

CHAPTER 211

THE CO-OPERATIVE SOCIETIES ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 211

THE CO-OPERATIVE SOCIETIES ACT

An Act to make better provision for the formation, constitution, registration and operation of co-operative societies; and for other matters incidental to those purposes.

[4th September, 1991]

[G.N. No. 385 of 1991]

Acts Nos.

15 of 1991

5 of 1997

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh211s1]1. Short title

This Act may be cited as the Co-operative Societies Act.

[PCh211s2]2. Interpretation

In this Act, unless the context otherwise requires—

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

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

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

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

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

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

"bank" means a co-operative bank registered at the secondary or tertiary level;

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

"by-law" means the by-laws made by a society in the exercise of the power conferred by this Act, and duly registered amendment of such by-laws;

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

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

"company" means a company registered under the Companies Act *;

"co-operative financial institution" means a society registered to render banking activities and any other financial service.

"co-operative society" means an association of persons who have voluntarily joined together for the purpose of achieving a common need through the formation of a democratically controlled organisation and who make equitable contributions to the capital required for the formation of such an organisation, and who accept the risks and the benefits of the undertaking in which they actively participate;

"Corporation" means the Co-operative Audit and Supervision Corporation established under the Co-operative Audit and Supervision Act *;

"delegate" means—

(a) in the case of a primary society in which the general meeting of members is substituted by a meeting of delegates, the representative of a specified number of individual members who is elected or appointed to attend and vote at a meeting of delegates; and

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

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

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

"federation" means an association formed by apex societies and may include secondary societies which are not members of apex societies and primary societies which are not members of secondary societies;

"Fund" means the Central Co-operative Fund established under section 74 of this Act;

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

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

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

"Minister" means the Minister responsible for matters relating to co-operative societies;

"officer" means any officer of a society and includes chairman, vice-chairman, secretary, treasurer, member of a committee or any other person empowered under the rules or the by-laws to act on behalf of a registered society;

"primary society" means a registered society all of whose members are individual persons or an association of such individual persons and any co-operative body other than a body registered under the Companies Act * and includes a joint enterprise where all its members are primary societies;

"registered society" means a co-operative society registered or deemed to have been registered under this Act;

"the Registrar" means the Registrar of co-operative societies appointed under section 11 of this Act, and includes, where appropriate, the Deputy Registrar or an Assistant Registrar;

"rules" means rules made under this Act;

"rural areas" means any area which is not part of an urban area;

"savings and credit society" means a registered society whose principal object is to encourage thrift among its members and to create a source of credit to its members at a fair and reasonable rate of interest;

"school society" means a society the membership of which is restricted to the pupils of a school;

"secondary society" means a registered society whose membership is open only to primary societies which are its members;

"society" means a co-operative society registered under this Act and includes a primary society, a secondary society, an apex society and a federation;

"specialised skills" means an expertise possessed by any person in such particular field as may be described in the rules;

"urban area" means any area within the jurisdiction of a city council, a municipal council, a town council or within a township established or deemed to have been established under the Local Government (Urban Authorities) Act *, or the Local Government (District Authorities) Act *, as the case may be;

"village" means a village registered or deemed to have been registered under the Local Government (District Authorities) Act, and includes an Ujamaa village designated as such under that Act.

[PCh211s3]3. Co-operative societies to be registered in accordance with this Act

(1) Co-operative societies shall be registered in accordance with this Act.

(2) Any reference in this Act to compliance with or contravention of this Act or any of its provisions or to any matter being subject to or being in accordance with this Act or any of its provisions, and any equivalent reference, shall include a reference to compliance with or contravention of any regulations or rules made under this Act and to the matter being subject to or in accordance with any such regulations or rules.

PART II

THE OBJECTIVE OF CO-OPERATIVE SOCIETIES AND PROTECTION OF CO-OPERATIVE SOCIETIES (ss 4-6)

[PCh211s4]4. Objects of co-operative societies

A co-operative society is an association of persons who have voluntarily joined together with an object of promoting the economic and social welfare of its members. The society shall be operated democratically on the basis of the principles, methods and procedures of co-operation. It shall thus strive, in accordance with the co-operative principles—

- (a) to improve the material living conditions of its members;
- (b) to satisfy the cultural needs of its members as well as to increase their social and political awareness; and
- (c) to promote co-operative education among its members.

[PCh211s5]5. Protection of co-operative societies

The state shall protect the co-operative societies by offering support, guidance and advice.

[PCh211s6]6. Application of Penal Code to employees and property of society

When applying the Penal Code * and the punishments provided for in this Act, the property of the society shall be deemed to be public property, its employees shall be deemed public servants and the papers of the society, its records and seal shall not be removed from the premises of the society except in accordance with the provisions of this Act.

PART III

RESPONSIBILITIES OF THE MINISTER (ss 7-10)

[PCh211s7]7. Encouragement of co-operative development

The Minister shall take such measures as he deems necessary for the encouragement generally of co-operative development for economic, social and cultural purposes and human advancement on the basis of self-help and in particular, but without limiting the generality of the foregoing for the encouragement of the organisation of co-operative societies as a means of—

- (a) improving the economic situation of their members;
- (b) contributing to the economy an increased measure of self-reliance and democratic control of economic activity;
- (c) increasing personal and national capital sources by the encouragement of thrift, the prevention of usury and the wise use of credit;
- (d) increasing incomes and employment by fuller utilisation of resources, including the bringing of new land into productive use, the marketing and processing of agricultural and natural products, the development of local industries, and processing raw materials;
- (e) improving social and cultural conditions and, where appropriate, providing supplementary services in housing, health, education and communications;
- (f) raising the level of general and technical knowledge of members of societies.

[PCh211s8]8. Responsibilities of Minister Act No. 5 of 1997 s. 3

In encouraging co-operative development and in carrying out the provisions of this Act, the Minister may take such measures which are not detrimental to the interests of the members as he deems necessary to—

(a) assist the organisation of co-operative societies among persons or groups of persons who desire to provide themselves with, or to market, commodities or services or both, on a co-operative self help basis;

(b) facilitate the financing of societies, where necessary for their establishment and operation;

(c) provide for such advice as may be necessary to assist officers and members of societies to achieve their objects;

(d) institute inquiry into and collect and classify analyses, information and statistics relating to societies and co-operative development;

(e) establish or facilitate the establishment of a research service or services for enquiry generally into the operation of societies and for investigation and analysis of economic, social and other problems as may be deemed advisable to lead to the encouragement of new or improved methods of co-operative development including—

(i) production of agricultural or natural products and the processing and marketing of such products;

(ii) industrial development, manufacturing and marketing and sale by retail or wholesale;

(iii) credit, investment and business finance;

(iv) wholesaling and retailing of goods and services;

(v) community and welfare services on a co-operative basis;

(f) issue such reports, circulars and other publications relating to societies and co-operative development as may be deemed advisable;

(g) provide or authorise such other services as may be necessary in carrying out the provisions of this Act; and

(h) give directions to the Registrar on matters relating to co-operative development.

[PCh211s9]9. Information on co-operation

(1) The Minister shall disseminate, or arrange for the dissemination of, information relating to co-operatives and co-operative development in such manner and form as may be found best suited to promote interest in and understanding of co-operative principles and practices with a view to the encouragement of the organisation of co-operative societies based on self help.

[PCh211s10]10. Persons required to furnish information to Minister

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

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

PART IV

REGISTRAR (ss 11-12)

[PCh211s11]11. Appointment of Registrar, Deputy Registrar and Assistant Registrars

(1) The President shall appoint public officers to be Registrar of Co-operative Societies and Deputy Registrar, and the Minister shall appoint such number of Assistant Registrars as may be required to assist the Registrar in carrying out his duties and functions under this Act.

(2) The Deputy Registrar and the Assistant Registrars shall act under the direction and control of the Registrar and may subject to this Act or upon due authorisation exercise any of the functions of the Registrar.

(3) The Registrar shall have a seal of such device as may be approved by the Minister.

[PCh211s12]12. Functions of a Registrar

(1) The functions of a Registrar shall be—

(a) to register, promote, inspect and advise co-operative societies in accordance with the provisions of this Act;

(b) to advise the Minister on any matter relating to co-operative societies, and in particular in respect of any assistance, financial or otherwise, which may be required by co-operative societies;

(c) to encourage the establishment of co-operative societies in all sectors of the economy and to assist co-operative societies to increase their efficiency;

(d) to provide services designed to assist in the formation, organisation and operation of societies and to give advice on co-operative management to all kinds of societies registered under this Act;

(e) to perform such other functions in relation to the development and well-being of co-operative societies such as he may be directed by the Minister;

(f) to promote or facilitate education and training of members and staff of co-operative societies.

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

PART V

FORMATION AND ORGANISATION OF SOCIETIES (ss 13-22)

[PCh211s13]13. Structure of the co-operative societies

The structure of co-operatives shall be determined by the members, and subject to the wishes of the members, may comprise of—

- (a) the primary society;
- (b) the secondary society;
- (c) the Apex society;
- (d) the Federation.

[PCh211s14]14. Formation of societies

(1) A primary society may be formed by ten or more persons except for co-operatives of specialised skills which can be formed by four or more persons.

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

(a) that he has attained the minimum age of eighteen years and is of sound mind;

(b) that he is following a trade or occupation relevant to the society's object as defined in the by-laws;

(c) that he has a common need which the society seeks to satisfy;

(d) that he is capable of paying fees and acquiring shares.

(3) Notwithstanding the provisions of subsection (2) a person who has not attained the age of 18 years but has the minimum age of fifteen and is following a trade, or occupation relevant to the society's object who is in this section referred to as a minor may become a member of a co-operative society, but such person shall not be eligible to act as a member of a committee until he has attained the age of eighteen; and a person who has not attained the age of fifteen years but is attending school may be a member of a school society at his school.

[PCh211s15]15. Societies may affiliate Act No. 5 of 1997 s. 4

(1) Primary societies may form secondary societies and secondary societies may form Apex Societies. Apex societies may join and form a Federation, but where a co-operative is unable due to its nature to combine with other of similar nature to form a secondary or Apex society it may be allowed to become a member of the Federation.

(2) A banking co-operative society may be formed by savings and credit societies and other co-operative societies.

[PCh211s16]16. Registrar may advise primary societies to join a co-operative union

Where the Registrar considers that a co-operative union in relation to any area is economically viable, he may advise any primary society or category of co-operative societies operating within that area to join the co-operative union, by notice in writing served on the society or category of co-operative societies, as the case may be.

[PCh211s17]17. Objects of primary society Act No. 5 of 1997 s. 5

The objects of a primary society shall be—

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

[s. 16A]

[PCh211s18]18. Objects and functions of secondary societies

The objects of secondary societies shall be—

- (1) to facilitate the operation of primary societies which are its members;
- (2) to provide services to primary societies as will be provided for in the by-laws of the secondary societies;
- (3) to procure, process and sell all their products.

[s. 17]

[PCh211s19]19. Objects of Apex Societies Act No. 5 of 1997 s. 6

The objects of Apex Societies shall include—

- (i) to represent member societies in collective bargaining;

(ii) to provide consultative services to member societies;

(iii) to do any other thing which in its opinion is connected with or is ancillary

to the above enumerated objects.

[s. 18]

[PCh211s20]20. Societies may form joint enterprise Act No. 5 of 1997 s. 7

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

(2) A co-operative society may join with another private or public non-co-operative company or firm to form a joint venture or company for the interest of the parties concerned provided that the Registrar shall signify approval in writing.

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

[s. 19]

[PCh211s21]21. Object of the Federation Act No. 5 of 1997 s. 8

(1) The Federation, when formed and registered, shall provide, organise and supervise effective centralized services for the member societies and for co-operative education and training and such other services as may be necessary or expedient for its members.

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

(a) to render services designed to ensure efficiency and uniformity in the business of its member societies, standardising their book-keeping, accounting and their procedures and providing audit services to those societies;

(b) to print, publish and circulate any newspaper or other publication designed to foster or increase interest in co-operative enterprises, principles and practices;

(c) to co-ordinate the economic plans of the member societies and to forward them to the Minister for incorporation in the national plan;

(d) to carry on, encourage and assist educational and advisory work relating to co-operative enterprise, and without limiting the generality of the foregoing, to advise the government on co-operative education and operating methods and for that purpose may prepare and provide correspondence courses regarding co-operative principles and operating methods and may disseminate information on co-operative principles and practices;

(e) to represent its member societies in international conferences;

(f) to do any other thing which in its opinion is connected with or is ancillary to the above enumerated objects.

[s. 20]

[PCh211s22]22. Kinds of societies not restricted Act No. 5 of 1997 s. 9

(1) The kinds of societies which may be formed and registered under the provisions of this Act shall not be restricted in any manner.

(2) Without prejudice to the generality of subsection (1) the Registrar may register the following types of societies–

(a) agricultural co-operatives which are designed to deal with crop production, purchasing, processing, marketing, distribution, and any such activity as may be provided in the rules and by-laws;

(b) savings and credit societies and banks which are designed to deal with the mobilisation of local savings and giving credit to members;

(c) consumer co-operatives designed to deal with wholesale and retail business amongst members;

(d) industrial co-operatives for production, manufacturing and sale of goods;

(e) housing co-operatives designed to deal with building, construction and housing programmes for members;

(f) livestock co-operative societies designed to deal with the needs of members in animal husbandry, livestock keeping and diary farming;

(g) fisheries co-operative societies designed to deal with fishing, processing and marketing of fish and other sea products;

(h) producers' co-operatives for agricultural, forestry or other natural products;

(i) such other society as may be deemed appropriate to establish.

[s. 21]

PART VI

REGISTRATION OF SOCIETIES (ss 23-36)

[PCh211s23]23. Societies which may be registered Act No. 5 of 1997 s. 10

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

(2) Except as otherwise provided in this Act, "co-operative principles" means the following principles and methods used in the operation and administration of a society—

(i) co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination;

(ii) co-operatives are democratic organisations controlled by their members who actively participate in setting their policies and making decisions; men and women serving as elected representatives are accountable to the membership; and in primary co-operatives, members have equal voting rights (one member one vote), and co-operatives at other levels are also organised in a democratic manner;

(iii) members contribute equitably to, and democratically control the capital of their co-operative; at least part of that capital is usually the common property of the co-operative; members usually receive limited compensation, if any on capital subscribed as a condition of membership; members allocated surpluses for any of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be divisible benefiting members in proportion to their transactions with the co-operative and supporting other activities approved by the members;

(iv) co-operatives are autonomous, self-help organisations controlled by their members; and they enter into agreement with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy;

(v) co-operatives provide education and training for their members, elect representatives, managers and employees so they can contribute effectively to the development of their co-operatives; and they inform the general public, particularly young people and opinion leaders about the co-operation;

(vi) co-operatives serve their members most effectively and strengthen the co-operative movement by working through local, national and international structures;

(vii) co-operatives work for the sustainable development of their communities through policies approved by their members.

(3) The liability of a joint venture, secondary society, Apex society or Federation, shall be limited.

(4) The word "Limited" shall be the last word in the name of every co-operative society with limited liability registered under this Act.

[s. 22]

[PCh211s24]24. Restrictions on members of society holding share capital

No member other than a registered society shall hold more than one fifth of the share capital of any co-operative society.

[s. 23]

[PCh211s25]25. Conditions for registration

(1) No society other than a society of which a member is a registered society shall be registered under this Act unless it consists of at least the minimum number of persons each of whom is qualified for membership as provided under section 14 of this Act.

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

(3) The word "co-operative" or its equivalent in Kiswahili shall form part of the name of every society registered under this Act.

(4) The word "Limited" or its equivalent in Kiswahili shall be the last word in the name of every society with limited liability registered under this Act.

[s. 24]

[PCh211s26]26. Rights of minor

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

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

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

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

[s. 25]

[PCh211s27]27. Contracts with minors

The fact that any person who has been admitted as a member of a society has not reached the age of eighteen years shall not prevent that person from executing any instrument or giving any acquittance necessary to be executed or given under this Act or the rules, and shall not be a ground for the invalidation of any contract entered into by such person with the society, whether as principal or as surety, and shall be enforceable at law as against such person, notwithstanding his minority.

[s. 26]

[PCh211s28]28. Powers of general meeting to decide certain questions

(1) Where for the purpose of this Act any question arises as to whether—

(a) a person is following a relevant trade to the society;

- (b) a person is a resident in the area of operation;
- (c) two or more societies shall be considered to form a joint venture;
- (d) a person has attained the apparent age of eighteen years,

the question shall be decided by the members at a general meeting.

(2) Any person aggrieved by a decision of the members at a general meeting as given under subsection (1) may in writing appeal to the Registrar. If the party is not satisfied with the decision of the Registrar, he may in writing appeal to the Minister whose decision shall be final and shall not be subject to review by any court.

[s. 27]

[PCh211s29]29. Membership subject to Registrar's permission in certain cases

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

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

[s. 28]

[PCh211s30]30. Application for registration

(1) For the purpose of registration an application shall be made to the Registrar.

(2) The application shall be signed—

(a) in the case of a society which after registration will be a primary society, by at least a minimum number of persons or such number of persons as the Registrar may approve, who are qualified in accordance with the requirement of section 14;

(b) in the case of a society which after registration will be a secondary society, by the duly authorised persons of at least two registered primary societies which are members of such secondary society;

(c) in the case of an Apex society, by the duly authorised person of at least two registered secondary societies which are members of such Apex society; and

(d) in the case of a Federation by the duly authorised persons of at least two registered Apex societies which are members of the Federation.

(3) The application shall be accompanied by—

(a) four copies of the proposed by-laws of the society, signed by the applicant;

(b) a report of a feasibility study or project write-up indicating the viability of the society; and

(c) such other information in regard to the society as the Registrar may require.

(4) The Registrar may prescribe the forms to be used and the conditions to be complied with in applying for the registration of a society and the procedure in the matter of such application.

[s. 29]

[PCh211s31]31. Registration Act No. 5 of 1997 s. 11

(1) No society shall be registered unless the Registrar is satisfied that—

(a) the volume of business from members of the society is sufficient to cover its costs;

(b) proper provision has been made for the financing of the society;

(c) no society exists in the same locality performing similar activities for people of the same class or occupation, and that the registration of another society would serve no useful purpose.

(2) Before registering any society or its by-laws the Registrar may require that the by-laws shall be amended so as to conform with such directions as he may give in that behalf.

(3) On registration the society shall pay such fees as may be required by the Registrar.

(4) The Registrar may refuse to register a society only if he is not satisfied in terms of subsection (1).

(5) An appeal shall lie to the Minister from a decision of the Registrar refusing to register a society under subsection (1) of this section and the Minister's decision thereon shall be final and shall not be subject to review by any court.

(6) Every appeal under subsection (5) shall be made within sixty days from the date of notification of the decision of the Registrar.

[s. 30]

[PCh211s32]32. Certificate of registration

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

[s. 31]

[PCh211s33]33. Probationary societies Act No. 5 of 1997 s. 12

(1) Where by reason of non-compliance with any provision of this Act or of the rules or any direction given by him, the Registrar, acting under the powers conferred upon him by section 28, is unable to register a society but is satisfied that steps can be taken with diligence by the applicants to comply with such provision or direction, as the case may be, he may, by notice in writing (hereinafter referred to as a notice of deferment), defer registration of that society pending compliance with such provision or direction.

(2) When a probationary society is duly registered under section 32, its certificate of registration shall supersede its notice of deferment which shall thereafter cease to have effect and the society shall be deemed for all purposes to have been registered from the date on which the notice of deferment in respect thereof was issued by the Registrar.

(3) The Registrar may cancel a notice of deferment by notice in writing to be addressed to the probationary society concerned and such cancellation shall from the date thereof operate as a refusal to register the society for the purpose of section 32:

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

(4) Where the notice of deferment of a probationary society is cancelled under subsection (6) of this section, the Registrar may appoint a competent person to be a liquidator of the society.

(5) The provisions of subsection (3) of section 23, subsection (2) of section 25, section 34, subsection (2) and (3) of section 46, sections 35, 52, 60, 80, 96, 99, 100 and 104 shall not apply to a probationary society.

(6) Subject to the provisions of subsection (8) of this section, any reference in any law, including this Act, to a registered society within the meaning of this Act shall, unless the context otherwise requires, include a reference to a probationary society.

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

(8) A probationary society which contravenes any of the provisions of subsection (10) and every office of a probationary society which contravenes any such provisions shall be guilty of an offence and shall on conviction be liable to a fine of ten thousand shillings and in the case of a continuing offence, to a fine of one thousand shillings for each day during which the default continues.

[s. 32]

[PCh211s34]34. Registrar to decide on registration within ninety days

(1) The Registrar shall consider and decide on an application for registration within ninety days from the date of the application and, if for any reason he is not able to consider

and decide on the application within that time, he shall make a report to the Minister and the society which is applying giving reasons as to why he is unable to dispose of the application within that time.

(2) Where the Registrar makes a report in terms of subsection (1), the Minister may direct him to finalise the application within sixty days from the date of the report or within such shorter time as it may be practically possible.

[s. 33]

[PCh211s35]35. Evidence of registration

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

[s. 34]

[PCh211s36]36. Societies to be bodies corporate

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

[s. 35]

PART VII

RIGHTS AND LIABILITIES OF MEMBERS (ss 37-43)

[PCh211s37]37. Member not to exercise right till due payment is made

No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of shares, entry fees and any other dues as may be prescribed by the rules or by-laws of the society.

[s. 36]

[PCh211s38]38. Restriction on membership in society with unlimited liability

No person other than a registered society shall be a member of more than one registered society with unlimited liability except with the sanction of the Registrar.

[s. 37]

[PCh211s39]39. Vote of members

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

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

[s. 38]

[PCh211s40]40. Restriction on transfer of share or interest

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

- (a) such a member has held such share or interest for not less than five years;
- (b) the transfer is made to the society or to a member of the society or to a person whose application for membership has been accepted by the committee;
- (c) such a person has ceased to have any of the qualifications laid down in section 14.

(2) No transfer of a share or other interest shall be valid and effective unless and until such transfer and the name of the transferee has been registered on the directions of the committee of the society.

[s. 39]

[PCh211s41]41. Liability of a member

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

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

[s. 40]

[PCh211s42]42. Liability of past member

The liabilities of a past member for the debt of a registered society as they existed at the time when he ceased to be a member shall, notwithstanding the provisions of any

written law to the contrary, continue for a period of two years from the date of his ceasing to be a member.

[s. 41]

[PCh211s43]43. Liability of the estates of deceased member

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

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

[s. 42]

PART VIII

DUTIES OF REGISTERED SOCIETIES (ss 44-52)

[PCh211s44]44. Address of societies

Every registered society shall have an address registered in accordance with the rules, to which all notices and communications may be sent, and shall send to the Registrar a notice of every change thereof.

[s. 43]

[PCh211s45]45. Copy of Act, the rules and by-laws to be free for inspection

Every registered society shall keep a copy of this Act, rules and of its by-laws open to inspection free of charge, at all reasonable times at the registered address of the society.

[s. 44]

[PCh211s46]46. Power to make by-laws Act No. 5 of 1997 s. 13

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

(2) Without prejudice to the generality of subsection (1) every registered society may make by-laws in respect of the following matters—

- (a) the name and registered address of the society;
- (b) the area of operation of the society;
- (c) the object for which the society is established;
- (d) the purpose to which the funds of the society may be applied and the mode of custody and investment of such funds;
- (e) the qualifications for membership of the society, the terms of admission of members' shares, the entrance fees, and the mode of election;
- (f) the nature and extent of the liability of members;
- (g) the withdrawal and expulsion, suspension of members and the payment, if any to be made to such members;
- (h) the transfer of shares or interest of members;
- (i) the manner of conducting meetings of the society and the powers of such meetings;

(j) the appointment, suspension and removal of members of the committee and officers and the powers and duties of the committee and officers;

(k) the authorisation of an officer to sign documents and to use the seal on behalf of the society.

(3) Where the objects of the registered society include the creation of funds to be lent to the members, additional by-laws shall be made in respect of the conditions on which loans may be made to members which shall include the following matters:

- (a) the rate of interest;
- (b) the maximum period which can be granted for the repayment of a loan;
- (c) the maximum amount of money which may be lent to a member;
- (d) the purpose of loans;
- (e) security for payment;
- (f) the consequences of default in payment of any sum due on account of shares or loans and the consequences of failure to use a loan for the purpose for which it was granted.

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

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

- (a) the member on whom the fine is intended to be imposed has been served with a notice, in writing, of the intention to impose the fine; and

(b) the member within fourteen days, has failed to show cause why the fine may not be imposed on him.

[s. 45]

[PCh211s47]47. Amendment of the by-laws of the registered society

(1) Any registered society may, subject to the provisions of this section amend its by-laws including the by-laws which declare the name of the society.

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

(3) If the Registrar is satisfied that the amendment of the by-laws is not contrary to this Act, he shall register the amendment.

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

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

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

(7) In this section "amendment" includes the making of new by-laws and the variation of by-laws.

[s. 46]

[PCh211s48]48. By-laws of the society to bind members

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

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

[s. 47]

[PCh211s49]49. Accounts and audit Act No. 5 of 1997 s. 14

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

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

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

(4) As soon as the annual accounts of a registered society have been audited the society shall cause to be sent to the Registrar a copy of the audited balance sheet and

statement of income and expenditure prepared in respect of that year together with any report made by the auditors thereon.

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

(6) When the accounts of a society have been audited and adopted by the general meeting of the society and approved in accordance with subsection (3) of this section, they shall be conclusive, except as regards any error discovered therein within six months following the date of such approval and except as regards any allegation of fraud, and whenever any such error is discovered within that period the accounts shall forthwith be corrected with the approval of the Registrar and thereafter shall be conclusive except as regards any allegation of fraud.

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

(8) Without prejudice to the generality of subsections (1), (2), (3), (4), (5) and (6) the management committee shall be held responsible for any loss occasioned to the society.

[s. 48]

[PCh211s50]50. Registrar may require bank to produce information, etc.

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

(a) to furnish any information regarding the transactions of any registered society with the bank;

(b) to produce a copy showing the accounts of the society with the bank from the ledger kept by the bank;

(c) to produce any cheques paid to the credit of the society or endorsed by the society.

[s. 49]

[PCh211s51]51. Communication of defects in the working of the registered societies

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

(2) The Registrar may make an order directing the society or its officers to take such action as shall be specified in the order and within such time as he may direct in that order as will remedy any defect disclosed in the audit, inquiry or inspection.

[s. 50]

[PCh211s52]52. Returns to be made by societies

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

[s. 51]

PART IX

PRIVILEGES OF REGISTERED SOCIETIES (ss 53-62)

[PCh211s53]53. Defect in the constitution not to render act of a registered society invalid

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

[s. 52]

[PCh211s54]54. Disposal of produce to or through a registered society

(1) A registered society which has as one of its objects the disposal of any article which is the product of agriculture or animal husbandry, may provide in its by-laws or may contract with its members—

(a) that every such member who produces any such articles shall dispose of the whole or any specified amount proportion of description thereof to or through the society; and

(b) that any member who is proved or adjudged to be guilty of a breach of by-laws or contract, shall pay to the society as liquidated damages a sum ascertained or assessed in such manner as may be prescribed by its by-laws.

(2) A contract made by a registered society under subsection (1) shall create in favour of the registered society a first charge upon all articles as referred to under subsection (1) whether these articles have been produced or are about to be produced.

(3) In any legal proceedings arising out of a contract made under subsection (1) it shall not be a defence that the contract is in restraint of trade.

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

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

[s. 53]

[PCh211s55]55. Creation of charges in favour of registered societies

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

(a) any rent or outstanding demand payable to a registered society by any member or past member shall be a first charge on all produce of agriculture, animal husbandry, fisheries or any industry and generally all reduce of labour and things used in

connection with production raised, purchased or produced in whole or in part from any loan whether in money or in goods given to him by the society:

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

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

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

(3) Notwithstanding anything contained in any law for the time being in force any transfer of property made in contravention of the provisions of subsection (2) shall be void.

[s. 54]

[PCh211s56]56. Charges and set-off in respect of shares or interest of members

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

[s. 55]

[PCh211s57]57. Shares or interest not liable to attachment

Subject to the provisions of section 48 the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decrees or order of a court in respect of any debt or liability incurred by such member, and the official receiver under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest.

[s. 56]

[PCh211s58]58. Transfer of interest on death of a member

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

Provided that—

(a) in the case of a registered society with unlimited liability such nominee, heir, or legal representative, as the case may be, may require payment by the society of the value of the shares or interest of the deceased member ascertained as aforesaid;

(b) in the case of a society with limited liability the society may transfer the share or interest of the member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and by-laws for membership of the

society, or on his application within six months of the date of the death or declaration or permanent insanity to any person specified in the application who is so qualified.

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

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

(4) The Registrar may prescribe the mode in which the value of a deceased member's interest shall be ascertained and the nomination of a person to whom such interest may be paid or transferred shall be made.

(5) The Registrar may prescribe the mode in which value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and the nomination of any person to whom such interest may be paid or transferred shall be made.

[s. 57]

[PCh211s59]59. Register of members

Any register or list of members kept by any registered society shall be prima facie evidence of any of the following particulars entered therein—

(a) the date at which the name of any person was entered in such register or list as a member;

(b) the date at which any such member ceased to be a member.

[s. 58]

[PCh211s60]60. Proof of entries in societies' books

(1) A copy of any entry in a book of a registered society regularly kept in the course of business shall, if certified in such manner as may be presented by the rules, be received in any suit or legal proceedings civil or criminal as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where and to the same extent as, the original entry is admissible.

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

[s. 59]

[PCh211s61]61. Exemption from compulsory registration of instruments relating to shares and debentures of registered society

Subject to the provisions of Part XIII nothing in any written law requiring registration of instruments relating to shares and debentures shall apply to:—

(a) any instrument relating to shares in a registered society, notwithstanding that the assets of such society consist in whole or any part of immovable property; or

(b) any debentures issued by such society and not creating, declaring, assigning, limiting or extinguishing any right, title, or interest to an immovable property except in so far as the instrument whereby the society has mortgaged, conveyed or

otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(c) any endorsement upon or transfer of any debentures issued by any such society.

[s. 60]

[PCh211s62]62. Power to exempt from duty or tax

(1) Notwithstanding the provisions of any law to the contrary the President may, by notice in the Gazette, in the case of any registered society or class of registered society 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 the accumulated funds;

(b) the stamp duty payable under the Stamp Duty Act *, on instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society of any class of such instruments, are respectively chargeable;

(c) any registration fee payable under any law.

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

[s. 61]

PART X

MANAGEMENT OF REGISTERED SOCIETIES (ss 63-69)

[PCh211s63]63. General meeting Act No. 5 of 1997 s. 15

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

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

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

(3) Every society shall hold a general meeting at least two times in a year except that the Federation shall hold a general meeting at least once in a year.

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

(5) (a) A Special meeting shall be held by a society where at least one third of members signify in writing their intention to hold such meeting.

(b) In the event the procedure to hold a special General meeting under paragraph (a) above fails, an appeal to hold such a meeting shall be lodged to Registrar.

[s. 62]

[PCh211s64]64. Constitution of committee

(1) Every committee of a registered society shall consist of at least four members but not more than fifteen members including the chairman and vice chairman.

(2) The members of the committee, shall be elected by the general meeting of the society and shall hold office for a period of three years and shall be eligible for re-election:

Provided that in the case of those members of the committee elected at the first general meeting of the society, one third of such members, to be determined by the ballot drawn by the chairman at the first meeting of the committee held after such election, shall retire at the expiration of a period of one year from the date of their election and of the remaining members one half, to be determined as aforesaid, shall retire at the expiration of a period of two years after the date of their election.

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

[s. 63]

[PCh211s65]65. Power of the committee Act No. 5 of 1997 s. 16

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

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

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

(3) Where, in the opinion of the Apex society, any person employed under subsection (2) is not performing his functions satisfactorily, the Apex society may advise the committee to terminate the employment of that person and the committee shall consider such advice and subject to any law for the time being regulating termination of employment shall terminate the employment of such person.

[s. 64]

[PCh211s66]66. Restriction relating to members of committee

(1) No member of the committee of a registered society shall hold any office of profit under the society.

(2) A member of the committee of a registered society may receive an honorarium from the society if—

(a) the payment of an honorarium is authorised by a resolution to that effect passed at a general meeting of the society;

(b) the amount of the honorarium shall be determined by the general meeting.

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

(4) Where a person is a member of the committees of two or more vertically related registered societies he shall not be entitled to receive an honorarium in respect of more than one registered society, otherwise he may receive honorarium in respect of more than one horizontally related registered societies.

[s. 65]

[PCh211s67]67. Dissolution of the committee of society Act No. 5 of 1997 s. 17

(1) If the Registrar is of the opinion that the committee of a registered society is not performing its duties properly he shall cause to be held special general meeting by notice in writing and advise it as appropriate. If the special general meeting resolves to suspend the management committee, it shall elect a care taker committee from amongst the delegates to administer the affairs of the society. Consequent to the suspension of the management committee, the special general meeting shall require it to state its objection if any, in writing jointly and severally in the next general meeting.

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

(3) Where after giving an opportunity to the committee to state its objections, if any, of its dissolution in the general meeting and the latter disapproves the objections, then a new management committee shall be elected to that effect by the general meeting, otherwise the provision of subsection (2) shall also apply. The Registrar shall publish in the Gazette the decision in favour of any change made by the general meeting.

(4) It shall be the duty of the care taker committee appointed under this section to manage the affairs of a registered society and to comply with the directions which the special general meeting may give.

(5) Nothing in this section shall be deemed to affect the power of the Registrar to cancel the registration of the society under section 99.

[s. 66]

[PCh211s68]68. Power of persons appointed under section 65

Subject to the general direction and control of the special general meeting any person or persons appointed under section 65 to assume the functions of the committee of any registered society shall have all the powers, rights and privileges of a duly constituted committee of the society.

[s. 67]

[PCh211s69]69. Committee to comply with any directions contained in reports

The committee shall without delay comply with any directions contained in an inspection report of the Registrar or in an audit report.

[s. 68]

PART XI

PROPERTY AND FUNDS OF REGISTERED SOCIETIES (ss 70-83)

[PCh211s70]70. Revenue of registered society

(1) The by-laws of a registered society shall provide for the raising of funds to finance its activities by—

(a) all moneys derived from fees or charges specified by the by-laws of the society;

(b) all moneys derived from payment of subscription where this is applicable;

(c) all moneys derived from issue of shares;

(d) all revenue accruing to the registered society from deposits and loans from persons who are not members as provided under the by-laws of registered society;

(e) all revenue accruing to the registered society from savings and deposits made by its members;

(f) all moneys derived from the sale of any produce of the registered society;

(g) all moneys which a registered society may borrow from lending institutions or any other source under its general powers of raising money by borrowing;

(h) all moneys derived from fines imposed in respect of contravention of any by-law made by a registered society.

(2) Any other moneys lawfully derived by a registered society from any source not mentioned specifically in subsection (1) shall be and shall form part of the revenue and funds of that registered society.

(3) All revenue of a registered society shall be paid into the general fund of the registered society:

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

[s. 69]

[PCh211s71]71. Rules to govern the the maintenance of the revenue and funds of a registered society

(1) The following provisions shall apply in respect of the revenues and funds of a registered society; that is to say—

(a) an admission fee shall not be refunded except in the case where an application for membership has been rejected;

(b) a regular obligatory deposit shall be made in accordance with the by-laws of the society and shall not be withdrawn except for purposes and in accordance with conditions specified in the rules or on termination of membership, or for the purposes of securing a loan taken by or a guarantee given by a member, voluntary deposits may be withdrawn, subject to any conditions or restriction specified in the by-law of the registered society;

(c) deposit or loans from persons who are not members of the registered society shall be subject to the provisions of this Act and of the by-laws of the society;

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

(2) Where the funds of a registered society required to finance its activities are obtained by the issue of shares, the following provisions shall apply—

(a) a share shall not be redeemed except in accordance with the provisions of by-laws of the society where such by-laws shall also specify the minimum number of shares a member shall hold while he is a member;

(b) the share capital shall not be reduced without the consent of the general meeting;

(c) unless the general meeting otherwise resolves to direct, a fund, which shall be known as the share transfer fund, shall be formed and maintained to meet expenditure which may be incurred by the society in purchasing the shares of the members whose membership has terminated with the consent of the committee;

(d) no payment from the share transfer fund shall be made for the purchase of the shares of any member whose membership has terminated without the consent of the committee;

(e) the amount standing to the credit of a share transfer fund shall include the value of any unallocated shares purchased from members under the foregoing provisions, and such amount shall not exceed ten per centum of the subscribed share capital;

(f) where the share of a member is purchased by the society under the foregoing provisions, the amount paid therefor shall not exceed the par value of the share,

and it shall be lawful for the society to pay such less sum than the par value as it considers reasonable regard being had to the financial position of the society at the time of purchase;

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

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

[s. 70]

[PCh211s72]72. Restriction on loans

(1) A registered society shall not make a loan to any person other than a member:

Provided that, with the approval of the General Meeting, a registered society may make loans to another registered society:

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

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

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

[s. 71]

[PCh211s73]73. Restriction on borrowing from non-members

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

[s. 72]

[PCh211s74]74. Restriction of transactions with non-members

Save as provided under sections 63 and 64 the transactions of a registered society with persons other than members shall be subject to such prohibition and restriction, as the Minister may by rules prescribe.

[s. 73]

[PCh211s75]75. Investment of Funds Act No. 5 of 1997 s. 18

(1) A registered society may invest its funds—

(a) in interest bearing deposit in the Co-operative Financial Institution, or any financial institution such as may be approved by the Minister;

(b) in the shares of any other registered society;

(c) in government bonds and other securities; or

(d) in such other investments as the Registrar may by order published in the Gazette declare to be authorised investments for the purpose of this section.

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

subsection (1) and it shall be the duty of every registered society to comply with such directions.

(3) If a registered society fails to comply with any advice given by the Registrar under subsection (2) the society and every officer thereof who is knowingly a party to the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings.

[s. 74]

[PCh211s76]76. Central Co-operative Fund Act No. 5 of 1997 s. 19

(1) There shall be a Central Co-operative Fund which shall be created and administered by the Federation in accordance with such regulations as the Minister shall make in that behalf.

(2) Without prejudice to the foregoing the fund may be applied for the furtherance of co-operative education, training and research, for auditing and the general development of co-operative societies in Tanzania.

(3) Every society shall contribute to a fund to be established by the Minister of Finance under the Public Finance Act * for the purpose of meeting the expenses of inspection and promotion of co-operatives.

[s. 75]

[PCh211s77]77. Repealed

[Repealed by Act No. 5 of 1997.]

[s. 76]

[PCh211s78]78. Secondary societies to contribute to the Fund Act No. 5 of 1997 s.

21

Every primary society, secondary society, Apex Society and Federation shall contribute to the Fund a fixed amount to be determined by the annual general meetings of the societies subject to the approval of the Registrar.

[s. 77]

[PCh211s79]79. Financial provision

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

(2) Where the funds of a registered society to finance its activities are obtained by the issue of shares, the following provisions shall apply–

- (a) the share capital shall not be reduced without the consent of the Registrar;
- (b) unless the Registrar otherwise in writing directs, a fund which shall be known as the share transfer fund shall be formed and maintained to meet expenditure which may be incurred by the society in purchasing the share of members whose membership has terminated with the consent of the committee;
- (c) no payment from the share transfer funds shall be made for the purchase of the share of any member who has terminated his membership without the consent of the committee;

(d) no purchase of the shares of a member whose membership has been terminated by reason of any causes other than death shall be made except with moneys then available in the share transfer fund;

(e) the amount standing to the credit of a share transfer fund shall not exceed ten per centum of the subscribed share capital;

(f) where the share of a member is purchased by the society under the foregoing provisions, the amount paid therefor shall not exceed the par value of the share, and it shall be lawful for the society to pay such less sum than the par value as it considers reasonable, regard being had to the financial position of the society at the time of purchase;

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

[s. 78]

[PCh211s80]80. Voluntary division

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

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

[s. 79]

[PCh211s81]81. Reserve Fund

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

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

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

[s. 80]

[PCh211s82]82. Distribution of net balances

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

[s. 81]

[PCh211s83]83. Contribution for charitable, educational and medical purposes

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

[s. 82]

PART XII

REGISTRATION OF CHARGES (ss 84-93)

[PCh211s84]84. Registration of charges

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

(2) This section applies to the following charges—

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

(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 purpose of this section 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 purposes of this section be deemed to be an interest in immovable property.

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

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

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

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

[s. 83]

[PCh211s85]85. Duty of society to register charges created by society

(1) It shall be the duty of the registered society to send to the Registrar the particulars of every charge created by the society to which section 82 applies, but registration of any such charge may be effected on the application of any person interested therein.

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

(3) If any registered society makes default in sending to the Registrar for registration the particulars of any charge to which section 82 applies, created by the society then unless the registration has been effected by some other person the society and every officer thereof who is knowingly a party to the default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings for every day during which the default continues.

[s. 84]

[PCh211s86]86. 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 section 82 would apply if the charge had been created by the society after the acquisition of on the property, the society shall cause the prescribed particulars of the charge, together with a copy (certified in the prescribed manner to be correct copy) of the instrument, if any, by which the charge was created or is evidenced to be delivered to the

Registrar of registration within forty-five days after the date of which the acquisition is completed.

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

[s. 85]

[PCh211s87]87. Register of charges

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

(a) in the case of a charge to the benefit of which the holders of a series of debentures are entitled, such particulars as are specified in subsection (5) of section 82;

(b) in the case of any other charge—

(i) if the charge is a charge created by the society, the date of its creation, and if the charge was a charge existing on the property acquired by the society, the date of the acquisition of the property;

(ii) the amount secured by the charge;

(iii) short particulars of the report charged; and

(iv) the persons entitled to the charge.

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

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

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

[s. 86]

[PCh211s88]88. Endorsement of certificate of registration of debentures

(1) Every registered society shall cause a copy of every certificate of registration given under section 85 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:

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

(2) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock which under the provisions of this section is required to have endorsed on it, a copy of a certificate of registration without the copy

being so endorsed on it, he shall, without prejudice to any other liability, be guilty of an offence and liable on conviction to a fine not exceeding one thousand shillings.

[s. 87]

[PCh211s89]89. Entry of satisfaction and rectification of register

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

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

[s. 88]

[PCh211s90]90. Enforcement of security

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order

or of the appointment under the said powers, given notice of the fact to the Registrar and the Registrar shall, on payment of the prescribed fee, enter the fact in the register of charge.

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

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

[s. 89]

[PCh211s91]91. Copies of instrument creating charges to be kept by society

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

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

[s. 90]

[PCh211s92]92. Society's register of charges

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

(2) If any officer of the society knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section in any such register he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

[s. 91]

[PCh211s93]93. Right to inspect copies of instruments creating mortgages and charges and society register of charges

(1) The copies of the instrument creating any charge required to be registered with the Registrar under the provisions of this part and the registered society in pursuance of section 89 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 members of the society without fee, and the register of charges shall also be open to the inspection of any other person on payment of such fee as may be determined by the general meeting.

(2) If inspection of the said copies or register is refused, any officer of the society refusing inspection or who knowingly and wilfully permits such refusal shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten shillings for every day

during which such refusal continues and any court may be order compel an immediate inspection of the copies or register.

[s. 92]

PART XIII

INSPECTION OF AFFAIRS (ss 94-97)

[PCh211s94]94. Inquiry

(1) The Registrar may of his own motion, and shall, on the application of the majority of the committee or of not less than one-third of the members, direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, activities and financial affairs of the registered society.

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

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

[s. 93]

[PCh211s95]95. Inspection

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

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

Provided that no inspection under this subsection shall be carried out or directed unless—

(a) the creditor satisfied the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the creditor deposits with the Registrar such sum as security for costs of the proposed inspection as the Registrar may require.

(3) The Registrar shall communicate the results of any inspection carried out under subsection (1) to the creditor.

[s. 94]

[PCh211s96]96. Costs of inquiry

(1) Where an inquiry is held under section 94 or an inspection is made under section 95 the Registrar may, by a certificate under his hand and seal, make an award apportioning the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officer or former officers of the society.

(2) The Registrar may lodge a certified copy of a certificate issued by him under subsection (1) in a court of a resident magistrate or a district court and upon being so lodged such certificate shall be deemed to be a decree passed by such court for the

payment by the person named in the certificate to the Registrar of the sum specified in the certificate and such sum may be recovered in any manner prescribed by the Civil Procedure Code *, for the enforcement of decrees and the provisions of that Act relating to executions of decrees shall apply, mutatis mutandis, to proceedings for the recovery of costs awarded under this Act.

[s. 95]

[PCh211s97]97. Surcharge

(1) Where upon an inquiry under section 94 or upon an inspection under section 95 the Registrar is satisfied that a past or present officer or member has made or authorised an unlawful payment or has by negligence or misconduct caused a deficiency or a loss or failure to bring to account or has by negligence or misconduct caused loss of or damage to any property of the registered society the Registrar may surcharge such person with the unlawful payment, deficiency or loss, or the sum which ought to have brought to account or the value of the property lost or damaged or portion of such unlawful payment, deficiency, loss, sum, value or cost as the Registrar may consider reasonable having regard to all the circumstances of the case.

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

(3) The decision of the Minister on any appeal made under subsection (2) shall be final and shall not be subject to review in any court.

(4) Where a person has been surcharged with an amount under this section and he fails to pay such amount within thirty days after the service of the notice upon him in accordance with subsection (2) or, if he has appealed to the Minister or the High Court, and he fails to pay the amount of the surcharge, if any, decided upon by the Minister or the High Court on appeal within fifteen days from the date of the decision of the Minister or the High Court the Registrar may issue a certificate under his hand and seal specifying the name and address of the person who has been surcharged and the amount of the surcharge and such certificate or a certified copy thereof may be lodged in a court of resident magistrate or a district court and upon being so lodged it shall be deemed to be a decree passed by such a court be for the payment by the person named in the certificate to the Registrar of the sum specified in the certificate and such sum may be recovered in any manner prescribed by the Civil procedure Code *, for the enforcement of decree and the provisions of that Act relating to execution of decrees shall apply, mutatis mutandis, to proceedings for the recovery of such amount specified in the certificate.

(5) The Chief Justice may make rules regulating the procedure on an appeal to the High Court under this section.

[s. 96]

PART XIV

AMALGAMATION AND DIVISION (ss 98-102)

[PCh211s98]98. Voluntary amalgamation

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

(2) Where the Registrar is satisfied that—

(a) two or more registered societies have resolved to amalgamate as a single society in accordance with the provisions of subsection (1);

(b) the proposed by-laws of the proposed amalgamated society are unobjectionable; and

(c) the proposed amalgamation is not against the interest of the members of the societies proposing to amalgamate or against the public interest, he may, by order published in the Gazette, amalgamate the societies.

(3) Every order made under subsection (2) shall specify—

(a) the date on which the societies shall amalgamate (hereinafter referred to as "the effective date");

(b) the names of the amalgamating societies; and

(c) the name of the amalgamated society,

and may contain such directions as the Registrar may consider necessary for the purpose of giving effect to the amalgamation or for safeguarding the interests of any person.

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

(a) all the assets and liabilities of the amalgamating societies shall, by virtue of such order and without further assurance, vest in the amalgamated society;

(b) the Registrar shall cancel the registration of the amalgamating societies and such cancellation shall be effective as from the effective date; and

(c) the Registrar shall, notwithstanding the provisions of section 29 and section 30, register the amalgamated society and the by-laws of the amalgamated society.

(5) Notwithstanding subsection (1) the Registrar may advise to amalgamate two or more societies if he is satisfied that it is in the interest of the societies.

[s. 97]

[PCh211s99]99. Defect or irregularity in notice, etc.

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

[s. 98]

[PCh211s100]100. Registered society may resolve to form new societies, etc.

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

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

(3) The Registrar may advise on voluntary division where he is satisfied that—

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

(b) such resolution complies with the provisions of subsection (2);

(c) the proposed new societies shall be economically viable when registered;

(d) the proposed division is not against the interests of the members of the existing society or against the public interest,

he may, by order published in the Gazette, divide the existing society into the proposed new societies.

(4) Every order made under subsection (3) shall specify—

(a) the date on which the existing society shall be divided into the new societies (hereinafter referred to as "the effective date");

(b) the name of the existing society and the names of the new societies into which it is divided;

(c) the manner in which the assets and liabilities of the existing society shall be divided among the new societies; and

(d) where necessary, the area of operation of each of the new societies,

and may contain such directions as the Registrar may consider necessary for the purpose of giving effect to the division or for safeguarding the interests of any person.

(5) Where an order is made under subsection (3)–

(a) the assets and liabilities of the existing society subsisting on the effective date shall, by virtue of such order and without further assurance, vest in the new societies in the manner specified in such order;

(b) the Registrar shall cancel the registration of the existing society and such cancellation shall be effective as from the effective date; and

(c) the Registrar shall, notwithstanding the provisions of section 29 and section 30, register the new societies and their respective by-laws.

[s. 99]

[PCh211s101]101. Compulsory amalgamation Act No. 5 of 1997 s. 24

(1) Where the Registrar is satisfied that it is in the interest of two or more societies to amalgamate as a single society and that such amalgamation will not be against the interest of the members, he may by notice in writing, require the societies to amalgamate.

(2) Where a notice has been given to the societies under subsection (1), the Registrar shall by notice published in the Gazette and in any newspaper circulating in the area where the societies conduct their business invite members of the societies to lodge with him any objections or other representations in writing within a period of two months from the date of such notice.

(3) Where no objection has been lodged pursuant to subsection (2) the Registrar may direct the societies to whom the notice has been delivered under subsection (1) to

prepare by-laws for the proposed amalgamated society and the societies shall submit the by-laws for the approval of the Registrar, and the Registrar may, after consultation with societies, vary or amend the proposed by-laws.

(4) Where the Registrar has approved the proposed by-laws, he may by order published in the Gazette amalgamate the societies.

(5) Where any objection has been raised by a member pursuant to subsection (2) and it is supported by not less than one third of the other members of the society to which the member belongs the Registrar shall convene a meeting of the members to consider the representations of the members on the question of amalgamation. Should the majority of the members present opt for amalgamation the Registrar shall proceed under the provisions of subsection (3).

(6) When the Registrar has approved the proposed by-laws, he may by order published in the Gazette, amalgamate the societies.

[s. 99A]

[PCh211s102]102. Compulsory division Act No. 5 of 1997 s. 24

(1) Where the Registrar is satisfied that it is in the interest of an existing society to divide itself into two or more new societies and such division will not be against the interest of the members, he may, by notice in writing, require the existing society to so divide itself.

(2) A notice given under subsection (1) shall contain proposals for the division of the assets and liabilities of the existing society among the proposed new societies, and may

prescribe the area of operation of, and specify the members who will constitute each of the proposed new societies.

(3) Where a notice is given to an existing society under subsection (1) such society shall, within such time as may be specified in the notice, prepare by-laws for the proposed new societies and submit the by-laws for the approval of the Registrar, and the Registrar may, after consultation with the existing society, vary or amend the proposed by-laws.

(4) Where the Registrar is satisfied that the proposed new societies are not objectionable, he may, by order published in the Gazette, divide the existing society into the proposed new societies.

(5) Where a notice has been given to the existing society under subsection (1), the Registrar shall by notice published in the Gazette, and in any newspaper circulating in the areas where the existing society conducts its business invite members of the society to lodge with him any objections or other representations within a period of two months from the date of such notice.

(6) Where any objection has been raised by a member pursuant to subsection (5) and it is supported by not less than one third of the members of the existing society the Registrar shall convene a meeting of the members to consider the representations of the members as to the question of the division of the existing society. Should the majority of the members present opt for the division the Registrar shall proceed to effect the division under this section.

[s. 99B]

PART XV

DISSOLUTION OF SOCIETY (ss 103-125)

[PCh211s103]103. Dissolution

If the Registrar after an inquiry has been held under section 94 or after an inspection has been made under section 95 or on receipt of an application made by three-fourths of the members of a registered society, is of the opinion that the society ought to be dissolved he may, by order in writing and after notifying the general meeting of the Federation if any cancel the registration of the society.

[s. 100]

[PCh211s104]104. Cancellation of registration of society

(1) Where it is a condition of the registration of a society that it should consist of at least required minimum members the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than the required minimum as per section 14 of this Act.

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

[s. 101]

[PCh211s105]105. Appeal against cancellation

(1) Where the registration of a society is cancelled under the provisions of—

(a) section 98; or

(b) section 99,

any member of the society the registration of which is cancelled may, within thirty days from the date of the order cancelling the registration, appeal from such order to the Minister.

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

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

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

[s. 102]

[PCh211s106]106. Effect of cancellation of registration

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

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

[s. 103]

[PCh211s107]107. Winding up

Where the registration of a society is cancelled under any of the sections 98 and 99 the Registrar shall—

(a) appoint by order in writing a custodian of assets and liabilities of the society immediately after cancellation is effected;

(b) within forty days appoint a competent person or persons to be liquidator of the society's assets and liabilities.

[s. 104]

[PCh211s108]108. Powers of liquidator

(1) A liquidator appointed under section 104 shall have the power subject to the guidance and control of the registrar, and to any limitations imposed by the Registrar—

(a) to institute and defend suits and other legal proceedings by and on behalf of the society by his name or office and to appear in court as a litigant in person on behalf of the society;

(b) to refer disputes to arbitration;

(c) to determine the contribution to be made by the members and past members and by the estates of deceased members of the society respectively to the assets of the society;

(d) to investigate all claims against the society, and, subject to the provisions of this Act, to decide questions of priority arising between claimants;

(e) to determine by what persons and in what proportion the costs of the liquidation are to be borne;

(f) to examine and investigate any claim which the society may have against any person;

(g) to take possession of the books, documents and assets of the society; and

(h) to give such directions in regard to the collection and distribution of the assets of the society and the disposal of the books and documents of the society as may appear to him to be necessary for winding-up the affairs of the society.

(2) Subject to any rules made under section 126 a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purpose of this section, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a court under the Civil Procedure Code *.

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

[s. 105]

[PCh211s109]109. Power of Registrar to control liquidation

(1) A liquidator shall exercise his powers subject to control and revision by the registrar, who may—

(a) rescind or vary any order made by a liquidator and make whatever new order is required;

(b) remove a liquidator from office;

(c) call for all books, documents and assets of the society;

(d) by order in writing limit the powers of the liquidator under the provisions of the foregoing section;

(e) require accounts to be rendered to him by the liquidator;

(f) procure the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;

(g) make an order for the remuneration of the liquidator;

(h) refer any subject of dispute between a liquidator and any third party to settlement if that party shall have assented in writing to be bound by the decision to be given on the dispute.

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

(a) when made by a liquidator, by any court of a resident magistrate having jurisdiction in the same manner as the decree of such court;

(b) when made by a court of appeal, in the manner of any such appeal as aforesaid in the same manner as a decree of such court in any suit pending therein.

[s. 106]

[PCh211s110]110. Power to stay or restrain proceedings against society

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

[s. 107]

[PCh211s111]111. Avoidance of disposition of property, etc. after cancellation

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

[s. 108]

[PCh211s112]112. Avoidance of attachment, etc.

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

[s. 109]

[PCh211s113]113. Power of Registrar to assess damage against delinquent promoters, etc.

(1) Where, in the case of the winding-up of a society, it appears that any person who has taken part in the organisation or management of the society or any past or present chairman, secretary member of the committee or officer of the society has

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

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

[s. 110]

[PCh211s114]114. Power to arrest absconding promoter, officer, etc.

Any court of a resident magistrate may, on the application of the Registrar or of the liquidator and on proof of probable cause for believing that any person or officer of the society mentioned in subsection (1) of section 109 is about to quit the United Republic or otherwise to abscond or remove any of his property for the purpose of evading calls or of avoiding investigation of his conduct or of avoiding examination by the liquidator or by the Registrar respecting the affairs of the society or of avoiding compliance with any order made by the Registrar under the said subsection (1) of section 109, cause him to be

arrested and his books and papers and movable property to be detained until such time as the court may order.

[s. 111]

[PCh211s115]115. Debts of all description may be proved

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

[s. 112]

[PCh211s116]116. Where society is insolvent

In the winding-up of a registered society which is insolvent the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, and all persons who in any such case would be entitled to prove for and realise dividends out of the assets of the society may come in under the winding upon and make such claims against the society as they respectively are entitled to by virtue of this section.

[s. 113]

[PCh211s117]117. Preferential payments

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

(a) all Government taxes and local rates due from the society at the relevant date and having become due and payable within twelve months next before that date not exceeding in the whole one year's assessment;

(b) all Government rents not more than one year in arrears;

(c) all wages or salary (whether or not earned wholly or in part by way of commission) for services rendered to the society during four months next before the relevant date and all wages (whether payable for time or for piece work) of any workman or labourer in respect of services so rendered; and

(d) unless the society has, immediately prior to the relevant date, under any contract with insurers, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under any law for the time being in force in Tanzania relating to compensation of workmen, being amounts which have accrued before the relevant date.

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

Provided that where a claimant under the said paragraph (c) is a labourer in husbandry who has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of

such sum, a part thereof, as the liquidator may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(3) Where any compensation under any law for the time being in force in Tanzania relating to compensation of workmen is a weekly payment, the amount due in respect thereof shall, for the purpose of paragraph (d) of subsection (1) be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under such law.

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

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

(a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and

(b) so far as the assets of the society available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by society, and be paid accordingly out of any property comprised in or subject to that charge.

(6) For the purposes of this section—

(a) any remuneration in respect of a period of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the society during the period;

(b) the expression "the relevant date" means the date on which the cancellation of the registration of the society takes effect.

[s. 114]

[PCh211s118]118. Fraudulent preference

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

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

[s. 115]

[PCh211s119]119. Liabilities and rights of certain fraudulent preferred persons

(1) Where anything made or done is void under section 118 as a fraudulent preference of a person interested in property mortgaged or charged to secure the society's debt then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights,

as if he had undertaken to be personally liable as surety for the debt to the extent of the mortgage or charge on the property or the value of his interest, whichever is the less.

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

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

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

[s. 116]

[PCh211s120]120. Effect of floating charge

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

the society at the time of or subsequently be the erection of, and in consideration, for the charge, together with interest on that amount at the rate of six percent per annum or such other rate as may be prescribed.

[s. 117]

[PCh211s121]121. Disclaimer of onerous property in case of society being wound up

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

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

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

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

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

[s. 118]

[PCh211s122]122. Restriction of rights of creditor as to execution or attachment in case of society being wound up

(1) Where a creditor has issued execution against the movable or immovable property of a registered society or has attached any debt due to the society, and the society is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator in the winding up of the society unless he

has completed the execution or attachment before the date on which the cancellation of the registration of the society takes effect:

Provided that—

(a) a person who purchase in good faith under a sale by bailiff on an order of a court any movable property of a society of which an execution has been levied shall in all cases acquire a good title thereto against the liquidator; and

(b) the rights conferred by this subsection on the liquidator may be set aside by the Registrar in favour of the creditor to such extent and subject to such terms as the Registrar may think fit.

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

(3) In this section and in section 119 the expression "movable property" includes all chattels personal, and the expression "bailiff" includes any officer charged with the execution or a writ or other process.

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

[s. 119]

[PCh211s123]123. Duties of court as to goods taken in execution

(1) When any movable property of a registered society is execution and, before the sale thereof taken in or the completion of the execution by receipt of recovery of the full amount of the levy, notice is served upon the court which issued the execution that the registration of the society has been cancelled, the court shall require the bailiff to deliver the movable property including any money seized or received in part satisfaction of the execution to the liquidator and the bailiff shall forthwith comply with such requirement.

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

[s. 120]

[PCh211s124]124. Courts not to have jurisdiction in dissolution of societies

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

[s. 121]

[PCh211s125]125. Preservation of books and records

On the completion of his duties the liquidator shall hand over to the Registrar all the books and records of the society, and the Registrar may order the removal of the name of the society from the registrar and cause such books and records to be preserved in an archive.

[s. 122]

PART XVI

RULES AND REGULATIONS (ss 126-129)

[PCh211s126]126. Rules

(1) The Minister may, for any registered society or class of such societies, make rules to carry out the purposes of this Act.

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

(a) subject to the provisions of section 24 prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

(b) 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;

(c) prescribe the matters in respect of which a society may or shall make by-laws and for the procedure to be followed in making, altering and abrogating by-laws, and the payment to be made and the interest to be acquired before the exercise of the right of membership and to provide for the termination of membership;

(d) 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 interest to be acquired before the exercise of the right of membership and to provide for the termination of membership;

(e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise and the form in which any application for financial assistance from Government, any bank or any financial institutions shall be made;

(f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings and for the methods of summoning members to such meetings and giving notice of such meetings to members;

(g) provide for the appointment, remuneration, suspension and removal of the member of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers and to provide for the delegation of the powers of the committee;

(h) provide for the appointment and terms of service of employees of a society;

(i) provide for the submission of annual estimates for the approval of the Registrar;

(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 form of the register of members and for the particulars to be entered therein;

(m) provide that any dispute touching the business of a society between the members or past members of the society or persons claiming through a member or past

member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or if he so directs to arbitration under the Arbitration Act *;

(n) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;

(o) provide for the mode in which the value of a deceased member's interest shall be ascertained and for the nomination of persons to whom such 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 affairs shall be ascertained and for the nomination of any persons to whom such interest may be paid or transferred;

(q) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for loans, the period for which loans may be made and amount which may be lent, to an individual member and the manner in which such loans shall be repaid;

(r) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;

(s) 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 liability and the maximum rate of dividend which may be paid by societies;

(u) prescribe the procedure for amalgamation and division of societies and conditions subject to which such amalgamation or division may be affected;

(v) prescribe the procedure to be followed by a liquidator appointed under section 104 and the case in which an appeal shall lie from any order of such liquidator;

(w) provide for the powers to be exercised and the duties to be performed by and the remuneration and other terms of service of a supervising Manager;

(x) provide for the audit of the accounts of registered societies and for the charges, if any, to be made for such audit and provide for the levy of contributions from all or any registered societies to a fund to be used for the audit and supervision of existing societies and prescribe for the administration for such a fund; and

(y) prescribe anything that may be, or is required to be prescribed under this Act.

(3) In any case where the Registrar is satisfied that a substantial number of members of any society are unacquainted with the English language he shall cause such rules to be translated into Swahili and additionally to be made known in such manner as is customary for the community concerned, but in the event of any dispute the English version shall be deemed to be the correct version.

[s. 123]

[PCh211s127]127. Power of Registrar

The Registrar after consulting the chief executive of the respective Apex society, shall make regulations prescribing—

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

[s. 124]

[PCh211s128]128. Fees

(1) Such fees as may be prescribed shall be charged in respect of the following matters—

- (a) an application for registration;
- (b) the issue of a registration certificate;
- (c) the registration of by-laws;
- (d) the registration of amendments to by-laws;
- (e) a search in the registration register;
- (f) inspection of documents;
- (g) certified or uncertified copies of documents;

- (h) translation of documents;
- (i) the registration of charges;
- (j) the inspection of registers of charges;
- (k) any other matter in respect of which a fee is chargeable under the provisions of this Act:

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

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

[s. 125]

[PCh211s129]129. Recovery of sums due to Government

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

[s. 126]

PART XVII

OFFENCES (ss 130-133)

[PCh211s130]130. Offences

(1) It shall be an offence under this Act if—

(a) a registered society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purpose of this Act by

the Minister, the Registrar or any other person duly authorised in that behalf by the Minister or the Registrar, as the case may be; or

(b) a registered society or an officer or member thereof wilfully makes a false return or furnishes false information; or

(c) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Act or does not furnish any information lawfully required from him by a person authorised to do so under the provisions of this Act; or

(d) any person acts or purports to act as a committee member when not entitled to do so; or

(e) a registered society, or an officer or a member thereof, wilfully performs any act which requires the consent or approval of the Registrar without first having obtained such consent or approval;

(f) a registered society or an officer or a member thereof wilfully omits to do or to cause to be done an act or thing which is required by or under this Act to be done;

(g) a registered society or an officer or a member thereof wilfully does or causes to be done any act or thing prohibited by or under this Act.

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

[PCh211s131]131. Penalty for soliciting violation of contracts

(1) Any person, firm or company having knowledge or notice of the existence of a contract described in section 52 or of an obligation imposed upon producers in accordance with the provisions of section 50 who solicits or persuades any person to sell or deliver produce in violation of that contract or obligation shall be liable to a fine not exceeding two thousand shillings for each offence, and shall in addition pay to the society concerned the market price of such produce as at the date of such offence.

(2) Any person, firm or company, as aforesaid, shall be deemed to have knowledge or notice of the existence of such contract or of such obligation if the said society has notified the existence of such contract or of such obligation in the Gazette and in any newspaper circulating in Tanzania.

[s. 128]

[PCh211s132]132. Offences by officer of society being wound-up

If any person, being a past or present officer or member of a registered society the registration of which has been cancelled and in respect of which a liquidator has been appointed—

(a) does not, to the best of his knowledge and belief, fully and truly disclose to the liquidator all the property, movable and immovable, of the society;

(b) does not deliver up to the liquidator or as he directs, all such part of the movable or immovable property of the society as is in his custody or under his control;

(c) does not deliver up to the liquidator, or as he directs, all books and papers belonging to the society; or

(d) fraudulently parts with, conceals, destroys, falsifies, mutilates or alters or is privy to the fraudulent parting with, concealment, destruction, falsification, mutilation or alteration of any book or paper relating to or affecting the property or affairs of the society, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years.

[s. 129]

[PCh211s133]133. Prohibition of the use of word "co-operative", etc.

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

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

(3) Every person who contravenes any of the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine not exceeding four thousand shillings for each day on which the offence is continued after conviction therefor.

[s. 130]

PART XVIII

MISCELLANEOUS PROVISIONS (ss 134-138)

[PCh211s134]134. Power to exempt societies from conditions as to registration

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

[s. 131]

[PCh211s135]135. Power to exempt registered societies from provisions of the Act

The Minister may, by order published in the Gazette exempt any registered society from any of the provisions of this Act or may direct that such provisions shall apply to such society with such modification as may be specified in the orders.

[s. 132]

[PCh211s136]136. Appointment of special members to committees

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

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

(3) For the purposes of this section—

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

(i) if within the immediately proceeding three years the society has received any grant of money from the Government;

(ii) if any money has been lent to the society by the Government and the loan has not been repaid; or

(iii) if any loan made to the society has been guaranteed by the Government and either the guarantee is still outstanding or the guarantee has been honoured by the Government and the society has not paid to the Government all sums (including interests, if any, thereon) paid by the Government under the terms of the guarantee; and

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

[s. 133]

[PCh211s137]137. Terms of appointment and power of special members

(1) A special member of a committee appointed under section 136 shall remain a member of the committee until his appointment is determined by the Registrar.

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

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

[s. 134]

[PCh211s138]138. Savings

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

[s. 135]

PART XIX

REPEAL AND TRANSITIONAL PROVISIONS (ss 139-143)

[PCh211s139]139. Omitted

[Omitted.]

[s. 136]

[PCh211s140]140. Repeal

[Repeal of Act No. 14 of 1982.]

[s. 137]

[PCh211s141]141. Repeal

[Repeal of Act No. 7 of 1990.]

[s. 138]

[PCh211s142]142.-143. Transitional provisions

[Transitional provisions spent.]

[s. 139]

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