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**EMBU COUNTY ACTS, 2020**

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# THE EMBU COUNTY CO-OPERATIVE SOCIETIES ACT, 2020

No. 4 of 2020

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**THE EMBU COUNTY CO-OPERATIVE SOCIETIES  
ACT, 2020**

**AN ACT of the County Assembly of Embu to give effect to section 7 (e) of Part II of the Fourth Schedule of the Constitution; to establish a framework relating to the formation, registration, promotion, development and regulation of co-operative societies and for connected purposes**

**ENACTED** by County Assembly of Embu, as follows—

**PART I—PRELIMINARY****Short title and commencement**

**1.** This Act may be cited as the Embu County Co-operative Societies Act, 2020 and shall come into operation upon publication in the *Gazette*.

**Interpretation**

**2.** In this Act, except where the context otherwise requires—

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

“apex society” means a national umbrella co-operative society whose membership is open to all co-operative societies and entire co-operative movement, to promote co-operative development and represent the interests of co-operative societies locally and internationally;

“Committee” means the governing body of a co-operative society to whom the management of its affairs is entrusted, and includes a Board of Directors.

“bonus”, in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s volume of business with the society bears to the total volume of business done by the society;

“by-laws” means the by-laws made by a society and registered under this Act and includes any registered amendment of such by-laws;

“capital” means the permanent members equity in the form of common stock and includes all disclosed reserves, retained earnings, grants or donations;

“contributor” means a person liable to contribute to the assets of a co-operative society in the event of its being wound up and for the purposes

of any proceedings for determining and before the final determination of the persons who are to be deemed contributors, includes any person alleged to be a contributor;

“co-operative society” means a society registered under section 7 and includes a co-operative society registered in another county and licensed to operate within the county;

“co-operative union” means a co-operative society whose membership is restricted to primary societies;

“County” means the County Government of Embu;

“date of dissolution” means the date on which the Director’s order canceling the registration of a co-operative society takes effect;

“deposit” means a sum of money received by a society from a member on terms under which it shall be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed between the society and the member;

“Director” means the Director for Co-operative Development appointed under section 6 and includes any person on whom any of the powers of the Director have been conferred in accordance with this Act;

“dividend”, in relation to a member of a co-operative society, means that member’s share of the surplus of the society which is divided amongst its members, calculated by reference to the proportion which that member’s share capital bears to the total share capital of the society;

“Executive Committee Member” means the County Executive Committee Member for the time being responsible for co-operative societies.

“Investment co-operative society” means a co-operative society whose core activity is to raise money for investment in any sector not prohibited by law.

“limited liability” means limited by shares or limited by guarantee, according to the nature of the liability prescribed by the by-laws of the co-operative society;

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

“officer” includes a chairperson, vice-chairperson, secretary, treasurer, committee member, employee or any other person empowered

under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society;

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

“primary society” means a co-operative society whose membership is restricted to individual persons;

“share” means the amount represented by a member’s portion in the equity of a society as a co-owner;

“special general meeting” means a general meeting, other than an ordinary general meeting, of which at least fifteen clear days written notice of the resolution and of the date, time and place of the meeting has been given to each member;

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

“supervisory committee” means an oversight committee elected at a general meeting; and

“winding up” means all proceedings subsequent to the dissolution of a co-operative society.

### **Object and purpose**

3. The object and purpose of this Act is to establish a legal framework for registration and regulation of co-operative societies within the County in order to—

- (a) promote growth and development of co-operative societies;
- (b) promotion of cooperation between the national and county governments in matters relating to co-operative societies;
- (c) enhance good governance in the co-operative societies;
- (d) manage conflicts and disputes;
- (e) promote corporate governance of co-operative societies; and
- (f) promote local economic growth and development.

### **Application**

4. (1) This Act shall regulate the operations of a co-operative society or a branch of a co-operative society within the County.

(2) A person who operates or intends to operate a co-operative society or a branch of a co-operative society within the County shall comply with the provisions of this Act.

**PART II—ADMINISTRATION AND OFFICERS****Role of the County Executive Committee Member**

5. The Executive Committee Member shall be responsible for the growth and development of co-operative societies in the County, and shall in particular—

- (a) develop and oversee the implementation of county co-operative societies policies and strategies;
- (b) promote good governance in co-operative societies;
- (c) liaise and collaborate with the national government and other county governments on matters relating to co-operative societies;
- (d) advise the County Government on matters relating to the co-operatives;
- (e) submit to the County Assembly an annual status of co-operative societies;
- (f) authorize the cancellation of licenses or de-registration of co-operative societies, subject to the provisions of this Act;
- (g) publish Regulations and guidelines for better operationalisation of this Act;
- (h) establish and put in place an office specially tasked to promote good ethics and high integrity in management of Co-operatives and devise mechanisms of enforcing the same;
- (i) take affirmative action in promotion, development and registration of youth, women, persons living with disability co-operative societies; and
- (j) perform such other functions as may be assigned under this Act.

**Director and other officers**

6. (1) There shall be a Director for Co-operative Development whose office shall be an office in the public service.

(2) The Director shall be responsible for—

- (a) registration of co-operative societies;
- (b) supervising and inspecting co-operative societies to ensure compliance with the law;
- (c) maintaining the register of co-operative societies within the county;

- (d) supervising dissolution, division or amalgamation of a co-operative societies;
- (e) overseeing the implementation of this Act;
- (f) educating and training of members, shareholders and office holders on operating and managing co-operative societies;
- (g) conducting programmes to promote and sensitize the public on co-operative societies;
- (h) collecting and maintaining data and registers of co-operative societies;
- (i) conducting audits of co-operative societies in special circumstances;
- (j) conducting research and disseminating findings on co-operative societies to the Executive Committee Member;
- (k) advising the Executive Committee Member on any matter relating to co-operative societies; and
- (l) undertaking any other function assigned under this Act or by Executive Committee Member for better realization of the objects of this Act.

(3) A person shall qualify for appointment as a Director under this Act if that person—

- (a) a Kenya Citizen;
- (b) holds an academic degree from a university recognized in Kenya;
- (c) possess at least five years post-graduate experience in co-operative societies affairs; and
- (d) has met the Constitutional requirements.

(4) the Director appointed under this Act may at any time resign from office by notice in writing to the Executive Committee Member or may be removed from office if the Director—

- (i) is adjudged bankrupt;
- (ii) is convicted of an offence involving dishonesty or fraud;
- (iii) otherwise fails to comply with the requirements of Chapter Six of the Constitution;
- (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(v) is incapacitated by prolonged physical or mental illness or is deemed otherwise unfit to discharge his or her duties as a Director.

(5) There shall be such number of officers, including Sub-County Co-operative officers, as may be necessary to assist the Director in the administration of the provisions of this Act.

(6) The Director may, with the approval of the Executive Committee Member, delegate any of his or her function to an officer of the County Government appointed in accordance with this section.

### **PART III—REGISTRATION AND STRUCTURE OF CO-OPERATIVE SOCIETIES**

#### **Registration of co-operative societies**

7. Subject to the provisions of this Act, a society which has as its objects—

- (a) the promotion of the welfare and economic interests of its members; and
- (b) has incorporated in its by-laws the following co-operative principles—
  - (i) voluntary and open membership;
  - (ii) democratic member control;
  - (iii) economic participation by members;
  - (iv) autonomy and independence;
  - (v) education, training and information;
  - (vi) co-operation among co-operatives; and
  - (vii) concern for community in general,

may be registered by the Director as a co-operative society under this Act with limited liability

#### **Qualification for membership**

8. A person shall not be qualified for membership of a co-operative society unless—

- (a) the person has attained the age of eighteen years provided that a minor may join a cooperative society through a guardian;
- (b) person's employment, occupation or profession falls within the category or description of those for which the co-operative society is formed; and

(c) the person is resident within, or occupies land within, the society's area of operation as described in the relevant by-law.

### **Affiliation**

**9.** Co-operative societies may affiliate to the relevant national bodies constituted in accordance with the cooperative principles.

### **Types of co-operative societies**

**10.** The Director may register the following types of co-operative societies—

- (a) marketing co-operative societies to deal with the processing, packaging and marketing of members agricultural produce;
- (b) consumer co-operative societies to deal with wholesale and retail business to be patronized by members and other members of the public;
- (c) industrial co-operative societies for production, manufacturing and sale of goods;
- (d) housing co-operative societies to deal with purchase of land, building and construction of houses at affordable rates to members;
- (e) livestock co-operative societies to deal with the needs of members in animal husbandry, livestock keeping and dairy farming;
- (f) fisheries co-operatives to deal with fishing, processing, packaging and marketing of fish and sea products;
- (g) investment co-operative societies to deal with investment in specific sectors;
- (h) such other co-operative societies as may be established from time to time.

### **Structure of Co-operatives**

**11.** The Co-operative society shall comprise of Primary co-operatives and co-operative unions.

### **Eligibility for registration of a co-operative society.**

**12.** For a society to be registered under this Act, it shall—

- (a) in the case of a primary society, consist of at least ten persons all of whom shall be qualified for membership of the co-operative society under section 8; or

- (b) in the case of a co-operative union has at least two registered societies as its members

### **Procedure for registration**

**13.** (1) The Director shall, within thirty days from the date of receipt of an application—

- (a) register the co-operative society; or
- (b) reject the application with a written explanation pointing out the provisions of the Act not complied with and in the case where in the opinion of the Director he thinks corrections can be made, require a duly corrected application for registration to be resubmitted within 15 days from the date such rejection is communicated.

(2) An application made under subsection (1) (b) shall be processed within 15 days from the date application is made.

### **Provisional registration**

**14.** (1) If the Director is not satisfied that a society has complied with this Act, or is of the opinion that further steps need to be taken by the persons on whose behalf the application for registration is made in order to comply with this Act, the Director may in his discretion provisionally register the society for such period, not exceeding one year, and subject to its compliance with such terms and conditions and provisions, as the Director may specify in writing.

(2) A provisional registration shall entitle the society to operate as a co-operative society and to operate as a body corporate

(3) A society which is provisionally registered shall cause the fact that it is provisionally registered to be stated in legible Roman letters in all billheads, letters, papers, notices, advertisements and other official publications of the society, and on a sign board in a conspicuous position outside any premises in which it operates.

### **Appeal against refusal to register**

**15.** (1) A co-operative society may appeal to the Executive Committee Member against the decision of the Director refusing to register the society.

(2) Any party aggrieved by the decision of the Executive Committee Member under subsection (1) may seek Court redress within thirty days from the date the Executive Committee Member makes a decision under sub-section (1).

**Protection of the name “co-operative”**

16. (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 Director, to mislead the members of the public as to its identity.

(2) The word “co-operative” shall form part of the name of every co-operative society, and the word “limited” shall be the last word in the name of every co-operative society having limited liability.

**Evidence of registration**

17. (1) A certificate of registration or of a provisional registration signed by the Director shall be conclusive evidence that the society therein mentioned is duly registered or provisionally registered, unless it is proved that such registration of the society has been canceled or has been terminated.

(2) The certificate of registration bearing the number and date of registration shall be displayed at the head office of every co-operative society.

(3) A copy of the by-laws of a co-operative society or of an amendment of such by-laws certified by the Director shall be *prima facie* evidence for all purposes of the registration of such by-laws or such amendment.

(4) A document purporting to be signed by the Director shall be presumed to have been signed by him until the contrary is proved.

**Co-operative society to be body corporate**

18. (1) Upon registration, every society shall be a body corporate and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) purchasing, acquiring, or otherwise holding, and or disposing of movable and immovable property;
- (c) entering into contract; and,
- (d) borrowing money

(2) There shall be a county register of Co-operative Societies into which shall be entered particulars of all registered co-operative societies including—

- (a) the name of co-operative society;
- (b) physical address of its offices;

- (c) nature of business;
- (d) number of members; and
- (e) such other particulars as the director may determine.

(3) A co-operative society registered under this Act may establish a branch or other offices other than its registered headquarters and file a notification of such establishment with the Director subject to payment of requisite fees.

#### **PART IV—CO-OPERATIVE SOCIETY'S BY- LAWS**

##### **Development and content of the By-laws**

**19.** Every co-operative society shall develop its by- laws and submit them to the Director.

(2) The by-laws shall, subject to the provisions of this Act, guide all the operations of a co-operative society.

(3) A co-operative society may, by resolution of members in a general meeting, develop regulations, rules or guidelines for better implementation of the by-laws.

(4) In addition to any other requirements, the by- laws of a co-operative society shall provide for—

- (a) the name of the co-operative society;
- (b) the registered office and address of the co- operative society including the Land Reference Number of the proposed physical address;
- (c) the nature of business of the co-operative society;
- (d) criteria for admission to membership;
- (e) procedure for review of the by-laws;
- (f) the common seal;
- (g) the rights and obligation of a member;
- (h) transfer of membership;
- (i) nomination of nominees;
- (j) cessation of membership;
- (k) the co-operative society's fund including subscription and members' contribution;
- (l) investments and trade, including trading with non-members where applicable;

- (m) procedure for acquisition and maintenance of movable and immovable assets;
- (n) procedure for disposal of movable or immovable assets and management of proceeds of sale of such assets;
- (o) the co-operative society's borrowing powers;
- (p) management of meetings of the co-operative;
- (q) co-operative committees and their functions;
- (r) procedure for transfer and registration of shares;
- (s) mode of appointment and functions of committee members;
- (t) quorum for meetings;

**Custody of a copy of the By-laws, rules or guidelines**

**20.** A copy of the co-operatives by-laws or an amendment to the by-laws or any rules, or guidelines made by a co-operative society shall be deposited and maintained by the Director.

**Amendment of by-laws**

**21.** (1) A co-operative society may, subject to this Act, amend its by-laws.

(2) No amendment of the by-laws of a co-operative society shall be valid until the amendment has been registered under this Act by forwarding to the Director a copy thereof in the prescribed manner.

(3) The Director may cancel the amendment if he discovers that an amendment was effected and registered through misrepresentation or concealment of a material fact.

(4) An amendment which changes the name of a co-operative society shall not affect any right or obligation of that society or its members.

(5) When the Director registers an amendment of the by-laws of a co-operative society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(6) In this section, "amendment" includes the making of a new by-law and the variation or revocation of a by-law, but excludes the variation of the registered address of a co-operative society where this forms a part of the by-laws of such a society.

**PART V—RIGHTS AND LIABILITIES OF MEMBERS****Limitation of holding share capital**

**22.** No member, other than a co-operative society, shall hold more than one-fourth of the issued and paid-up share capital of any co-operative society.

**Membership subject to authorization by annual general meeting.**

**23.** No company incorporated or registered under the Companies Act (Cap. 486), and no unincorporated body of persons shall be entitled to become member of a co-operative society, except with a written authorization through a resolution by a general meeting of that co-operative society.

**Membership of co-operative society**

**24.** No member of a co-operative society shall exercise any of the rights of a member unless he has made such payment to the society in respect of membership, or has acquired such interest in the society as may be prescribed under this Act or under the by-laws of the society.

**Limitation of membership to one society**

**25.** No person shall be a member of more than one co-operative society having the same or similar object:

Provided that a person who—

- (a) is a member of a co-operative society; and
- (b) carries on business on land or at premises outside the area of operation of that co-operative society, may be a member of a co-operative society in whose area of operation that land or those premises are situate, notwithstanding that its objects are the same as or similar to those of the first-mentioned society.

**Voting rights of members**

**26.** Each member of a co-operative society shall have one vote only in the affairs of the society, irrespective of the number of shares the member holds:

Provided that a co-operative society which is a member of a co-operative union or an apex society shall have as many votes as may be prescribed by the by-laws of the co-operative union or apex society of which it is a member, and may, subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

**Transfer of shares**

27. The transfer or charge of the share or interest of a member in the capital of a co-operative society shall be subject to such conditions as to maximum holding as are laid down in section 23

**Rights of members**

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

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

**Member's obligations**

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

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

**Member's share not subject to attachment**

30. Subject to section 31, the share, saving deposits or interest of a member in the capital of a co-operative 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 a trustee in bankruptcy under the law relating to bankruptcy shall not have any claim on such share, saving deposits or interest:

Provided that, where a co-operative society is dissolved, the share or interest of any member who is adjudged a bankrupt under such law shall vest in the trustee in bankruptcy in accordance with such law.

**Liability of past members.**

**31.** The liability of a past member of a co-operative society shall be in respect of the debts of the society as they existed at the date when he ceased to be a member and proceedings in respect thereof may be commenced within a period of two years from such date:

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

**Liability of deceased members.**

**32.** The estate of a deceased member shall be liable for the debts of the co-operative society as they existed at the time of his death, and proceedings in respect thereof may be commenced within one year of the death:

Provided that—

- (a) in the case of a co-operative society with limited liability, if the first audit of the accounts of the society after the death discloses a credit balance in favour of the society, the financial liability of the estate shall cease forthwith; and
- (b) a personal representative shall not be liable except in respect of assets in his possession or under his control.

**Transfer of share or interest of deceased members.**

**33.** (1) On the death of a member, a co-operative society may transfer the share or interest of the deceased member to—

- (a) the person nominated in accordance with this Act and any rules made thereunder; or
- (b) if there is no person so nominated, such person as may appear to the Committee of the society to be the personal representative of the deceased member; or
- (c) if either of such persons is not qualified under this Act and any rules made thereunder or the by-laws of such society for membership, such person, specified by the nominee or personal representative, as the case may be, who is so qualified, or may pay to such nominee or personal representative, as the case may be, a sum representing the value of such member's share or interest ascertained in accordance with any rules made under this Act or by-laws of the society:

Provided that—

- (i) in the case of a co-operative society with unlimited liability, such nominee or personal representative, as the case may be, may require the society to pay him the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection; or
- (ii) in the case of a co-operative society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee or personal representative, as the case may be, being qualified in accordance with this Act or any rules made thereunder or the by-laws of such society for membership of the society, or on his application within one month of the death, to any person specified in the application, who is so qualified.

(2) A co-operative society shall pay all other moneys due to the deceased member from the society to such nominee or personal representative, as the case may be.

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

#### **Evidence of member's interest in society**

34. (1) Any register or list of members or of shares which is kept by a co-operative society shall be *prima facie* evidence of any of the following particulars entered therein—

- (a) the date on which the name of any person was entered in such register or list, as a member;
- (b) the date on which any such person ceased to be a member; and
- (c) the number of shares held by any member.

(2) A copy of any entry in a book of a co-operative society regularly kept in the course of its business, shall, if certified in accordance with the rules made under this Act, be *prima facie* evidence in any proceedings of the existence of such entry, and of the matters, transactions, and accounts, therein recorded.

### **PART VI—RIGHTS AND DUTIES OF CO-OPERATIVE SOCIETIES**

#### **Registered office and address of co-operative society**

35. Every co-operative society shall have a registered office and address to which notices and communications may be sent and shall send

to the Director notice of every change of address and office within one month of the change.

**Society to keep certain documents at registered office**

**36.** Every co-operative society shall keep a copy of this Act and of the Regulations made hereunder including its own by-laws and a list of its members (excluding details of nominees and shareholdings) at its registered office and shall keep them open for inspection by any person, free of charge, at all reasonable times during business hours.

**Estimates of income and expenditure**

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

**Account and audit**

**38.** (1) Every co-operative society shall keep proper accounts which shall—

- (a) be prepared in accordance with International Accounting Standards;
- (b) reflect the true and fair state of the co-operative society's affairs; and
- (c) explain the co-operative society's transactions including—
  - (i) all sums of money received and paid by the co-operative society and the reasons thereto;
  - (ii) all sales and purchases of goods and services by the co-operative society; and
  - (iii) all assets and liabilities of the co-operative society.

(2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.

(3) It shall be the duty of every co-operative society to cause its accounts to be audited at least once in every financial year by an auditor appointed under subsection (4).

(4) The auditor shall be appointed at the annual general meeting from a list of auditors approved by the Director, in consultation with the Institute of Certified Public Accountants of Kenya.

(5) Where at an annual general meeting no auditor is appointed, the Director may competitively appoint a person to fill the vacancy and the remuneration of the person so appointed shall be borne by the co-operative society.

(6) The accounts referred to in subsection (3) shall—

- (a) conform with International Financial Reporting Standards;
- (b) be approved by the Committee; and
- (c) be authenticated by at least three Committee members including the chairperson of the co-operative society.

(7) No auditor shall present the audited accounts of a co-operative society to the members at a general meeting unless the accounts have previously been submitted to the Director in such form as may be prescribed.

(8) The auditor shall present the audited accounts to a general meeting within four months after the end of the accounting period and shall include his opinion as to whether or not the co-operative society's business has been conducted—

- (a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and
- (b) in accordance with the co-operative society's objectives, by-laws and any other resolutions made by the society at a general meeting.

(9) The auditor shall have the right to—

- (a) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor;
- (b) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive;
- (c) access, at all times, any accounting records, books or documents of the co-operative society as may be necessary for the purpose of carrying out his duties as an auditor and may at the time of his audit—

- (i) summon any officer, agent or member of the co-operative society for the purpose of obtaining information on the transactions of the co-operative society or management of its affairs;
- (ii) require the production of any book, document, cash or securities relating or belonging to the co-operative society by any officer, agent, trustee or member having custody of such book, document, cash or securities;
- (iii) demand such other information or explanation from any officer of the co-operative society as may be necessary for the performance of his duties as an auditor.

(10) Every co-operative society shall, at such time and in such form as may be prescribed, file with the Director an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.

(11) Where a co-operative society fails to cause its accounts to be audited within the prescribed period in respect of its business for the previous financial year, members of the Committee shall automatically lose their positions at the next general meeting and shall not be eligible for re-election for three years unless the Director is satisfied that the failure was due to circumstances beyond their control.

(12) For the purposes of this section, "International Accounting Standards" and "International Financial Reporting Standards" means the standards established by the Institute of Certified Public Accountants of Kenya.

#### **Production of books and other documents.**

**39.** Any officer, agent, servant or member of a co-operative society who is required by the Director, or by a person authorized in writing by him to do so shall, at such place and time as the Director may direct, produce all moneys, securities, books, accounts and documents belonging to or relating to the affairs of such society which are in the custody of such officer, agent, servant or member.

#### **Society to have charge over member's produce and service**

**40.** (1) A co-operative society which has as one of its objects the disposal of any agricultural produce or service provision, may enter into a contract with its members, either in its by-laws or by a separate document binding the members to dispose of all their agricultural produce or service, or such amounts or descriptions of the same as may be stated therein, to or through the society, and the contract may bind the members to produce the

quantities of agricultural produce or provide service therein specified, and the contract may also provide for payment of a specific sum per unit of weight or other measure as liquidated damages for any breach of the contract, and any such sum on becoming payable shall be a debt due to the society and shall be a charge upon the immovable property of the member (subject to registration of the charge under the law under which the property is registered) and all stock then being thereon.

(2) Any such contract as is mentioned in subsection (1) shall have the effect of creating in favour of the co-operative society a charge upon the proceeds of sale of all produce or service mentioned therein, whether existing or future.

(3) A co-operative society may, on the authority of a resolution passed in general meeting, pledge the produce deliverable by members under any such contract as is mentioned in subsection (1) as security for loans made to the society, in all respects as if it were the owner of the produce, or service provider responsible.

#### **Fines for violation of by-laws**

**41.** (1) The by-laws of a co-operative society may, subject to this Act, provide for the imposition of fines, not exceeding twenty thousand shillings, on its members for any infringement of its by-laws, but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefore has been served on him and he has had an opportunity of showing cause why the fine should not be imposed and, if he so desires, of being heard with or without witnesses.

(2) Any such fine shall be a civil debt due to the co-operative society, and shall, without prejudice to any other means of recovery, be recoverable summarily.

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

(4) A member shall not be taken to have infringed the by-laws of a co-operative society by reason of his having failed to deliver produce to such society, and the contract had been disclosed in accordance with this Act.

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

**Society to have first charge over debts, assets, etc. in certain cases**

42. (1) Subject to any other written law as to priority of debts where a co-operative society has—

- (a) supplied to any member or past member any seeds or manure, or any animals, feeding stuff, agricultural or industrial implements or machinery or materials for manufacture or building; or
- (b) rendered any services to any member or past member; or
- (c) lend money to any member or past member to enable him to buy any such things as aforesaid or to obtain any such services, the society shall have a first charge upon such things or, as the case may be, upon any agricultural produce, animals or articles produced therewith or therefrom or with the aid of such money.

(2) The charge shall subsist for such period as the loan or value of the services rendered by a co-operative society to a member shall remain unpaid.

**Society to have first charge over members' share**

43. A co-operative society shall have a first charge upon the share 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 such member or past member to the society, and may set off any sum credited or payable to such member, or past member in or towards the payment of any such debt.

**Failure to remit the sum deducted**

44. (1) Where an employer of a person who is a member of a co-operative society has, under the instructions of the employee, made a deduction from the employee's emoluments for remittance to the co-operative society concerned but fails to remit the deductions within seven days after the date upon which the deduction was made, the employer shall be liable to pay the sum deducted together with compound interest thereon at a rate of not less than five per cent per month.

(2) The Director may, on behalf of the society, institute legal proceedings in court for recovery of the sum owing under subsection (1) without prejudice to any other mode of recovery and such sum shall be a civil debt recoverable summarily.

(3) The Director may, by written notice, appoint any person, bank or institution to be an agent of the society for the purposes of collection and recovery of a debt owed to the society.

(4) The agent shall pay the amount specified in the notice issued under subsection (3) out of any moneys which may, at any time during the twelve months following the date of the notice, be held by him for the employer or are due from him to the employer.

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

- (a) accept the notification and cancel or amend the notice accordingly; or
- (b) if he is not satisfied with the reasons, reject the notification in writing.

(6) Where an agent fails to notify the Director or the notification is rejected, it shall be presumed that the agent has sufficient moneys for the payment of the amount specified in the notice.

(7) Where an agent fails to pay the amount specified in the notice within thirty days from the date of service or the date on which any moneys come into his hands for or become due to him from the employer, the agent shall be liable for the amount specified in the notification as if he were the employer.

(8) In any proceedings for the collection or recovery of the amount specified in the notice, it shall not be a defence for the agent to claim lack of the moneys.

(9) This section shall apply notwithstanding that the failure under subsection (1), to remit the sum deducted may constitute an offence under some other law for which the employer has been prosecuted, or is being, or is likely to be prosecuted.

(10) In this section “employer” includes any person, firm or organization holding remuneration or payment for produce of a member of a co-operative society and the term “employee” includes any person who receives remuneration or payment for produce from such persons or firm or organization.

#### **Restriction on production of society's books.**

**45.** No officer of a co-operative society shall in any legal proceedings to the society or liquidator is not a party may be compelled to produce any of the society's books where the contents can be proved under section 42 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless the court, for special cause, otherwise orders.

**PART VII—MANAGEMENT OF CO-OPERATIVE SOCIETIES**

**General meetings**

46. (1) The supreme authority of a co-operative society shall vest in the general meeting in which members shall have the right to attend and vote on all matters.

(2) Subject to subsection (3) a co-operative society shall hold an annual general meeting within four months after the end of each financial year.

(3) In the first year after registration of a co-operative society, the first general meeting shall be held not later than one month after receipt of the certificate of registration of the co-operative society and during such meeting, the members shall —

- (a) elect the co-operative society's office bearers for the ensuing year;
- (b) determine the maximum borrowing powers of the co-operative society;
- (c) consider and approve estimates of income and expenditure for the ensuing financial year or part thereof;
- (d) appoint the co-operative society's bankers and auditors; and
- (e) receive reports and decide upon such other matters as may be necessary for the conduct of the co-operative society's business.

(4) A general meeting of a co-operative society shall be convened by giving at least fifteen days written notice to the members.

(5) At the annual general meeting of a co-operative society, the members shall —

- (a) consider and confirm the minutes of the last general meeting;
- (b) consider any reports of the Committee or the Director;
- (c) consider and adopt audited accounts;
- (d) determine the manner in which any available surplus is to be distributed or invested;
- (e) elect the co-operative society's office bearers for the ensuing year;
- (f) determine, where necessary, the maximum borrowing power of the society;