2) For the purposes of this section, credit on current account for a period of more than ninety days and a deposit of money under a hire-purchase agreement shall be deemed to be a loan within the meaning of this section.

**44. Restrictions on other transactions with nonmembers.**

Except as provided in sections 42 and 43, the transactions of registered persons other than members shall be subject to such prohibitions and restrictions, if any, as the registrar may, from time to time, in writing, direct.

**45. Investment of funds.**

A registered society may invest or deposit its funds only—

- (a) in a registered cooperative bank;
- (b) in any registered society, company or statutory corporation approved in writing by the registrar;
- (c) in any bank or financial institution incorporated in Uganda;
- (d) in and upon such investment and securities as are by law allowed for the investment of trust funds;
- (e) in such other mode as specified by the byelaws of the society and approved by the registrar.

**46. Dividend or bonus.**

(1) No registered society shall pay a dividend or bonus or distribute any part of its accumulated funds without the prior written consent of the registrar and the written acknowledgement of the registrar that a balance sheet has been lodged with him or her disclosing the surplus funds out of which the dividend, bonus or distribution is to be made.

(2) No society shall pay a dividend to its members exceeding the maximum rate prescribed by regulations made under this Act.

(3) No society with unlimited liability, which advances money or

goods to any member in excess of money or goods deposited by him or her, shall pay a dividend before ten years from the date of its registration without the sanction of the registrar.

**47. Reserve and provident fund.**

(1) Every society which does or can derive a surplus from its transactions shall maintain a reserve fund.

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

(3) All societies other than societies referred to in subsection (2) shall carry to the reserve fund such portion of the net surplus in each year as may be prescribed by any regulations made under this Act or byelaws of the registered society.

(4) Every society shall, with the approval of the registrar, establish a contributory provident fund for payment of pensions to its permanent employees at the time of their retirement.

**48. Distribution of net balance.**

Subject to sections 46 and 47, the net balance of each year, with any sum available for distribution from previous years, may be distributed as may be prescribed by any regulations made under this Act or by the byelaws of the registered society.

**49. Contribution to education fund.**

(1) There shall be a National Cooperative Education Fund to which every registered cooperative society shall contribute 1 percent per year of its turnover.

(2) Fifty percent of the education fund set aside under subsection (1) shall be sent to the secondary society to which the society is affiliated, while the remaining 50 percent shall be retained by the society and used to carry out its own educational programmes.

(3) In case of a secondary society, or a primary society not affiliated to any secondary society, 50 percent of the education fund set aside under subsection (1) shall be sent to the Uganda Cooperative Alliance Ltd., while the remaining 50 percent of the fund shall be used by the secondary society or primary society to carry out its own educational programmes.

(4) The Uganda Cooperative Alliance Ltd. shall make quarterly returns to the registrar accounting for collections and utilisation of the education fund.

#### **50. Registration of charges.**

The First Schedule to this Act shall apply in relation to the registration of charges against the property of a registered society.

### **PART VII—SUPERVISION AND INSPECTION OF AFFAIRS.**

#### **51. Production of cash and books of a registered society.**

Any officer, agent, servant or member of a registered society who is required by the registrar, or any persons authorised in writing by the registrar, so to do shall, at such place and at such time as the registrar may direct, produce all monies, securities, books, accounts and documents the property of, or relating to the affairs of, the society which are in the custody of the officer of the society, agent, servant or member and which are under his or her control.

#### **52. Ad hoc committee of inquiry.**

(1) The registrar in consultation with the board may hold an inquiry or direct a person authorised by him or her by order in writing in that behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

(2) On receipt of a resolution demanding an inquiry passed by not less than two-thirds of the members present at a general meeting of the society which has been duly advertised, the registrar in consultation with the board shall cause such an inquiry.

(3) During the period of inquiry referred to in subsections (1) and (2), the chief executive and other officers or employees may be suspended from

duty by the registrar as he or she may deem necessary to facilitate the smooth holding of the inquiry.

(4) Where the chief executive has been suspended in accordance with subsection (3), a caretaker manager shall be appointed by the registrar in consultation with the board.

(5) The caretaker manager shall remain in office until either the former chief executive is reinstated or a new one is appointed; except that he or she shall not stay in that office for more than three months after the report of the committee of inquiry has been submitted.

(6) If during the course of inquiry cause arises to dissolve the committee of the society, the registrar, in consultation with the board, shall dissolve the committee and convene within thirty days a special general meeting to replace the committee.

(7) All officers and members of the society shall produce such cash, accounts, books, documents and securities of the society and furnish any information in regard to the affairs of the inspected society as the registrar or such person authorised by the registrar may require.

### **53. Inspection of books of an indebted registered society.**

(1) The registrar may, if he or she thinks fit, on the application of a creditor or a registered society, direct a person authorised by him or her in writing in that behalf to inspect the books of the society if—

- (a) the applicant satisfies the registrar that the debt is a sum then due, and that he or she has demanded payment of the debt and has not received satisfaction within a reasonable time; and
- (b) the applicant deposits with the registrar such sum as security for the costs of the proposed inspection as the registrar may require.

(2) The registrar shall communicate the results of any inspection to the creditor.

### **54. Cost of inquiry.**

Where an inquiry is held under section 52 or an inspection is made under section 53, the registrar may make an award apportioning the costs or such part of the costs as he or she may think fit between the society, the members

or creditor demanding an inquiry or inspection and the officer or former officers of the society.

**55. Recovery of an award under section 54.**

Any award under section 54 may be recovered in any court of competent jurisdiction in the same manner as a decree of that court.

PART VIII—DISSOLUTION OF A REGISTERED SOCIETY.

**56. Cancellation of registration after inquiry or inspection.**

(1) If the registrar, after holding an inquiry under section 52 or after making an inspection under section 53, or on receipt of an application made by two-thirds of the members of a registered society, is of the opinion that the society ought to be dissolved, he or she may make an order for the cancellation of registration of the society.

(2) Any member of a registered society may, within two months from the date of an order made under subsection (1), appeal from the order to the board.

(3) Where no appeal is presented within two months from the making of an order under subsection (1) cancelling the registration of a society, the order shall take effect on the expiry of that period; where an appeal is presented within two months, the order shall not take effect until it is confirmed by the board.

(4) No registered society shall be wound up, except by an order of the registrar.

**57. Cancellation for other reasons.**

(1) The registrar may, on his or her motion, by order in writing, cancel the registration of any society, if satisfied that—

- (a) the registration was obtained by fraud or mistake;
- (b) the society exists for an illegal purpose;
- (c) the society has wilfully, after notice by the registrar, contravened any of the provisions of this Act, the regulations or the byelaws;
- (d) the society is no longer operating in accordance with cooperative principles;

- (e) the number of members of the society has fallen below the minimum required by this Act; or
- (f) the society has not commenced operations or has ceased to operate for two consecutive years.

(2) A society shall liquidate when two-thirds of its share capital has been lost, unless it can convince the registrar that the loss will be made good within six months from the date of discovery of the insolvency.

(3) An appeal against an order made under subsection (1) or (2) shall be lodged with the board within two months from the date of receipt of the order.

#### **58. Winding up.**

(1) Where the registrar, after an inquiry has been held under section 52, is of the opinion that the society ought to be wound up, he or she may make an order directing it to be wound up and may appoint a liquidator for the purpose and fix his or her remuneration which shall be paid out of the funds of the society.

(2) Where no liquidator is appointed, the assets and liabilities of the society shall vest in the registrar.

#### **59. Application of the Companies Act, etc.**

(1) Upon the winding up of any registered society, the provisions of the Companies Act mentioned in the Second Schedule to this Act shall, subject to the modifications mentioned in subsection (2), by statutory order, apply in relation to the society as if those provisions had been expressly enacted in this Act.

(2) For the purposes of this Act, the provisions of the Companies Act mentioned in the Second Schedule to this Act shall have effect as if for references to “company”, “the commencement of the winding up”, “winding up order”, “contributor” and “director”, “manager or other officer”, there were substituted references to “society”, “the date of dissolution”, “order for the cancellation of the registration of a society”, “member of a society” and “officer or manager of a society”, respectively.

**60. Effective date of cancellation.**

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

**61. Copy of order to be filed by the registrar.**

On the making of an order to cancel the registration of a society, a copy of the order shall be placed in the file maintained by the registrar in respect of the society and gazetted and published in at least one of the newspapers in Uganda.

**62. Appointment of a liquidator.**

Where the registration of a society is cancelled under section 56 or 57, the registrar may appoint one or more persons to be a liquidator or liquidators of the society, and all the property of the society shall vest in the liquidator or liquidators with effect from the date of dissolution.

**63. Powers of a liquidator.**

A liquidator appointed under section 62 shall, subject to the guidance and control of the registrar and to any limitation imposed by the registrar or by an order made under section 64, have the following powers—

- (a) to appoint a day, in the manner prescribed by regulations made under this Act, before which the creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
- (b) to institute and defend suits and other legal proceedings by and on behalf of the society by his or her name of office and appear in court as a litigant in person on behalf of the society;
- (c) to refer disputes to arbitration in the manner prescribed by regulations made under this Act;
- (d) to determine from time to time the contributions to be made by the members and past members, and by the estate of deceased members of the society, respectively, to the assets of the society;
- (e) to investigate all claims against the society and, subject to this Act, decide questions of priority arising between claimants;
- (f) to call such meetings of members as may be necessary for the proper conduct of the liquidation;

- (g) to sell the assets of the society;
- (h) to carry on the business of the society so far as may be necessary for the proper liquidation of the affairs of the society;
- (i) to determine from time to time by what persons and in what proportion the costs of the liquidation are to be borne;
- (j) to take possession of the books, documents and assets of the society;
- (k) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the registrar;
- (l) to give such directions in regard to the disposal of the books and documents of the society as may appear to him or her to be necessary for winding up the affairs of the society;
- (m) to compromise, with the approval of the registrar, any claim by or against the society; and
- (n) to apply to the registrar for his or her discharge from the duties of liquidator after completion of the liquidation proceedings.

**64. Powers of the registrar in liquidation.**

- (1) A liquidator shall exercise his or her powers subject to powers of 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 and appoint a new liquidator;
  - (c) call for all books, documents and assets of the society;
  - (d) by order in writing, limit the powers of a liquidator under section 63;
  - (e) require accounts to be rendered to the registrar by the liquidator at the registrar's discretion;
  - (f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
  - (g) make an order for the remuneration of the liquidator;
  - (h) grant a discharge to the liquidator on application by him or her after completion of the liquidation proceedings;
  - (i) require any member of a society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer immediately, or within such time as he or she shall direct, to the liquidator any money, property or books and papers in his or her hands to which the society is prima facie entitled;



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

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

#### **65. Appeal against an order of a liquidator or the registrar.**

Any person aggrieved by an order of a liquidator or the registrar given under section 63 or 64(1)(a) may appeal against the order to the board whose decision shall, subject to section 75, be final.

#### **66. Closure of liquidation.**

(1) In the liquidation of a society whose registration has been cancelled, the funds, including the reserve fund, shall be applied first to the costs of liquidation, including the remuneration of the liquidator, then to the discharge of the liabilities of the society, then to the payment of the share capital and then, if the byelaws of the society so permit, to the payment of a dividend at a rate not exceeding 10 percent per year for any period for which no disposal of the net surplus was made.

(2) When the liquidation of a society has been closed, the claim of any creditor of that society who has not received what is due to him or her under the approved scheme of distribution shall be barred by prescription on the expiry of one year from the date of the order cancelling the registration of the society.

(3) Any surplus remaining after the application of the funds to the purposes specified in subsection (1) and any sums unclaimed under subsection (2) shall—

- (a) be distributed among the members at the time of dissolution (or their legal personal representatives) in proportion to the value of the business of each such member with the society during the

three years immediately preceding the date of dissolution or, if the society has not existed for such period, during the existence of the society or if the society has done no business during these three years, then in proportion to the share capital held by them at such date;

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

#### **67. Commission of offences under the Companies Act.**

If the liquidator of a society whose registration has been cancelled alleges that any of the offences mentioned in section 322, 323, 324, 325, 326 or 327 of the Companies Act has been committed, he or she shall report the facts to the registrar who shall forward a copy of the report to the Director of Public Prosecutions for the institution of such proceedings as may be necessary.

#### **68. Convicted officers not to be officers of a society.**

(1) Any person convicted of an offence under this part of this Act shall not be an officer of a registered society or in any way, whether directly or indirectly, be concerned in or take part in the management of a society for five years from the date he or she is released from prison or he or she pays a fine.

(2) Any person acting in contravention of this section commits an offence and is liable on conviction to imprisonment for a period not exceeding two years.

#### **69. Offences.**

Offences under this Part of this Act shall be cognisable by a court presided over by a chief magistrate or a magistrate grade I having jurisdiction over the place in which the alleged offence was committed.

PART IX—SURCHARGE AND ATTACHMENT.

**70. Powers of the registrar to surcharge officers, etc.**

(1) Where it appears that any person who has taken part in the organisation or management of a registered society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of that society or has been guilty of misfeasance or breach of trust in relation to the society, the registrar may, on his or her own motion or on the application of the liquidator or of any creditor or member, examine into the conduct of that person and make an order requiring him or her to repay or restore the money or property or any part of the money or property 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, dishonesty or breach of trust as the registrar thinks just.

(2) Any monies (including interest) awarded by an order made under subsection (1) to be repaid or contributed to a registered society shall, without prejudice to any other mode of recovery, be a civil debt recoverable summarily in any competent court.

(3) This section shall apply notwithstanding that the act in respect of which the registrar has made an order under subsection (1) may constitute an offence under any other law for the time being in force.

**71. Appeal to the Minister.**

Any person aggrieved by an order of the registrar made under section 70 may appeal to the Minister within twenty-one days from the date of that order, and the decision of the Minister shall, subject to section 75, be final.

**72. Attachment of property.**

Where the registrar is satisfied that any person, with intent to defraud or delay the execution of any order which may be made against him or her under section 63 or 70, or of any decision that may be given in a dispute referred to the arbitrators under this Act and for the time being in force, is about to dispose of the whole or any part of his or her property, the registrar may, unless adequate security is furnished, order the conditional attachment of that property, and the attachment shall have the same effect as if made by

a competent court.

PART X—SETTLEMENT OF DISPUTES.

**73. Settlement of disputes.**

(1) If any dispute touching the business of a registered society arises—

- (a) among the members, past members and persons claiming through the members, past members and deceased members;
- (b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its committee or any officer or past officer of the society;
- (c) between the society or its committee and any officer or past officer of the society; or
- (d) between the society and any other registered society,

the dispute shall be referred to an arbitrator or arbitrators for decision.

(2) A claim by a registered society for any debt or demand or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether the debt or demand be admitted or not, shall be deemed to be a dispute within the meaning of subsection (1).

(3) The parties to a dispute may agree upon an arbitrator or arbitrators for purposes of deciding the dispute.

(4) Where there is failure of agreement upon an arbitrator or arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator to decide the dispute.

(5) If a party fails to appoint an arbitrator as required under subsection (4) within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on a third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of either party, by the general secretary of the Uganda Cooperative Alliance Ltd.

(6) If an appointed arbitrator refuses or neglects to act, or is incapable of acting or dies or is removed, the parties shall fill the vacancy.

(7) If the parties fail to fill the vacancy under subsection (6) within seven days from the date the vacancy occurs, either party may apply to the general secretary of Uganda Cooperative Alliance Ltd. to fill the vacancy which he or she shall do after giving the other party an opportunity of being heard.

(8) The provisions of the Arbitration and Conciliation Act shall, to the extent that they are not inconsistent with this Act, apply to an arbitration under this Act.

(9) Any party aggrieved by an award made under this section may appeal from it to the board within two months from the date of the award.

(10) An arbitrator appointed under this section may—

- (a) summon witnesses and call for any accounts, books, documents or any information which he or she considers relevant to the matter in question;
- (b) administer an oath or affirmation to any witness giving evidence before him or her;
- (c) refer any point of law to the High Court for its decision; and
- (d) amend the terms of the order of reference with the consent of the two parties to the dispute.

(11) When an arbitrator has made an award, he or she shall sign it and shall give notice to the parties of the making of the award and of the amount of the fees and charges payable to him or her in respect of the arbitration and award.

(12) An arbitrator or arbitrators shall, at the request of any party to the arbitration or any person claiming under him or her, and upon payment of the fees and charges due in respect of the arbitration and award, and of the costs and charges of filing the award, cause the award or a signed copy of it to be filed in the court; and notice of the filing shall be given to the parties by the arbitrator.

(13) Where an arbitrator or arbitrators refer a case to court on a point of law under (10)(c), the court shall make its decision; and if the decision affects the amount of the award, it shall be increased or reduced, as the case may be, and the court shall execute the award as soon as possible.

(14) The award of an arbitrator or arbitrators under this section shall,

if no appeal is preferred to the board under subsection (9) or if an appeal is abandoned or withdrawn, be final and shall not be called in question in any court and shall be enforced in the same manner as if the award had been a judgment of a court.

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

(16) Subsections (1) to (5) shall not apply to the Cooperative Bank Limited, for the purpose of transacting banking or credit institution business in as far as the matter relates to that business.

(17) The general secretary of the Uganda Cooperative Alliance Ltd. may take administrative steps to cause a society indebted to the Cooperative Bank Limited to pay without recourse to the court.

#### **74. Protection of an arbitrator.**

No matter or thing done by an arbitrator or arbitrators under section 73 shall, if it is done bona fide for the purpose of executing any provisions of that section, subject the arbitrator to any civil liability.

#### **75. Appeal to the court from the decision of the board.**

(1) Any decision of the board on an appeal to it from a decision of an arbitrator or arbitrators under section 73 or by virtue of any other provisions of this Act shall be subject to an appeal to the court on a point of law, and the decision of the court shall then be final.

(2) The Chief Justice may make rules of court regulating the procedure and practice of the hearing of appeals by a court under this section.

#### **76. Legal representative not allowed before an arbitrator.**

A party to a dispute under section 73 shall not engage a legal representative before an arbitrator or arbitrators except on a reference to the court on a point of law, on an appeal from a decision of the board under section 75 or at the filing of the award to the court.

PART XI—GENERAL.

**77. Remuneration of officers.**

(1) No officer or member of a registered society shall receive any remuneration, salary, commission or other payment from the society for services rendered to the society unless the society has after consultation with the registrar by resolution passed at a general meeting of the society, approved the payment of that remuneration, salary, commission or other payment.

(2) No officer or member of a registered society shall receive any remuneration, salary, commission or other payment from any person other than the society in respect of any business or transaction entered into by the society; but that in special circumstances the society may, after consultation with the registrar, by a resolution passed at a general meeting of the society, consent to such remuneration, salary, commission or other payment being made.

(3) Any officer or member of a registered society who receives any remuneration, salary, commission or other payment in contravention of subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months or to both and shall, if convicted for contravening subsection (1), be ordered to repay the remuneration, salary, commission or other payment received from the society; and default in that payment shall be treated in the same manner as default in paying a fine imposed by a competent court.

(4) Notwithstanding subsections (1) and (2), where in the opinion of the registrar a registered society has improperly paid or consented to the payment to an officer or member of any remuneration, salary, commission or other payment, the registrar may report the matter to the board.

(5) If the board is of the opinion that the remuneration, salary, commission or other payment has been improperly paid, or payment has been improperly consented to, it may, by order published in the Gazette, declare that the society shall not, for a period to be stated in the order, pay or consent to the payment to an officer or member of the society of any such remuneration, salary, commission or other payment except with the approval of the registrar.

(6) Any society which contravenes any such order and any officer or member who is knowingly a party to such contravention commits an offence and is liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a period not exceeding six months or to both.

**78. Prohibition of the use of the word “cooperative”.**

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word “Cooperative” is part without the sanction of the registrar.

(2) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings for each day on which the offence is continued after conviction for the offence.

**79. Regulations.**

(1) The Minister in consultation with the board shall make regulations for carrying out the provisions of this Act.

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

- (a) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;
- (b) prescribe the matters in respect of which a society may or shall make byelaws and for the procedure to be followed in making, altering and rescinding byelaws and the conditions to be satisfied prior to such making, altering or rescinding;
- (c) prescribe 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 interests to be acquired before the exercise of the right of membership;
- (d) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;
- (e) provide for general meetings of the members and for the procedure at those meetings and the powers to be exercised by those meetings;
- (f) provide for the appointment and minimum qualifications of



members of a committee, the suspension and removal of members of a committee and other officers, the procedure at meetings of a committee and the powers to be exercised and the duties to be performed by a committee and other officers;

- (g) provide for audit of the accounts and books to be kept by a society and the charges, if any, to be made for the audit;
- (h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating to them;
- (i) provide for the establishment of a supervision and audit fund;
- (j) provide for the periodical publication of a balance sheet showing the assets and liabilities of a society;
- (k) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;
- (l) provide for the inspection of documents and registers at the registrar's office and the fees to be paid therefor and for the issue of copies of those documents or registers;
- (m) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of the register of shares;
- (n) provide for the resignation and expulsion of members and for the payments, if any, to be made to members who resign or are expelled and for the liabilities of past members;
- (o) provide for the mode in which the value of a deceased member's interest shall be ascertained and, subject to section 38, for the nomination of a person to whom that interest may be paid or transferred;
- (p) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing his or her affairs shall be ascertained and for the nomination of any person to whom that interest may be paid or transferred;
- (q) fix the conditions under which a society may grant loans to its members and the maximum amount of such loans and prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which the loans may be made and the amount which may be lent to an individual member;
- (r) provide for the manner of formation and maintenance of reserve funds and the objects to which those funds may be applied and for the investment of any funds under the control of the society;

- (s) prescribe the extent to which a society may limit the number of its members;
- (t) prescribe the conditions under which accumulated funds may be distributed to the members of a society with unlimited liabilities and, subject to section 46(2), prescribe the maximum rate of dividend which may be paid by societies;
- (u) prescribe the procedure to be followed in appeals made to the registrar or the board under this Act;
- (v) prescribe the accounts and books to be kept by a society;
- (w) prescribe the returns to be submitted by a society to the registrar and the person by whom and the form in which those returns shall be submitted;
- (x) prescribe the fees to be paid on applications, registrations and other acts undertaken by the registrar or his or her representative under this Act; and
- (y) prescribe anything required by this Act to be prescribed.

(3) In any case where the registrar is satisfied that a substantial number of members of any society are unacquainted with the English language, he or she may cause any regulations made under this section to be translated into a language with which those members are acquainted and to be made known to them in a manner customary for the community to which those members belong; but on any matter of interpretation the English version of the regulations shall prevail.

## **80. Offences and penalties.**

- (1) It shall be an offence under this Act if—
  - (a) a registered society or an officer or a member of a registered society fails to do or to allow to be done any act or thing which is required to be done by this Act or by any regulations made under this Act;
  - (b) a registered society or an officer or a member of a registered society does anything prohibited by this Act or by regulations under this Act;
  - (c) a registered society or an officer or a member of a registered society knowingly neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the registrar or any person duly authorised in that behalf by the registrar;
  - (d) a registered society or an officer or member of a registered

society knowingly makes a false return or furnishes false information;

- (e) any person knowingly or without reasonable excuse disobeys any summons, requisition or lawful order issued under this Act or does not furnish any information lawfully required from him or her by a person authorised to do so or which he or she is required to furnish under this Act;
- (f) any person acts or purports to act as an officer of a registered society when not entitled to do so; or
- (g) a registered society or an officer or member of a registered society knowingly performs any act which requires the consent or approval of the registrar without having first obtained such consent or approval.

(2) Every society, officer or member of a registered society or other person guilty of an offence under this section is liable on conviction, where no other penalty is provided under this Act, to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding six months or to both.

### **81. Penalty for soliciting violation of contracts.**

Any person, firm or company having knowledge or notice of the existence of a contract described in section 31, who or which solicits or persuades or assists any person to sell or deliver produce in violation of that contract commits an offence and is liable on conviction to a fine not exceeding five thousand shillings for each offence and shall, in addition, be ordered to pay the society concerned such damages as the court may see fit.

### **82. Application of other laws.**

(1) Nothing in this Act shall be deemed to relieve any society from any of its obligations under any other laws governing or regulating its business activities.

(2) Where those laws conflict with this Act, the Act shall be construed with such modifications, adaptations and qualifications as are necessary to enable the society to conform to the laws governing or regulating its business activities.

**83. Certain laws not to apply.**

(1) The provisions of the Companies Act, other than those mentioned in sections 59 and 67, and of the Business Names Registration Act shall not apply to a registered society.

(2) Notwithstanding the Trade Unions Act, no registered society shall be deemed to be a trade union.

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## SCHEDULES

### *First Schedule.*

s. 50.

#### **Registration of charges.**

##### **1. Voiding of certain charges created by a registered society.**

(1) Subject to this Schedule, every charge to which this paragraph applies created by a registered society shall, so far as any security on the society's property is conferred by the charge, be void against the liquidator and any creditor of the society unless the particulars of the charge prescribed by regulations made under this Act, together with the instrument, if any, by which the charge is created or evidenced, or a copy of the instrument verified in the manner prescribed by the regulations made under this Act, 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 obligations for when a charge becomes void under this paragraph, the money secured thereby shall immediately become payable.

- (2) This paragraph applies to the following charges—
  - (a) a charge for the purpose of securing any issue of debentures;
  - (b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale;
  - (c) a charge on immovable property, wherever situated, or any interest in that property;
  - (d) a charge on book debts of the society;
  - (e) a floating charge on the property of the society.

(3) 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 purposes of this paragraph be treated as a charge on those book debts.

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

(5) In this Schedule, "charge" includes a mortgage and a letter of hypothecation.

## **2. Duty of society to register charges created by society.**

(1) A registered society shall send to the registrar for registration the particulars of every charge created by the society to which paragraph 1 of this Schedule applies, but registration of any charge may be effected on the application of any person interested in the charge.

(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 or her to the registrar of registration.

(3) If any registered society makes default in sending to the registrar of registration the particulars of any charge to which paragraph 1 of this Schedule applies created by the society, then, unless the registration has been effected by some other person, the society and every officer and member of the society who is knowingly a party to the default commits an offence and is liable on conviction to a fine not exceeding five hundred shillings for every day during which the default continues.

## **3. Duty of society to register charges existing on property acquired.**

(1) Where a registered society acquires any property which is subject to a charge to which paragraph 1 of this Schedule would apply if the charge had been created by the society after the acquisition of the property, the society shall cause the particulars of the charge prescribed by regulations made under this Act, together with a copy (certified in the manner prescribed by regulations made under this Act to be a correct copy) of the instrument, if any, by which the charge was created or is evidenced, to be delivered to the registrar for registration within thirty days after the date on which the acquisition is completed.

(2) If default is made in complying with this paragraph, the society and every officer who is in default commits an offence and is liable on conviction to a fine not exceeding five hundred shillings.

## **4. Register of charges.**

(1) The registrar shall keep, with respect to each registered society, a register in the form prescribed by regulations made under this Act of all

charges requiring registration under this Schedule and shall, on payment of the fee prescribed by regulations made under this Act, enter in the register with respect to any such charge the following particulars—

- (a) if the charge is a charge created by the society, the date of its creation and if the charge was a charge existing on property acquired by the society, the date of the acquisition of the property;
- (b) the amount secured by the charge;
- (c) short particulars of the property charged; and
- (d) the person entitled on the charge.

(2) The registrar shall issue a certificate under his or her hand of the registration of any charge registered under this Schedule, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this Schedule as to registration have been complied with.

(3) The register kept under this paragraph shall be open to inspection by any person on payment of the fee prescribed by regulations made under this Act.

(4) The registrar shall keep a chronological index, in such form and containing such particulars as may be prescribed by regulations made under this Act, of the charges entered in the register.

## **5. Endorsement of certificate of registration or debentures.**

(1) Every registered society shall cause every certificate of registration issued under paragraph 4 of this Schedule to be endorsed on every debenture or certificate of debenture stock which is issued by the society, and the payment of which is secured by the charge so registered; but nothing in this subparagraph 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 wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under this paragraph is required to have endorsed on it a certificate of registration without the certificate being so endorsed upon it, he or she, without prejudice to any other liability, commits an offence and is liable on conviction to a fine not exceeding one thousand shillings.

## **6. Entry of satisfaction.**

The registrar may, on evidence being given to his or her satisfaction that the debt for which any registered charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the society with a copy of it.

## **7. Rectification of register of charges.**

The registrar on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or misstatement of any particular with respect to any such charge or in the memorandum of satisfaction was accidental or due to inadvertence or some other good 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 on such terms and conditions as seem to the registrar 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.

## **8. Registration of the appointment of receiver.**

(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 or she shall, within seven days from the date of the order or of the appointment under those powers, give notice of the fact to the registrar, and the registrar shall, on payment of the fee prescribed by regulations made under this Act, enter the fact in the register of charges.

(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 or she shall on so ceasing give the registrar notice to that effect, and the registrar shall enter the notice in the register of charges.

(3) If any person makes default in complying with the requirements of this paragraph, he commits an offence and is liable on conviction to a fine not exceeding one hundred shillings for every day during which the default continues.



**9. Copies of instruments creating charges to be kept by society.**

Every registered society shall cause a copy of every instrument creating any charge requiring to be registered under this Schedule to be kept at the registered address of the society.

**10. Society's register of charges.**

(1) Every registered society shall keep at the registered address of the society a register of charges and enter in it all charges specifically affecting 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) If any officer of the society knowingly and wilfully authorises or permits the omission of any entry required to be made under this paragraph in any such register, he or she commits an offence and is liable on conviction to a fine not exceeding five hundred shillings.

**11. Right of inspection.**

(1) The copies of the instruments creating any charge required to be registered under this Schedule with the registrar, and the register of charges kept by the registered society under paragraph 10 of this Schedule, shall be open during business hours (but subject to such reasonable restrictions as the society in general meeting may impose, so, however, that not less than two hours in each day shall be allowed for inspection) to the inspection of any creditor or member 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, not exceeding one hundred shillings for each inspection, as the society may determine.

(2) If inspection of those copies or that register is refused, any officer of the society refusing inspection, or who knowingly and wilfully permits the refusal, commits an offence and is liable to a fine not exceeding five hundred shillings together with a further fine not exceeding five hundred shillings for every day during which the refusal continues, and the court may by order compel an immediate inspection of the copies or register.

*Second Schedule.*

s. 59.

**Provisions of the Companies Act which shall apply to the winding up of a society.**

<i>No. of Section</i>	<i>Description of section</i>
223	Definition of inability to pay debts.
226	Power to stay or restrain proceedings against a company.
227	Avoidance of dispositions of property, etc. after commencement of winding up.
228	Avoidance of attachments, etc.
231	Actions stayed on a winding up order.
232	Effect of a winding up order.
254	Power to stay winding up.
266	Power to summon persons suspected of having property of the company, etc.
269	Power to arrest an absconding contributory.
313	Debts of all descriptions may be proved.
314	Application of bankruptcy rules in winding up of insolvent companies.
315	Preferential payments (except subsection (6) thereof).
316	Fraudulent preference.
318	Effect of a floating charge.
320	Restriction of rights of creditor as to execution or attachment in the case of a company being wound up (except subsection (1)(a) thereof).
321	Duties of bailiff as to goods taken in execution.
322	Offences by officers of companies in liquidation.
323	Penalty for falsification of books.
324	Fraud by officers of companies which have gone into liquidation.
325	Officers of company failing to account for loss of part of the company's property.
326	Liability where proper accounts not kept.
327	Responsibility for fraudulent trading of persons concerned.

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**History:** Statute 8/1991.

## **Cross References**

Arbitration and Conciliation Act, Cap. 4.  
Business Names Registration Act, Cap. 109.  
Companies Act, Cap. 110.  
Trade Unions Act, Cap. 223.

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