Malawi

Cooperatives Societies Act

Chapter 47:02

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Malawi

Cooperatives Societies Act

Chapter 47:02

Commenced on 1 April 2000

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An Act to consolidate the law relating to the constitution and regulation of cooperative societies and for other matters incidental thereto or connected therewith

Part I – Preliminary

1. Short title

This Act may be cited as the Cooperative Societies Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"**apex society**" means a registered society under this Act, the membership of which is restricted to cooperative unions and includes a society established to serve the cooperative movement by providing facilities for banking, insurance and the supply of goods or services;

"**bonus**" means a share of the surplus of a registered society divided its members in proportion to the volume of business done with the society by them from which the surplus of the society was derived;

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

"**committee**" means the governing body of a registered society to which the management of its affairs is entrusted and includes a Board of Directors;

"**Commissioner**" means the Commissioner for Cooperative Development and, includes the Deputy Commissioner for Cooperative Development and Assistant, Commissioner for Cooperative Development when acting for the Commissioner;

"**cooperative**" means an autonomous association of persons united voluntarily to meet their common economic and social needs in accordance with cooperative principles through a jointly owned and democratically controlled enterprise;

"**cooperative principles**" means—

(i) membership of a society is voluntary and open;

(ii) the management of the society is carried out democratically whereby each member has one vote and there is no voting by proxy;

(iii) the distribution of surplus is done justly in proportion to the amount of the business contribution of each member;

(iv) there is payment of limited return on capital;

(v) there is self-reliance;

(vi) race, creed, ethnic origins, language or political beliefs are no bar to voluntary membership and membership is open to all who can use the services of the society;

"**cooperative union**" means a registered society under this Act, the membership of which is restricted to primary societies;

"**date of dissolution**" means the date on which the Registrar's order cancelling the registration of a society takes effect;

"**dividend**" means share of surplus of a registered society divided among its members in proportion to the share capital held by them;

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

"**officer**" includes a Chairman, Secretary, Treasurer, member of committee, employees or other person empowered under any regulations made under the provisions of this Act or by-laws of registered society to give directions in regard to the business of a registered society.

"**Primary society**" means a registered society under this Act, the membership of which consists of individual persons and includes any body of persons and other bodies approved by the Registrar under section 16; of this Act.

"**registered society**" means a cooperative society registered under this Act;

"**Registrar**" means the Registrar of cooperative societies appointed under section 3 and includes any person when exercising such powers of the Registrar as may have been conferred upon him under that section;

"**secondary society**" means a registered society under this Act, the membership of which is restricted to primary societies;

"**society with limited liability**" means a society the liability of whose members is limited by its by-laws to —

(a) the amount if any unpaid on the shares respectively held by them; or

(b) such amount as the members may each undertake to contribute to the assets of the society in the event of its being wound up;

"**society with unlimited liability**" means a society not having limited on the liability of its members;

"**winding-up**" means all proceedings subsequent to the cancellation of the registration of a society.

Part II – Registration

3. Registrar and assistant registrar

(1) There shall be a Registrar for cooperative societies who shall also be the Commissioner for Cooperative Development for the purposes of this Act.

(2) The Registrar shall be a public officer responsible for providing and administering services required by societies under this Act.

(3) There shall be assistant registrars who shall be assistant commissioners, who shall assist the Registrar in the administration of cooperative societies and the implementation of the provisions of this Act.

4. Societies which may be registered

Subject to the provisions of this Act, a society may be registered under this Act with or without limited liability:

Provided that a cooperative union or any apex society shall be registered with limited liability.

5. Conditions of registration

(1) No society shall be registered under this Act unless—

(a) in the case of a primary society, it consists of at least ten persons all of whom are qualified for membership of the society under section 14; or

(b) in the case of a secondary society, it consists of at least two registered primary societies among its registered members;

(c) in the case of a tertiary society, it consists of at least two registered secondary societies among its registered members;

(d) in the case of an apex society, it consists of two or more secondary societies.

(2) All cooperative societies registered under this Act shall conform to the cooperative principles.

(3) When for the purposes of this section any question arises as to residence or occupation of land constituting the qualification of any person, that question shall be decided by the Registrar.

6. Application for registration

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

(2) The application shall be signed—

(a) in the case of a primary society, by at least ten persons qualified for membership of the society under section 14; and

(b) in the case of a secondary, tertiary or apex society, by a person duly authorized in that behalf by each registered society, as the case may be, who is a member of that society.

(3) The application shall be accompanied by three copies of the proposed by-laws of the society and the persons by whom or on whose behalf such an applications made shall furnish such information regard to the society as may be prescribed under regulations made under this Act.

(4) An application for the registration of a society shall be accompanied by such registration fees as may be prescribed by regulations made under this Act.

7. Registration of society

(1) If the Registrar is satisfied that a society has complied with the provisions of this Act and regulations made thereunder and that its proposed by-laws are not contrary to the provisions of this Act, he shall register the society and its by-laws.

(2) The Registrar, shall register a society within thirty days from the date the application is submitted failing which the society shall be deemed to have been registered.

8. Indication of registration

(1) A society which is registered under section 7 shall state in legible letters in all its receipts, letter-heads, notices, advertisements or other official publications that it is registered and shall indicate the same on a signboard in a conspicuous position outside any premises or office in which it carries on its business.

(2) If a society registered under section 7 contravenes or fails to comply with the provisions of this section that society and any officer or person who purports to act on its behalf commits an offence and shall be liable after conviction to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued after conviction thereof.

9. Cancellation of registration

(1) At any time during the period of registration of a society under section 7, the Registrar may, after giving notice in writing to the person responsible for the running of the society, cancel the registration of such society stating reasons for such cancellation and the society shall, from the date of service of the notice, cease to be a registered society.

(2) The cancellation referred to in subsection (1) shall be Published in the *Gazette*.

10. Amendment of by-laws of a registered society

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

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

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

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

(5) 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 by him which shall be conclusive evidence of the fact that the amendment has been fully registered.

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

(7) If the society fails to comply with the Registrar's directive, the Registrar may cancel the registration of the Society under section 73 (c).

(8) With effect from the date of registration, of an amendment under this Act, the by-laws shall be binding on the society and its members.

11. Appeal to the Minister

From every refusal of the Registrar to register a society or its by-laws or any amendment of its by-laws, an appeal shall lie to the Minister.

12. Name of society to be different from others

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

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

13. Evidence of registration

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

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

Part III – Rights and liabilities of members

14. Qualifications for membership

In order to be qualified for membership of a society, a person, other than a registered society shall—

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

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

(c) qualify under a common bond as specified by-laws.

15.

No member shall hold more than one-fifth of the paid-up share capital of any cooperative society.

16. Restriction on shareholding

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

[Cap. 46:03]

17. Member not to exercise rights until due payment made

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

18. Restriction of membership in more than one society

(1) No person shall be a member of more than one registered society with unlimited liability.

(2) Save with the written consent of the Registrar, no person be a member of more than one registered society having the same or similar objects:

Provided that a person who is a member of a registered society and carries on business on land or at premises outside the area of operation of that registered society, may be a member of a registered society in whose area of operations, that land or those premises are situated notwithstanding that its objects are the same as or similar to those of the list mentioned society.

19. Vote of members

Each member of a registered society shall have one vote only as a member in the affairs of the registered society:

Provided that a registered society, a cooperative union or an apex society which is a member of any registered society shall have as many votes as may be prescribed by the by-laws of such other society, and

may subject to such by-laws, appoint any number of its committee members, not exceeding the number of such votes, to exercise its voting power.

20. Restriction on shares or interest

(1) The transfer of the share or interest of a transfer of member in the capital of a registered society shall be subject to the conditions as to maximum holding for which provision is made in section 15.

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

(a) he has held such share or interest for not less than one year; and

(b) the transfer of charge is made to the society or to a member of the society.

Part IV – Duties of registered societies

21. Address of societies

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

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

22. Copy of the Act, regulations, by-laws, etc., to be open for inspection

Every registered society shall keep a copy of this Act and of the Regulations made thereunder and of its by-laws and a list of members open to inspection by any member, free of charge, and any other person at a fee to be determined by the Society, at all reasonable times during business hours at the office of the society.

23. Audit and annual returns and accounts

(1) It shall be the duty of every registered society to cause its accounts to be audited at least once in every year by an auditor from a list of registered auditors appointed by the annual general meeting and the cost of such audit shall be borne by the society:

Provided that—

(a) no auditor chosen by a registered society to audit its books shall perform that function for more than three consecutive annual audits;

(b) where the registered society is unable to appoint its own auditors, the Registrar may appoint such auditors or carry out the audit at a fee.

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

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

(4) Every auditor appointed under subsection (1) shall submit a detailed audit report on the financial statements to the committee and a true copy of such financial statements to the Registrar within three months after its financial year and shall include the auditor's opinion on whether or not the business administration of the society has been conducted—

(a) efficiently;

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

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

(5) The audited financial statements referred to in subsection (4) shall be open for inspection by any member of the public upon payment of such fee as may be fixed by the Registrar.

(6) Where a registered society fails to cause its accounts to be audited in accordance with subsections (1), (2) and (4), the committee of that society shall be deemed to have relinquished its office; and the Registrar shall convene special general meeting to elect a new committee unless the Registrar is satisfied that the failure was due to circumstances beyond the committee's control.

24. Qualifications of auditors

(1) No person shall be appointed or approved as an auditor for the audit of the accounts of a registered society unless that person, or in the case of a firm, is a member of a recognized accounting body.

(2) The Minister may, in consultation with the Registrar and by notice published in the *Gazette*, amend the qualifications of auditors specified in this section.

25. Estimates and expenditure

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

(2) If a society contravenes or fails to comply with any provision of this section, every member of that Committee and any officer or person who purports to act on its behalf commits an offence and shall, upon conviction, be liable to a fine not exceeding K3,000 and in the case of a continuing offence to a further fine not exceeding K500 for each day on which the offence is continued.

26. Voluntary amalgamation of societies

(1) Any or more registered societies (hereinafter referred to as the "amalgamating societies") may, by special resolution with the approval of the Registrar, (in this section referred to as the "preliminary resolution"), resolve to amalgamate as a single society (hereinafter referred to as the "amalgamated society").

(2) A copy of the preliminary resolution shall be sent to all the members and creditors of each of the societies, and to all other persons whose interest in any of the societies will be affected by the amalgamation.

(3) Any member of any of the societies concerned may, notwithstanding any by-law to the contrary, by notice in writing given to his society at least one month before the date specified as the date of amalgamation, intimate his intention not to become a member of the amalgamated society.

(4) Any creditor of any of the societies concerned may, notwithstanding any agreement to the contrary, by notice in writing given to such society at least one month before the date specified as the date of amalgamation, intimate his intention to demand the payment of any money due to him.

(5) Any other person whose interest will be affected by the amalgamation may, by notice in writing given to the society concerned not less than one month before the date specified as the date of amalgamation, object to the amalgamation unless his claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution is passed, a further special general meeting of each of the societies shall be held to consider the preliminary resolution and any notices received under this section.

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(7) At the special general meeting held under subsection (6) of the section, provision shall be made by a further resolution of the society (in this section referred to as the "secondary resolution") for—

(a) the repayment of the share capital of any member who has given notice under subsection (3);

(b) the satisfaction of any claims by creditors who have given notice under subsection (4); and

(c) the satisfaction of the claims of such other persons who have given notice under subsection (5) of this section as the Registrar determines, or the securing of their claims in such manner as the Registrar directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in subsection (8).

(8) Each society may, by further resolution passed by a two-thirds majority of the members present and voting, confirm the preliminary resolution.

(9) If, within such time as the Registrar considers reasonable, the Registrar is satisfied that the provisions of the secondary resolutions of each of the societies, and the provisions of this section, have been complied with, he may register the amalgamated society and the by-laws of such thereupon—

(a) the registration of all the amalgamating societies shall be cancelled, and the amalgamating societies shall be dissolved;

(b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;

(c) the remaining members of the amalgamating societies shall become members of the amalgamated society and subject to its by-laws in accordance with section 30; and

(d) any creditors of the amalgamating societies or any other persons who have claims against the amalgamating societies, and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims or causes of action against the amalgamated society.

27. Transfer of assets and liabilities to another society

(1) Any registered society may by a resolution transfer its assets and liabilities to any other society which agrees to accept them.

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

(3) If a creditor objects to an amalgamation deeded upon under section 26 or a transfer of liabilities under this section and gives notice in writing of one month before the date fixed for the amalgamation or transfer of liabilities to the society concerned, the amalgamation or transfer shall not take place until liabilities of the creditor have been satisfied or until an agreement for payment of the liabilities has been made by the society and the creditor.

(4) Any creditor who is not satisfied with the liabilities paid to him or who does not accept to enter into an agreement with the society concealed as provided under subsection (3) may appeal to the Registrar within ninety days from the date of his disagreement with the society.

28. Voluntary division of a society

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

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

(a) a general meeting of the members of the society has been called;

(b) each member of the society has had a written notice of at least fifteen days of the meeting; and

(c) a resolution has been passed by a two-thirds majority of the members present at the meeting in support of the division.

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

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

(5) Any member of the divided society may notify the society in writing, within three months from the receipt of the preliminary resolution, of his intention not to belong to any of the new societies and any creditor may demand from the society within the said period a repayment of the amount due to him.

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

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

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

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

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

(a) the repayment of the share capital of all the members who have given notice under subsection (5);

(b) the satisfaction of the claims of all the creditors who have given notice under subsection (5);

(c) the satisfaction of the claims of any other person who has given notice under subsection (6):

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

(11) The registration of new societies, under, subsection (9) shall be sufficient to vest the assets and liabilities of the divided society in the new societies in accordance with the provisions of the preliminary resolution.

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Part V – Duties and privileges of societies

29. Societies to be bodies corporate

A society on registration shall become a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold moveable and immoveable property of every description, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its constitution.

30. Registered by-laws to bind members

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

(2) No member of a registered society shall contest suit, claim, action or proceedings between such member and the society or any other member of the society on the ground that any by-laws of the society constitutes a contract in restraint of trade.

31. Contract with members

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

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

(3) The covenants obligations imposed by any contract as is mentioned in subsection (1) shall run with any assets and shall be binding on all assignees and transferees and any transfer or conveyance of property subject to such contract shall be deemed to operate also as alike transfer or assignment of the contract.

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

32. Imposition of fines upon members

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

(2) Any such fine may be recovered by legal proceedings in a court of law.

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

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

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

33. Charge on produce and certain other, materials and articles

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

(a) upon produce of a member or past member, at any time within two years from the date when seed or fertilizer as advanced, or services were supplied, or money was lent to such member or past members in respect of the unpaid portion of such advance, supplies services on loan;

(b) in respect of the supply of agricultural or industrial implements or machinery, or raw material for manufacturing or building or for the loan of money for the purchase of any of such implements to be supplied or purchased in whole or in part from any such loan or any articles manufactured from raw materials supplied or purchased.

34. Charge and set-off in respect of shares or interest of member

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

35. Share or interest not liable to attachment

Subject to the provisions of section 33, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest:

Provided that where a society is dissolved, the property in the shares of any member who has been adjudicated as bankrupt under the provisions of any such law relating to bankruptcy shall vest in the trustee in bankruptcy.

36. Liability of past member

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

37. Liability of estate of deceased

The estate of a deceased member shall be liable for a period of one year from the time of his demise for the debts of a registered society as they existed at the time of his death.

38. Transfer of interest on death of member

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

interest, ascertained in accordance with any regulations made under this Act or the by-laws of the society:

Provided that—

(a) in the case of a society with unlimited liability, such nominee or legal personal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained in the manner mentioned in this subsection; or

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

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

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

39. Registers and books shall be received in evidence in certain circumstances

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

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

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

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

40. Restriction on the production of societies books

No officer of a registered society shall, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books the contents of which can be proved under section 39, or to appear as a witness to prove the matter, transactions and accounts therein recorded unless by order of the court made for special cause.

41. Power to remit or refund revenue

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

(a) any 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 members of the society on account of accumulated funds;

(b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments are respectively chargeable.

(c) any fee payable under any law relating to registration for the time being in force;

(d) the customs and excise duty on any development goods ordered or purchased by a registered society. For purposes of this paragraph "development goods" means agricultural equipment,

vehicles and other goods which the Minister responsible for finance may declare to be development goods.

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

Part VI – Property and funds of registered societies

42. Restrictions on loans

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

Provided that—

(a) with the general or special sanction of the general meeting, a registered society may make loans to another registered society; and

(b) subject to the prior written approval of a general meeting and subject to such conditions as may be imposed, a registered society may stand surety for a loan to be granted to an employee of the society where such a loan is for the benefit of that society.

43. Restrictions on borrowing

(1) A registered society shall receive deposits and loans from persons who are not members, only to such extent and under such conditions as the general meeting of members may, from time to time, by resolution, approve.

(2) A depositor or lender shall not be required to know whether the resolution has been approved.

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

44. Restriction on other transactions with non-member

(1) Save as provided in section 42 and 43 transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as the general meeting may, from time to time, in writing, direct.

(2) The total value of transactions entered into by a registered society in respect of a particular kind of produce with persons other than members shall not exceed, in any one year, one-half of all transactions entered into by it in respect of that kind of produce.

(3) The net amount of all profits accruing from transactions with persons other than members shall be credited to the society s statutory reserve fund and shall not be available for distribution among members.

45. Investments of funds

A registered society may invest or deposit its funds only—

(a) in a registered cooperative bank;

(b) in any registered society, company or statutory corporation approved in writing by the Registrar;

(c) in any bank or financial institution incorporated in Malawi;

(d) in and upon such investment and securities as are by law allowed for the investment of trust funds; and

(e) in such other mode as specified by the by-laws of the society and approved by members in a general meeting.

46. Dividend or bonus

(1) No registered society shall pay a dividend or bonus or distribute any part of its accumulated funds without the prior approval of the annual general meeting.

(2) No society shall pay a dividend to its members exceeding the maximum rate prescribed by the by-laws of the society.

(3) No society with unlimited liability shall advance money or goods to any member in excess of money or goods deposited by him.

47. Reserve and provident fund

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

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

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

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

48. Distribution of net balance

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

Part VII – National Cooperative Education Fund

49. Establishment of the Fund

(1) There is hereby established a National Cooperative Education Fund (in this Act otherwise referred to as the Fund).

(2) Every registered society shall contribute one *per centum* per annum of its net profit to the Fund.

50. Fund Committee

(1) The Fund shall be vested in a Fund committee which shall consist of—

(a) a chairman elected from the cooperative movement; and

(b) three other persons elected from the cooperative movement; and

(c) the Registrar who shall provide secretarial services.

(2) The Fund committee shall administer the moneys in the Fund and shall—

(a) prepare an annual budget for the approval of the Minister; and

(b) submit an annual report on the Fund to the Minister.

(3) Three members of the Fund Committee shall constitute a quorum.

(4) Subject to the approval of the Minister, the Fund Committee shall determine its own procedure.

51. Account and audit

(1) The Fund Committee shall cause proper books of accounts of the Fund to be kept together with adequate financial and other records relating to the Fund.

(2) The Fund Committee shall within three months after the end of the financial year have the books of the Fund audited by an auditor appointed by the Fund Committee and approved by the Minister.

52. Financial year

The financial year of the Fund shall be the period of twelve months ending on 30th June in each year.

53. Disbursement from the Fund

The Fund Committee may authorize payment from the Fund for educational costs and any reasonable and necessary expenses arising from the maintenance of the Fund.

54. Holdings of the Fund

(1) All moneys received on behalf of the Fund shall be paid into a bank account and no moneys shall be withdrawn there from except by means of cheques signed by such persons as are authorized in that behalf by the Fund Committee.

(2) Any part of the Fund not immediately required for the purpose of the Fund may be invested as agreed upon by the Fund Committee.

Part VIII – Charges by societies

55. Power to charge property

(1) A registered society may from time to time, with the consent of the Registrar, charge the whole or any part of its property, if its by-laws expressly empower it to do so and to the extent to which its by-laws empower it to do so.

(2) The chargee shall not be required to know whether the consent of the Registrar has been obtained or that the society s by-laws empower the society to charge its property.

56. Registration of charges

(1) Subject to this Part, every charge to which this section applies created by a registered society, shall so far as any of the society's property is thereby charged, 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 or within three months after commencement of this Act, whichever is the later, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a charge so becomes void under this section the money secured thereby shall immediately become payable.

(2) this section shall apply to the following charges—

(a) a charge for the purpose of securing an issue of debentures;

(b) a charge created or evidenced by an instrument which, if executed by an individual, would require registration;

(c) a charge on immoveable property wherever situated;

(d) a charge on book debts of the society; and

(e) a floating charge on the property of the society.

(3) In this Part, "charge" includes a mortgage.

(4) Where a negotiable instrument has been given to secure the payment of any book debts of a registered society the deposit of tire instrument shall, for the purpose of this section, be treated as a charge on those book debts.

(5) The holding of debentures entitling the holder to a charge on immoveable property is not itself an interest in immoveable property for the purposes of this section.

(6) Where a series of debentures containing, or specifying by reference to any other instrument, any charges to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a registered society, it shall for the purposes of this section be sufficient if there are delivered to the Registrar within thirty days after the execution of the deed containing the charges (or, if there is no such deed, after the execution of any debentures of the series), or within three months after the commencement of this Act, whichever is the later, the following particulars—

(a) the total amount secured by the whole series;

(b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined;

(c) a general description of the property charged; and

(d) the names of the trustees, if any, for the debenture holders, together with the deed containing the charge or a certified copy thereof, 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 registration, within thirty days after the date of each issue or within three months after the commencement of this Act, whichever is the later, particulars of the date and the amount of the issue, but an omission to do so shall not affect the validity of the debentures issued.

57. Duty of society to register charges created by society

(1) It shall be the duty of a registered society to send to the Registrar for registration the particulars of every charge created by it to which section 55 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 registered 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 fails to send to the Registrar within the prescribed time for registration the particulars of any charge created by it to which section 55 applies, then, unless the registration has been effected by some other person within such time, the society and every officer thereof shall be guilty of an offence and liable to a fine not exceeding K3,000 for every day during which the default continues.

58. 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 55 would apply if the charge had been created by the society, the society shall cause the prescribed particulars of the charge, together with a certified copy of the instrument, if any, by which the

charge was created or evidenced, to be delivered to the Registrar for registration within thirty days after the date on which the acquisition is completed or within three months after the commencement of this Act, whichever is the later.

(2) If default is made in complying with this section, the registered society and every officer thereof shall be guilty of an offence and liable to a fine not exceeding K3,000.

59. Register of charges

(1) The Registrar shall, with respect to each registered society, keep a register in such form as may be prescribed under this Act of all charges requiring registration under this Part, and shall enter in the register, with respect to every charge, the following particulars—

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

(b) the amount secured by the charge;

(c) short particulars of the property charged; and

(d) the persons entitled to the charge;

(2) The Registrar shall issue a certificate under his hand of the registration of any charge registered under this Part, stating the amount 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.

(4) The Registrar shall keep a chronological index containing the particulars of the charges entered in the register.

60. Endorsement of certificate of registration on debenture

(1) Every registered society shall cause every certificate of registration issued under section 59 to be endorsed on the 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 tins subsection shall require a society to cause a certificate of registration of any charge so given to be endorsed on any debenture stock issued by the society before the charge was created.

(2) If any person knowingly and willfully authorizes or permits the delivery of any debenture or certificate of debenture stock which has not endorsed on it the certificate of registration required by sub-section (1), he shall, without prejudice to any other liability, be guilty to an offence and liable on conviction to a fine not exceeding K3,000.

61. Entry of satisfaction

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 order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the registered society concerned with a copy thereof.

62. Rectification of register of charges

The Registrar on being satisfied that the omission to register a charge within the time required by this Act, or that the omission or mis-statement of any particulars with respect to any such charge or in a memorandum of satisfaction, was accidental or due to inadvertence or some other good cause, or is not of a nature to prejudice the position of creditors or members of the registered society, or that on other grounds it is just to grant relief, may, on the application of the registered society or any person interested,

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and on such terms and conditions as seem to the Registrar fair, order that the time for registration shall be extended or, as the case may be, that the omission or mis-statement shall be rectified.

63. Registration of appointment of receiver

(1) If any person obtains an order for the appointment of a receiver or manager of the property of a registered society, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven days from the date of the order or of the appointment under the said powers, give written notice of the fact to the Registrar, and the Registrar shall enter the notice in the register of charges.

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

(3) If any person makes default in complying with the requirements of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000 for every day during which the default continues.

64. Copy of instrument creating charge to be kept by society

Every registered society shall cause a copy of every instrument creating a charge which is required by this Part to be registered to be kept at the registered address of the society.

65. Society's register of charges

(1) Every registered society shall keep at the registered address of the society a register of charges in which shall be entered all charges specifically affecting property of the society and all floating charges on the property or assets of the society, giving in each case a short description of the property charged, the amount of the charge and the name of the person entitled thereto.

(2) If any officer of a registered society knowingly omits or permits the omission of any entry required to be made in any register in pursuance of this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding K3,000.

66. Right to inspect copies of instruments creating charges and society's register of changes

(1) The copies of the instruments creating charges which are required by this Part to be registered, and the register of charges kept by the registered society under section 65 shall be open to inspection during business hours by any creditor or member of the society without fee (subject to such reasonable restrictions as the society in general meeting and may impose, so, however, that not less than two hours in each day shall be allowed for inspection), and the register of charges shall also be open to changes inspection by any other person on payment of the prescribed fee.

(2) Any officer of the registered society who refuses to allow inspection of the register of charges or of copies of the instruments creating charges in accordance with subsection (1) or who permits such refusal, shall be guilty of, an offence and liable to a fine not exceeding K3,000 for every day during which the refusal or permission continues, and the court may order an immediate inspection of such register or copies.

Part IX – Supervision and inspection of affairs

67. Production of cash and books of society

Any officer, agent, servant or member of a registered society who is required by the Registrar, or any person authorized in writing by the Registrar, so to do shall, at such place and such time as the Registrar

may direct, produce all moneys, securities, books, accounts and documents the property of, or relating to the affairs of, such society which are in custody of such officer of such society, agent, servant or member and which are under his control.

68. *Ad hoc* committee of inquiry

(1) The Registrar may hold an inquiry or direct any person authorized by him by order in writing in that behalf to hold an inquiry into the constitution, working and financial conditions of a registered society.

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

(3) during the period of inquiry referred to in subsections (1) and (2), the chief executive and other officers or employees may be suspended from duty by the Registrar if evidence is uncovered showing breach of this Act, regulation, rule, or by-laws of the society by any of them to facilitate the smooth holding of the inquiry.

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

(b) Such caretaker manager shall remain in office until either the former chief executive is reinstated or a new one is appointed:

Provided, that he shall not stay in that office for more than three months after the report of the committee of inquiry has been submitted.

(5) If during the course of inquiry, cause arises to dissolve the committee of the society, the Registrar shall dissolve such a committee and convene within thirty days, a special general meeting to replace such a committee.

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

69. Inspection of books of indebted society

(1) The Registrar may, if he thinks fit, on the application of a creditor or a registered society, direct a person authorized by him in writing in that behalf to inspect the books of the society:

Provided that—

(a) the application satisfies 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 applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

70. Cost of inquiry

Where an inquiry is held under section 68 or an inspection is made under section 69, the Registrar may make an award apportioning the costs or such part of the costs as he may think fit, between the society, the members or creditor demanding an inquiry or inspection, and the officer or former officers of the society.

71. Recovery of an award under section 70

Any award under section 70 may be recovered in any court of competent jurisdiction in the same manner as a judgment of such court.

Part X – Dissolution of a registered society

72. Cancellation of registration after inquiry or inspection

(1) If the Registrar, after holding an inquiry under section 68 or after making an inspection under section 69, or on receipt of an application made by two-thirds of the members of a registered society, is of the opinion that the society ought to be dissolved, he may make an order for the cancellation of the registration of society.

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

(3) Where no appeal is presented within two months from the making of an order under subsection (1) cancelling the registration of a society, the order shall take effect on the expiry of that period.

73. Cancellation for other reasons

(1) The Registrar may, on his own motion or after hearing representations from the Society, by order in writing cancel the registration of any society, if satisfied that—

(a) the registration was obtained by fraud or mistake; or

(b) the society exists for illegal purposes; or

(c) the society has willfully, after notice by the Registrar, contravened any of the provisions of this Act, the regulations made thereunder or the by-laws or any direction given by the Registrar;

(d) the society is no longer operating in accordance with cooperative principles; or

(e) the number of members of the society has fallen below the minimum required by this Act; or

(f) the society has not commenced operations or has ceased to operate for one year.

(2) A society, shall be liquidated when two-thirds, of its share capital has been lost, unless the Registrar is satisfied that the loss will be made good within six months from the date of discovery of the insolvency.

(3) An appeal against an order made under subsection (1) or (2) shaIl be lodged with the Minister within sixty days from the date of receipt of the order.

(4) Where the Munster hears an appeal from the Registrar pursuant to subsection (3), the Minister may reverse the order, confirm the order or refer the order back to the Registrar.

74. Winding-up

(1) Where the Registrar, after an inquiry has been held under section 68 is of the opinion that the society ought to be wound up, he may make an order directing it to be wound up and may appoint a liquidator for the purpose and fix his remuneration which shall be paid out of the funds of the society.

(2) Pending the appointment of the liquidator, the assets and liabilities of the society shall vest in the Registrar.

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75. Application of certain provisions of Companies Act

Upon the winding-up of any registered society, the Minister may, by notice published in the *Gazette*, declare certain provisions of the Companies Act applicable to the society as if such society was registered under that Act.

[Cap. 46:03]

76. Effect of cancellation

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

77. Copy of order to be filed by Registrar

On the making of an order to cancel the registration of a society, a copy of such order shall be placed on the file maintained by the Registrar in respect of the society and another copy shall be published in the *Gazette*.

78. Appointment of liquidator

Where the registration of a society is cancelled under section 73 or 74, the Registrar may appoint a liquidator of the society and all the property of the society shall vest in such liquidator with effect from the date of cancellation:

Provided that if the society is to be wound up voluntarily, the members may appoint a liquidator.

79. Powers of liquidator

A liquidator appointed under section 78 shall, subject to the guidance and control of the Registrar and to any limitation imposed by the Registrar or by an order made under section 80, have the following powers—

(a) to appoint a day, in the manner prescribed by regulations made under this Act, before which the creditor whose claims are not already recorded in the books of the society shall state their claims for admission, or be excluded from any distribution made before they have proved them;

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

(c) to refer disputes to arbitration in the manner prescribed by regulations made under this Act;

(d) to determine from time to time the contributions to be made by the members and past members, and by the estate of deceased members of the society, respectively, to the assets of the society;

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

(f) to call such meetings of members as may be necessary for the proper conduct of the liquidation;

(g) to sell by public auction the assets of the society;

(h) to carry on the business of the society so far as may be necessary for the proper liquidation of the affairs of the society;

(i) to determine, from time to time, by what persons and in what proportion the costs of the liquidation are to be borne;

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

(k) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Registrar;

(l) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding-up the affairs of the society;

(m) to compromise, with the approval of the Registrar, any claim by or against the society; and

(n) to apply to the Registrar for his discharge from the duty of liquidator after completion of the liquidation proceedings.

80. Powers of Registrar in liquidation

(1) A liquidator shall exercise his powers subject to the control and revision by the Registrar.

(2) The Registrar may—

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

(b) remove a liquidator from office for good cause and appoint a new liquidator;

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

(d) by order in writing, limit the powers of a liquidator under section 79;

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

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

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

(h) grant a discharge to the liquidator on application by him after completion of the liquidation proceedings;

(i) require any member of a society and any trustee, banker, receiver, agent or officer of the society to pay, deliver, convey, surrender or transfer forthwith, or within such time as he shall direct, to the liquidator any money, property or books and papers in his hands to which the society is *prima facie* entitled;

(j) appoint a special manager of the business of a society whose registration has been cancelled and determine his remuneration and what, if any, security he shall give for the proper performance of his duties; or

(k) refer any subject of dispute between a liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator provided that the decision of an arbitrator on any matter shall be binding upon the parties and shall be enforceable in like manner as an order made by the Registrar under paragraph (a).

81. Appeal against an order of a liquidator or the Registrar

Any person aggrieved by an order of a liquidator or the Registrar given under section 79 or paragraph (a) of section 80 may appeal against such order to the Minister.

82. Closure of liquidation

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

(2) When the liquidation of a society has been closed the claim of any creditor of that society who has not received what is due to him under the approved scheme of distribution shall he barred by

prescription on the expiry of one year from the date of the order cancelling the registration of the society.

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

(a) be distributed amongst the members at the time of dissolution or their legal personal representatives in proportion to the value of the business of each such member with the society during the three years immediately preceding the date of dissolution or, if the society has not existed for such period, during the existence of the society, or if the society has done no business during these three years, then in proportion to the share capital held by them at such date;

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

83. Commission of offence

If the liquidator of a society whose registration has been cancelled alleges that any offences have been committed, he shall report the facts to the Registrar who shall forward a copy of such report to the Director of Public Prosecutions for the institution of such proceedings as may be necessary.

84. Convicted officers not to be officers of a society

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

(2) Any person acting in contravention of the provisions of subsection (1) commits an offence and shall be liable on conviction to imprison for a period not exceeding two years.

85. Offences

Offences under this Part shall be tried by a court having jurisdiction over the place in which the alleged offence was committed.

Part XI – Surcharge and attachment

86. Powers of Registrar to surcharge officers, etc.

(1) Where it appears that any person who has taken part in the organization or management of a registered society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of that society or has been guilty of misfeasance, or breach of trust in relation to the society, the Registrar may, on his own motion or on the application of the liquidator or of any creditor or member, enquire into the conduct of that person and make an order requiring him to repay or restore the money or property or any part therefor with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

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

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

87. Appeal to Minister

Any person aggrieved by an order of the Registrar made under section 86 may appeal to the Minister.

88. Attachment of property

Where the Registrar is satisfied that any person, with intent to defraud or delay the execution of any order which may be made against him under section 79 or section 86, or of any decision that may be given in a dispute referred to the arbitrators under the provisions of this Act or any other written law and for the time being in force, is about to dispose of the whole or any part of his property, the Registrar may, unless adequate security is furnished, order the conditional attachment of such property and such attachment shall have the same effect as if made by a competent court.

Part XII – Settlement of disputes

89. Settlement of disputes

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

(a) among the members, past members or person claiming through members, past members and deceased members; or

(b) between a member, past members and persons claiming through a member, past member or deceased member and the society, its committee or nay officer or past officer of the society; or

(c) between the society or its committee and any officer or past officer of the society; or

(d) between the society and any other registered society,

such dispute shall be referred to an arbitrator for decision.

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

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

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

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

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

[Cap. 6:03]

(7) Any Party aggrieved by an award made under this section may Appeal to the Registrar within Sixty days from the date of the award.

(8) An arbitrator appointed under the provisions of this section may—

(a) summon witnesses and call for any accounts, books, documents or any information which he considers relevant to the matter in question;

(b) administer an oath or affirmation to any witness giving evidence before him;

(c) refer any point of law to the High Court for its decision; and

(d) amend the terms of the order of reference with the consent of the parties to the dispute.

(9) When the arbitrator has made his award, he shall sign it, and shall give notice to the parties of the making thereof, and of the amount of the fees and charges payable to him in respect of the arbitration and award.

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

(11) Where the arbitrator refers a case to court on a point of law under paragraph (c) of subsection (8), the court shall make its decision and if the decision affects the amount of the award, it shall be increased or reduced, as case may be.

(12) The award of an arbitrator under this section shall, if no appeal is preferred to the Registrar under subsection (7) or if such appeal is abandoned or withdrawn, be final and shall be enforced in the same manner as if the award had been a judgment of a court.

(13) Notwithstanding the provisions of this section, any debt arising out of embezzlement, loss of cash or misappropriation of a registered society s funds shall not be die subject of settlement by arbitration, but shall be referred by the arbitrator to the Director of Public Prosecutions.

(14) The provisions of subsections (1) to (13) shall not apply to a cooperative bank, for the purpose of transacting banking or credit institution business in as far as the matter relates to that business.

90. Protection of arbitrator

No matter or thing done by the arbitrator under section 89 shall, if it is done *bona fide* for the purpose of executing any provisions of the said section, subject the arbitrator to any civil liability.

91. Appeal to court from decision of the Minister

(1) Any decision of the Minister on an appeal to him from a decision of the arbitrator under section 89, or by virtue of any other provisions of this Act shall be subject to an appeal to a court of law.

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

Part XIII – Regulations

92. Regulations

(1) The Minister may make regulations for the carrying out of the provisions of this Act.

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

(a) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such application;

(b) 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 the rescission of by-laws, and the conditions to be satisfied prior to such making, alteration or rescission;

(c) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members, and the payment to be made and the interest to be acquired before the exercise of the right of membership;

(d) regulate the manner in which funds may be raised by means of shares or debentures or otherwise;

(e) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;

(f) provide for the appointment, suspension and removal of members of a committee and other officers and for the procedure at meetings of a committee, for the powers to be exercised and the duties to be performed by a committee and other officers;

(g) provide for audit of the accounts and books to be kept by a society and the charges if any to be made for such audit;

(h) provide for the form of the final accounts and the balance sheet to be prepared annually and any other statements and schedules relating thereto;

(i) provide for the establishment of a supervision and audit fund;

(j) provide for the periodical publication of a balance sheet showing the assets and liabilities of a society;

(k) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;

(l) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;

(m) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of the register of shares;

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

(o) provide for the mode in which the value of deceased member's interest shall be ascertained and, subject to the provisions of section 38, for the nomination of a person 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 person to whom such interest may be paid or transferred;

(q) fix the conditions under which a society may grant loans to its members and the maximum amount of such loans and prescribe the payments to be made and the conditions to be complied with by members applying for loans the period for which the loans may be made and the amount which may be lent to an individual member;

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

(s) prescribe the extent to which a society may limit the number of its members;

(t) prescribe the conditions under which accumulated funds may be distributed to the members of a society with unlimited liabilities, and subject to the provisions of subsection (2) of section 47, prescribe the maximum rate of dividend which may be paid by societies;

(u) prescribe the procedure to be followed in appeals made to the Registrar or the Minister under the provisions of this Act;

(v) prescribe the returns to be submitted by a society to the Registrar and the person by whom and the form in which such returns shall be submitted;

(w) prescribe the fees to be paid on applications, registrations and other acts undertaken by the Registrar or his representative under the provisions of this Act; and

(x) prescribe anything required by this Act to be prescribed.

(3) The Minister may cause any regulations made under this section to be translated into a language with which such members are acquainted and be made known to such members in a manner customary for the community to which such members belong:

Provided that on any matter of interpretation the English version of the regulations shall prevail.

Part XIV – Miscellaneous provisions

93. Remuneration of officers

(1) An officer or member of a registered society shall not receive any remuneration, commission or other payment from the society for services rendered to the society unless the society has, by resolution passed at a general meeting of the society, approved the payment of such remuneration, commission or other payment.

(2) An officer or member of a registered society shall not receive any remuneration, commission or other payment from any person other than the society in respect of any business or transaction entered into by the society:

Provided that in special circumstances the society may, by a resolution passed at a general meeting of the society, consent to such remuneration, salary, commission or other payment being made.

(3) Any officer or member of a registered society who receives any remuneration, salary, commission or other payment in contravention of the provisions of subsection (1) or (2) commits an offence and shall be liable on conviction to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment and shall, if convicted for contravening the provisions of subsection (1), be ordered to repay the remuneration, salary, commission or other payment received from the society, and default in such payment shall be treated in the same manner as default in paying a fine imposed by a competent court.

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

(5) If the Minister is satisfied that such remuneration, salary, commission or other payment has been improperly paid, or payment has been improperly consented to, he may declare that the society shall not, for a period to be stated, pay or consent to the payment to an officer or, member of the society of any such remuneration, salary, commission or other payment except with the approval of the Registrar.

(6) Any society which contravenes any such order and any officer or member who is knowingly a party to such contravention commits an offence ml shall be liable on conviction, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

94. Prohibition of the use of the word "cooperative"

(1) No person other than a registered society shall trade or carry on business under any name or title of which the word "cooperative" is part.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction the fine not exceeding K2,000 for each day on which the offence is continued after conviction.

95. Offences and penalties

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

(a) a registered society or an officer or a member thereof fails to do or to allow to be done any act or thing which is required to be done by this Act or by any regulations made under this Act;

(b) a registered society or an officer or member thereof does anything prohibited by this Act or by regulations made under this Act;

(c) a registered society or an officer or member thereof neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Registrar, or any person duly authorized in that behalf by the Registrar;

(d) a registered society or any officer or member thereof makes a false return or furnishes false information;

(e) any person knowingly or without reasonable excuse disobeys any summons, requisition or lawful order issued under the provisions of this Act, or does not furnish any information lawfully required from him by a person authorized to do so, or which he is required to furnish, under the provisions of this Act;

(f) any person acts or purports to act as an officer of a registered society when not entitled to do so;

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

(2) Every society, officer or member of a registered society or other person guilty of an offence under this section shall be liable on conviction, where no other penalty is provided under this Act, to a fine not exceeding K10,000 or to imprisonment for a period not exceeding one year or to both such fine and imprisonment.

96. Penalty for soliciting violation of contracts

Any person, firm or company having knowledge or notice of the existence of a contract described in section 31 who solicits or persuades or assists any person to sell or deliver a product or service in violation of that contract commits an offence and shall be liable on conviction to a fine not exceeding K10,000 for each offence and shall in addition be ordered to pay the society concerned such damages as the court may see fit to award.

97. Application of other laws

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

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

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98. Certain laws not to apply

(1) Subject to section 75 of this Act, the provisions of the Companies Act, the Business Names Registration Act and the Labour Relations Act shall not apply to a registered Society.

(2) No society registered under this Act shall be deemed to be a trade union.

[Cap. 46:03]

[Cap. 46:02]

[No. 16 of 1996]

99. Repeal and savings

(1) The Cooperative Societies Act is repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act—

(a) shall, unless in conflict with this Act, continue in force and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any agreement or similar arrangement made pursuant to the provisions of the Act repealed by subsection (1) shall continue in force until terminated in accordance with terms and conditions thereof.

(4) Any society and any by-law of a society registered under the Act repealed by subsection (1) shall be deemed to have been registered under this Act.

(5) Any orders, directions, appointments and other acts lawfully done under the Act repealed by subsection (1), and in force immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act and shall continue to have effect accordingly.

[Cap. 47:02]

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