

# THE CO-OPERATIVES ACT 2005

Act No. 12 of 2005

I assent

**SIR ANEROOD JUGNAUTH**

President of the Republic

15th April 2005

**Date in Force: not proclaimed**

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**AN ACT**

**To repeal and replace the existing Cooperative Societies Act**

ENACTED by the Parliament of Mauritius, as follows-

**1. Short title**

This Act may be cited as the **Co-operatives Act 2005**.

**2. Interpretation**

In this Act, unless the context otherwise requires -

"Advisory Board" means the Co-operative Development Advisory Board established under section 106;

"annual general meeting" means the general meeting held once in every financial year where members exercise most of their rights;

"application" means an application for registration under section 14;

"arbitrator" means a person appointed by the Registrar under section 86;

"audit" means an audit under section 74;

"audit report" means a report referred to under section 79;

"auditor" means a person licensed to practise as an auditor under the Financial Reporting Act 2004;

"Board" means the Board of directors referred to in section 47;

"bonus" means a portion of the surplus as referred to in section 66;

"bonus share" means a share issued by a society from its Reserve Fund under section 64;

"class" means a class of society specified in the first column of the Fourth Schedule;

"Co-operative Principles" includes -

- (a) voluntary and open membership;
- (b) democratic member control;
- (c) member economic participation;

- (d) autonomy and independence;
- (e) education, training and information;
- (f) co-operation among co-operatives; and
- (g) concern for community;

"credit union" means a society the objects of which are to promote thrift among, and provide credit to, its members;

"determination" means a decision of, or an order made by, the Registrar, an arbitrator or liquidator on an issue he is empowered to decide under this Act;

"director's share" means a share as referred to under section 51(4);

"dispute" means a dispute referred to the Registrar under section 85;

"dividend" means a portion of the net surplus of a society divided among its members in proportion to the paid up shares held by them;

"dormant society" means a society which has ceased its operation for not less than 2 years;

"employee" means a person employed by a society;

"first general meeting" means the first meeting of members held after the registration of a society;

"Fund" means the Co-operative Development Fund established under the Finance and Audit Act and set up under section 124;

"inspector" means a person qualified to be appointed as inspector under section 4;

"Institute" means the National Institute for Co-operative Entrepreneurship established under section 110;

"internal controller" means an internal controller referred to in section 55;

"liability" in relation to a member, means liability of a person for the debts of a society of which he is a member and which he will be called upon to contribute in case of liquidation of the society;

"liquidator" means a person appointed as such under section 99;

"Mauritius Standards Bureau" has the same meaning as in the Mauritius Standards Bureau Act;

"member" means a person who holds a share in a society;

"Minister" means the Minister to whom the responsibility for co-operative matters is assigned;

"multi-purpose society" means a society the objects of which include the activities of not less than 2 classes of society;

"net surplus" means the excess of income over expenditure of a society at the end of a financial year after provision has been made for statutory reserves;

"nominee" means a person appointed as such under section 35;

"officer" in relation to a society -

(a) means a person empowered to give directions in regard to the business of a society; and

(b) includes the President, the Vice President, the Secretary, the Treasurer, the Assistant Treasurer, any director or manager of a registered society and any other office bearer appointed according to the rules of a society;

"past member" means a person whose membership has been terminated by withdrawal, by the transfer of his shares or by expulsion;

"Permanent Secretary" means the Permanent Secretary of the Ministry;

"primary society" means a society satisfying the conditions specified in section 5;

"Registrar" means the Registrar of Co-operative Societies referred to in section 3;

"Reserve Fund" means the fund referred to in section 64;

"rules" means the rules of a society;

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

"secondary society" means a society satisfying the conditions specified in section 6;

"society" means a co-operative society registered under this Act;

"special general meeting" means a general meeting convened under section 42;

"special reserve fund" means a fund maintained pursuant to section 64(3);

"surplus" means the excess income earned by a society in a financial year in respect of the business carried out by the society;

"tertiary society" means a society satisfying the conditions specified in section 7;

"Tribunal" means the Co-operative Tribunal established under section 89.

## **PART II - ADMINISTRATION**

### **3. The Registrar**

- (1) There shall be, for the purposes of this Act, a Registrar of Co-operative Societies who shall be a public officer.
- (2) The Registrar may delegate any of his duties under this Act to any public officer appointed to assist him in the execution of his functions.
- (3) The Registrar and all staff appointed to assist him in carrying out the Registrar's functions shall take the oath specified in the First Schedule.

### **4. Appointment of inspector**

For the purposes of this Act, the Registrar may, subject to the approval of the Permanent Secretary, appoint as an inspector -

- (a) an auditor;
- (b) a person who has held the office of Registrar;
- (c) a person who holds or has held an office not below the level of Senior Co-operative Officer; or
- (d) a person who has knowledge of and experience in the subject matter under inquiry.

## **PART III - FORMATION OF SOCIETIES**

### **5. Membership of a primary society**

- (1) A body of persons may be registered as a primary society if it consists of -
  - (a) at least 5 individuals; or
  - (b) a society and a body corporate other than a society.
- (2) A body corporate, registered in Mauritius or elsewhere, may be admitted as a member of a primary society if it undertakes to bring in the society know-how and technology which may contribute to the growth of the society.
- (3) A non-citizen or a body corporate not incorporated or registered in Mauritius shall not be admitted as a member of a primary society unless the person or body corporate has been authorised to do so under the Non-Citizens (Property Restriction) Act.
- (4) The rules of a primary society may provide for the maximum number of members in the society.
- (5) Except in the case of a school society or a credit union, no individual shall become a member of a society unless he has attained the age of 18.

### **6. Membership of a secondary society**

- (1) A body of persons may be registered as a secondary society if it consists of at least 2 primary societies.
- (2) Only primary societies may be members of a secondary society.

### **7. Membership of a tertiary society**

- (1) A body of persons may be registered as a tertiary society if it consists of at least 2 secondary societies.
- (2) Only secondary societies may be members of a tertiary society.

## **8. Minimum share capital and types of shares**

- (1) The minimum issued and paid up share capital of a society at the time of registration shall be not less than 5,000 rupees divided into ordinary shares of a denomination of 10 rupees.
- (2) A society shall at all time maintain the minimum issued and paid up capital provided under subsection (1) and it may issue
  - (a) non-redeemable preference shares of a denomination of 10 rupees; and
  - (b) redeemable preference shares of a denomination of 10 rupees.
- (3) Where non-redeemable preference shares are issued -
  - (a) the rights attached to those shares in terms of dividends payable by the society;
  - (b) their ranking for purposes of dividends;
  - (c) the cumulating or non-cumulating of dividends in arrears; and
  - (d) the periodicity and time for payment for such dividends,shall be specified in the rules.
- (4) Where redeemable preferences shares are issued -

- (a) the conditions which make the shares redeemable;
- (b) the rights subject to which dividends are payable in respect of those shares;
- (c) the cumulating or non cumulating of dividends in arrears;
- (d) their ranking for purposes of dividends; and
- (e) the periodicity and time for payment of such dividends,

shall be specified in the rules.

- (5) Where a society issues redeemable or non redeemable preference shares, the ranking of those shares for liquidation purposes shall be in the order set out in section 104.

## **9. Limited liability of members**

- (1) The liability of the members shall be limited to -
  - (a) the amount unpaid on shares held by them; or
  - (b) such other amount as they may undertake under its rules to contribute to the assets of the society in the event of its being wound up.
- (2) The word "Limited" shall appear as the last word in the name of every society.

## **10. Objects to be specified**

Every proposed society shall state in clear and concise terms in its rules -

- (a) the activities which the society is formed to carry on; and
- (b) the purposes which the society is registered to achieve.

**11. Rules of societies**

- (1) The rules shall include provisions relating to those matters specified in the Second Schedule.
- (2) The rules shall be printed, divided into numbered paragraphs, signed and dated by at least 3 members of a proposed society.

**12. Registered office and hours of business**

- (1) Every society shall have a registered office to which any communication addressed to it shall be sent.
- (2) A society shall -
  - (a) submit to the Registrar the place at which and the hours during which business is carried out by the society; and
  - (b) post up at its registered office a notice indicating the name of the society and the hours of business.
- (3) The rules of the society shall set out the procedure for changing the hours or the place of business.

**13. Name of societies**

- (1) No society shall be registered under a name which -
  - (a) is identical with that of an existing society or statutory corporation;

- (b) so nearly resembles the name of an existing society or statutory corporation as to be likely to mislead; or
  - (c) is, in the opinion of the Registrar, undesirable or misleading.
- (2) Where the Registrar is satisfied that a society should not have been registered under a name, the Registrar may cancel its registration unless the society changes its name to a name which may be registered under this section, within 30 days from the date the Registrar requests it to do so.
- (3) Except with the Minister's approval, no society shall be registered under a name which includes -
  - (a) the word "Municipal" or "Chartered" or any other word which, in the Minister's opinion, suggests, or is likely to suggest, connection with a local authority in Mauritius or elsewhere;
  - (b) the word "company" or "association"; or
  - (c) the words "Chamber of Commerce".
- (4) Every society shall, unless the Minister otherwise determines, have the word "Co-operative" as part of its name.
- (5) No person other than a society shall, without the written approval of the Minister, trade or carry on business under any name or title of which the word "co-operative", or its abbreviation, or its equivalent in any other language, forms part.

#### **PART IV – APPLICATION, PROCESSING OF APPLICATION AND REGISTRATION**

#### **14. Application for registration**

(1) An application for registration as a society shall be made to the Registrar in such form as he may deem fit and shall be accompanied by -

- (a) 3 copies of the draft rules of the proposed society;
- (b) a project write-up on the activities of the proposed society;
- (c) documents showing the manner in which the proposed shares of the proposed society shall be subscribed;
- (d) a list of persons appointed as interim President, Secretary and Treasurer of the proposed society; and
- (e) the application fee specified in the Third Schedule.

(2) On receipt of an application, the Registrar -

- (a) may, within 7 days, require the applicant to give such further information as may be necessary to determine the application; and
- (b) shall cause to be issued to the applicant an acknowledgement which shall clearly specify the date on which the application was received.

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

A society may be registered if it is established -

- (a) with the objects of promoting the economic and social betterment of its members in accordance with Co-operative Principles; or

- (b) with the objects, amongst other things, of facilitating the operations of its members.

## **16. Processing of application**

- (1) A decision on an application shall be communicated to the applicant within 14 days of its receipt.
- (2) Where the applicant does not receive a reply in relation to his application within 14 days, he may apply to the Permanent Secretary for an order directing the Registrar to make a reply.
- (3) Where, in the course of an application, the Registrar requests further information, the 14 days period referred to in subsection (1) shall start from the day the last document was submitted.
- (4) Where the Registrar rejects an application, he shall communicate his decision in writing and shall state in clear terms the reasons for his decision.
- (5) Any applicant aggrieved by the decision of the Registrar may appeal to the Permanent Secretary within 21 days of the decision.

## **17. Certificate of registration**

- (1) Where the Registrar approves an application, he shall issue a certificate of registration in such form as he may deem fit.
- (2) The certificate shall state -
  - (a) that the society is registered;
  - (b) the date from which the society is registered; and

(c) whether the society is a primary, secondary or tertiary society.

**18. Effect of registration**

(1) No society shall commence business until it has obtained a certificate of registration.

(2) From the date of issue of the certificate of registration, the society shall -

(a) be a body corporate by the name set out in the application form;

(b) have perpetual succession and a common seal; and

(c) be capable of -

(i) exercising all the functions of a society;

(ii) suing and being sued; and

(iii) acquiring, holding, dealing with and disposing of movable and immovable property.

(3) The promoters shall be deemed to have agreed to become members of the society and, on the registration of the society, shall be entered in the members' register.

(4) Every person who agrees to become a member and whose name is entered in the members' register shall be a member.

(5) A member shall be a shareholder if the share he holds is an ordinary share, a preference share, a redeemable preference share or a director's share.

- (6) (a) No society shall carry out any operation without the payment of the annual fee specified in the Third Schedule.
- (b) The annual fee shall be payable within 2 months of the end of the financial year.
- (7) Where a society fails to pay its annual fee within the period specified in subsection (6), it shall be liable to the surcharge specified in the Third Schedule.
- (8) Where the society fails to pay its annual fee within 4 months of the end of the financial year, the Registrar may cancel its registration.

#### **19. Register of societies**

- (1) The Registrar shall keep a register of societies in such form as he may deem fit.
- (2) The register shall be open to inspection subject to such conditions as the Registrar may deem fit.

#### **20. Effect of rules**

- (1) Where a society is registered, the rules shall, subject to this Act, have the effect of a contract between the society and its members and among the members themselves, whereby they agree to act in all respects according to the rules.
- (2) Any money payable by a member to the society under the rules shall be a debt due from him to the society.
- (3) The Registrar may issue a copy of the rules of a society to a member on payment of the fee specified in the Third Schedule.

## **21. Amendment of rules**

- (1) The rules may be amended at a special general meeting.
- (2) Where a society has altered its rules or changed its name or been re-organised, the society shall not give effect to the altered rules, or act under the new name or in the re-organised state, unless the alteration, change or re-organisation, as the case may be, has been notified in writing to the Registrar.

## **22. Obligations in relation to resolution**

- (1) Where the rules are amended, the society shall, within 7 days, forward a copy of the resolution to the Registrar who shall within 14 days of its receipt, register the amendment if he is satisfied that the requirements of this Act have been complied with.
- (2) Where the Registrar registers a resolution, he shall issue to the society a certificate to that effect.
- (3) A resolution approved under section 21 shall not be registered by the Registrar where it is inconsistent with this Act.
- (4) A resolution approved under section 21 shall have no effect unless it is registered by the Registrar.
- (5) Where the Registrar refuses to register a resolution approved under section 21, he shall, within 14 days of the receipt of the copy of the resolution, give written notice of the refusal and the ground for such refusal to the society.
- (6) Any society aggrieved by a decision of the Registrar may, within 21 days of the decision, appeal to the Tribunal.

- (7) Where a resolution which is approved under section 21 has been registered -
- (a) a society shall issue to every member a copy of that part of the rules which has been amended; and
  - (b) no copy of the rules shall be issued by the society unless the copy is in accordance with the amendment.

## **PART V – POWERS, PRIVILEGES AND DUTIES OF SOCIETIES**

### **23. Powers of societies**

- (1) Every society shall, in furtherance of its objects, have all the powers of a natural person.
- (2) Pursuant to its powers, a society may initiate any legal action against the Secretary, a member, a director, the internal controller or an employee, or a creditor, or a debtor, or a past Secretary, a past member, a past director, a past internal controller or a past employee, or a past creditor, or a past debtor, if any such person has done any act detrimental to the interests of the society.
- (3) The society may sue any member or past member for breach of the contract referred to in section 20(1).

### **24. Registers of members and shares**

- (1) Every society shall keep and maintain up to date a register of members and a register of shares which shall be prima facie evidence of the following particulars entered in them -

- (a) the date on which the name of a person was entered in the register as a member;
  - (b) the date on which a person ceased to be a member;
  - (c) the name of the nominee appointed under section 35(1); and
  - (d) the number of shares, by category, held by each member.
- (2) Every member shall be issued with a share certificate on payment of the amount due by him in respect of the shares.

**25. Books to be open for inspection**

- (1) Every society shall, at all times, keep at its registered office in an updated form -
- (a) its registration certificate;
  - (b) a copy of this Act;
  - (c) a copy of the regulations made under this Act;
  - (d) a copy of its rules;
  - (e) a register of its members;
  - (f) a register of shares;
  - (g) a copy of its approved accounts and balance sheets over the immediately preceding 5 years; and
  - (h) a register showing any declaration of interest by any director.

- (2) The documents referred to in subsection (1) shall be open for inspection free of charge and at all reasonable times -
- (a) to the Permanent Secretary or his representative;
  - (b) to its members; and
  - (c) to the Registrar and his officers.
- (3) Every society which fails to comply with subsection (1) shall commit an offence.

**26. Proof of entries in books of societies**

- (1) Notwithstanding any other enactment, a copy of an entry in any book of a society shall be prima facie evidence of the entry and of the matter, transaction or account recorded where -
- (a) the book was, at the time the entry was made, one of the ordinary books of the society;
  - (b) the entry was made in the usual course of the society's business;
  - (c) the book is in the custody of the society; and
  - (d) the copy of the entry has been compared with, and is a correct copy of, the original entry.
- (2) A copy of an entry in a book of a society shall be certified as a true copy of the entry together with a declaration that the book containing the entry is still in the custody of the society.

- (3) A certificate issued under subsection (2) shall be dated and signed by the President and the Secretary of the society and the seal of the society shall be affixed to it.

**27. Acts of societies not invalidated**

An act of a society executed by any officer or employee of a society shall not be invalidated -

- (a) by reason of the existence of any defect -
- (i) in the rules; or
  - (ii) in the election or appointment of any officer or employee;  
or
- (b) on the ground that an officer or employee was disqualified for serving in that capacity.

**28. Attachment, charge and set-off**

- (1) Notwithstanding any other enactment -
- (a) the share or interest of a member shall not be liable to be charged, seized or attached by a creditor of the member under the order of a Court in respect of any debt or liability incurred by the member; and
  - (b) where a member is adjudged bankrupt, the Official Receiver shall have no claim on the share or interest of the member.
- (2) A society shall have a charge which shall rank in priority -

- (a) on the shares and on the deposits of a member or past member or deceased member; and
  - (b) on any dividend or bonus payable to a member or past member or to the estate of a deceased member, in respect of a debt due to the society by the member or past member or estate.
- (3) A society may set-off any sum payable to a member or past member or estate of a deceased member against the payment of any debt due to the society by the member, past member or deceased member.
- (4) No bank shall have a charge on any sum invested in the bank -
  - (a) by the society if the bank is not the sole creditor of the society; or
  - (b) from any provident fund.

## **29. Priority of claims**

- (1) Notwithstanding any other enactment, a society shall, in respect of a loan or an advance made by the society to a member or in respect of any other sum due by a member or an employee to the society, have a privilege -
  - (a) on the crops or other agricultural produce of that member and on the proceeds from the sale of such produce;
  - (b) on any -
    - (i) livestock;
    - (ii) fish and marine products;
    - (iii) fodder;

- (iv) seed;
- (v) fertiliser;
- (vi) agricultural or industrial machinery;
- (vii) raw materials; or
- (viii) finished products,

supplied to that member, or purchased, produced or otherwise acquired by him with the loan or advance; and

- (c) on his salary or wages or other allowances within the limits prescribed by the Labour Act.
- (2) The privilege referred to in subsection (1) shall rank immediately after the privilege of the Government in respect of taxes or of a landlord in respect of rent.
- (3) Nothing in this section shall affect the claim of a bona fide purchaser or transferee without notice of the claim of the society.
- (4) A member may execute an agreement in favour of a society requesting his employer to deduct such amount as may be specified by him but which amount shall not exceed the amount prescribed by the Labour Act.
- (5) Where an employer fails to comply with a request made under subsection (4)
- (a) the society may recover the amount due from the employer as a debt due by him to the society; and

(b) he shall commit an offence.

(6) Notwithstanding this Act, a society may, with the approval of the Registrar, cede the priority of claim that it has by virtue of this section to any other institution.

**30. Privilege on bankruptcy of members**

Notwithstanding any other enactment and subject to section 29(6), where a member is adjudged bankrupt, the claim of a society in respect of any amount due to it by the member shall be a privileged claim and shall rank immediately after any claim by a landlord in respect of rent or an employee in respect of wages.

**31. Fiscal exemptions of societies and members**

(1) Notwithstanding any other enactment -

(a) no stamp duty shall be levied -

(i) on an instrument executed by any society; and

(ii) on an instrument executed by a member in relation to business transacted with the society, in accordance with its rules; and

(b) no fee shall be payable by any society under any enactment relating to registration dues, transcription or inscription fees, except on a declaration or deed of transfer, of ownership of a motor vehicle or trailer.

(2) Subsection (1) shall not apply unless -

- (a) the society has held its annual general meeting within the time specified under section 41(1) or (5); and
- (b) the society has paid any sum due to -
  - (i) the Fund;
  - (ii) a secondary society, in case it is a member of that society;  
and
  - (iii) a tertiary society, in case it is a member of that society.
- (3) Where a society complies with subsection (2), the Permanent Secretary may issue to the society a certificate to that effect.
- (4) Subsection (1) shall not apply unless the member of a society produces a certificate issued under subsection (3).
- (5) A certificate issued under subsection (3) shall relate to the financial year preceding the date on which the certificate is issued.

### **32. Transfer of shares or interest**

- (1) Notwithstanding any other enactment, a society shall, on the death or insanity of a member, transfer the share or any interest of the deceased or insane member to the person nominated under section 35.
- (2) Where upon the death of a member, no person has been nominated under section 35, the share or interest of the deceased member shall accrue to the heirs.
- (3) Where -

- (a) under the rules, the nominee or heir is not qualified for membership in the society; or
  - (b) the nominee or heir does not intend to apply for membership,
- the society shall pay a sum representing the value of the deceased or insane member's share or other interest based on the latest valuation of the shares as the rules of the society may provide, together with any money due to the deceased or insane member by the society, to the nominee or heir, as the case may be.
- (4) Any transfer or payment made by a society under this section shall be valid and effective against any demand made on the society by any other person.
  - (5) When any money is paid to a nominee who is a minor, a receipt given by his legal guardian shall be sufficient discharge to the society.
  - (6) A member may transfer his share in the society where -
    - (a) the person to whom the share is transferred is eligible to be admitted as a member; and
    - (b) the transfer is made in accordance with the rules.

## **PART VI - RIGHTS AND OBLIGATIONS OF MEMBERS**

### **33. Rights of members**

Subject to section 34, every member may -

- (a) attend general meetings, participate in decisions taken at such meetings and vote;

- (b) stand as candidate;
- (c) at all reasonable times, consult the rules, registers, minutes of proceedings of general meetings, the annual reports, final accounts and balance sheets, the reports of the internal controller and the audit reports at the society's registered office;
- (d) call, together with other members, for a special general meeting in accordance with section 42;
- (e) call, together with other members, for an inquiry to be held into the constitution, organisation or financial situation of the society, in accordance with section 81;
- (f) claim, subject to the rules, a share of the surplus, if any, at the end of the financial year after approval of the accounts at the annual general meeting;
- (g) withdraw from the society in accordance with the conditions prescribed in this Act and in the rules; and
- (h) exercise any other rights provided for in the rules.

#### **34. Exercise of rights**

A person shall not exercise any right as member unless -

- (a) he has paid the membership fee; or
- (b) he has become a member on acquisition of such shares in the society as provided in this Act or as provided in the rules.

#### **35. Appointment of nominee**

- (1) Every individual member shall, at the time he joins the society, appoint at least one nominee to whom his share or interest in the society shall be transferred or paid out on his death or in case of insanity.
- (2) An appointment under subsection (1) shall be made in writing and signed by the member in the presence of two attesting witnesses.
- (3) Every appointment of a nominee shall be recorded in the register of members.
- (4) A member may at any time revoke and replace in writing a nominee previously appointed by him.

**36. Obligations of members**

- (1) A member shall-
  - (a) abide by this Act and the rules and by the decisions of the general meeting and of the Board; and
  - (b) be loyal to the society and abstain from any act detrimental to the interest of the society.
- (2) Subject to subsection (3), no member shall pledge the same product or his salary to more than one society, the main objects of which are similar.
- (3) An individual may be a member of more than one society, the main objects of which are similar, provided the rules of the societies of which he is a member so provide.

**37. Termination of membership**

- (1) A person shall cease to be a member where -

- (a) he withdraws from the society as member in accordance with this Act and the rules;
  - (b) he transfers all his shares;
  - (c) in the case of an individual, he -
    - (i) dies;
    - (ii) becomes insane; or
    - (iii) becomes bankrupt;
  - (d) in the case of a body corporate, it -
    - (i) becomes insolvent; or
    - (ii) is dissolved following liquidation; or
  - (e) the person is expelled from the society.
- (2) A member may withdraw from a society subject to such notice as the rules may provide, but the notice shall not exceed -
- (a) one year in the case of a primary society; and
  - (b) 2 years in the case of a secondary or a tertiary society.
- (3) A member shall not transfer his share or interest in the society unless -
- (a) he has held the share for -
    - (i) a period of not less than one year; or

- (ii) such longer period as may be stipulated in the rules but which period shall not exceed 3 years; and
  - (b) the transfer is effected to another member or to a person who has applied for membership and such membership has been approved by the Board.
- (4) A society may provide, in its rules, for the termination of membership of inactive or dormant members.

### **38. Expulsion of members**

- (1) Where the member -
  - (a) has committed or has attempted to commit an act detrimental to the society; or
  - (b) has failed to comply with any obligation as stipulated in section 36,he may be expelled by a decision of the general meeting.
- (2) The rules shall lay down the procedure for the expulsion of a member and shall include provision for -
  - (a) suspension of the member;
  - (b) notification in writing, specifying the reasons for expulsion; and
  - (c) the member's right to defend himself before any special committee appointed for the purpose or before the general meeting prior to the decision.

## **PART VII - ORGANISATION OF SOCIETIES**

### **39. General meetings**

The general meeting shall be the supreme authority of the society.

### **40. First general meeting**

- (1) The first general meeting of a newly registered society shall be convened by the interim President referred to in section 14(1) not later than one month after receipt of the certificate of registration.
- (2) The first general meeting shall have the same powers as the annual general meeting, except that the first general meeting shall -
  - (a) elect directors of the Board;
  - (b) appoint an internal controller; and
  - (c) appoint an auditor.

### **41. Annual general meeting**

- (1) Every society shall hold an annual general meeting not later than 31 December of each year.
- (2) The annual general meeting shall be convened by the Board.
- (3) A society shall at its annual general meeting -
  - (a) approve the programme of the activities of the society prepared by the Board for the coming year;

- (b) approve the estimates of income and expenditure for the next financial year;
  - (c) elect the directors of the Board;
  - (d) consider -
    - (i) the financial statement of the society for the preceding year duly audited together with the audit report;
    - (ii) a report of the Board on the activities of the preceding year; and
    - (iii) the manner of disposing of the surplus, if any;
  - (e) approve the minutes of the preceding annual general meeting;
  - (f) fix the maximum liability that the society may incur from any society or bank or public or private financial institution;
  - (g) fix the investment, deposit and placement ceiling;
  - (h) appoint the auditor and approve his remuneration where appropriate;
  - (i) appoint the internal controller and fix his remuneration as appropriate; and
  - (j) consider any other matter that may be raised under the rules.
- (4) The annual general meeting shall not approve the annual accounts unless -

- (a) the annual report of the internal controller has been made accessible to the members in accordance with section 56(7); and
  - (b) the members have been presented with the audit report at the annual general meeting of the society in terms of section 79(2).
- (5) Where a society fails to hold its annual general meeting within the period specified in subsection (1), the Registrar may in writing direct the society to hold its annual general meeting within one month from the receipt of the written directive.
- (6) Where a society fails to comply with a directive issued under subsection (5), the Registrar may, subject to the approval of the Permanent Secretary -
  - (a) appoint an inspector who shall submit a report within 3 months of his appointment; and
  - (b) based on the report of the inspector -
    - (i) revoke the Board;
    - (ii) cause an interim Board to be appointed; and
    - (iii) initiate procedures for the winding up of the society.
- (7) For the purposes of subsection (6), an interim Board of directors shall -
  - (a) be composed of at least 3 persons appointed by the Registrar on such terms and conditions as he may determine, subject to the approval of the Permanent Secretary; and
  - (b) hold office for a period not exceeding one year.

- (8) The remuneration of a person appointed under subsection (7) and the costs, if any, incurred in the management of the society, shall be paid out of the funds of the society.

#### **42. Special general meeting**

- (1) A special general meeting -
- (a) may be convened by the Board at any time;
  - (b) shall be convened by the Board -
    - (i) at the request of one fifth of the total number of members or 2 members, whichever is the higher, such members holding -
      - (aa) 20% of the ordinary shares of the society; or
      - (ab) 30% of the preference shares of the society, if any, within 21 days from the date of the request; or
    - (ii) at the request of the Registrar within 30 days from the date of that request.
- (2) Where the Board fails to comply with the request under subsection (1)(b), the Registrar may convene a special general meeting.
- (3) A special general meeting may conduct any business that may be conducted at an annual general meeting except the approval of accounts.

#### **43. Procedures at general meetings**

- (1) Notice of any general meeting containing the time, date, place and agenda of the meeting shall be given -
  - (a) by the Board -
    - (i) at least 14 days before the holding of such a meeting to the Registrar who may attend and address the meeting in respect of any matter concerning the society; and
    - (ii) at least 8 days before the holding of such a meeting to the members; or
  - (b) by the Registrar to the members at least 72 hours before the holding of such a meeting, where the meeting is convened by the Registrar.
- (2) Notice under subsection (1) shall be in writing sent to the members by post, and a copy of the notice shall be displayed at the registered office of the society and published in at least 3 daily newspapers.
- (3) The agenda of the general meeting shall be determined by -
  - (a) the Board; or
  - (b) the Registrar when the meeting is convened by him.
- (4) Any matter submitted to the Board at least 3 days before the general meeting in writing by at least one fifth of the total number of members or 2 members, whichever is the higher, holding at least -
  - (a) 5% of the ordinary shares of the society; or
  - (b) 15% of the preference shares of the society, if any,

shall be included in the agenda.

- (5) Only matters on the agenda shall be considered at a general meeting.
- (6) A general meeting shall be chaired by the President of the society or, in his absence, in accordance with the rules, or, in the absence of any provision relating to the matter in the rules, by a member elected by the members present.
- (7) The President may, upon a decision of the general meeting, adjourn the meeting and, on resumption, deliberations shall relate only to matters that were left unattended on the agenda.
- (8) Members present at the general meeting shall sign the attendance register which shall be countersigned by the person chairing the meeting.
- (9) The Secretary of the society shall keep the minutes of proceedings of the general meeting in a minute book and the minutes shall be signed by the Secretary and countersigned by the person chairing the meeting.
- (10) The minutes of the general meeting shall be read and approved by the members at the next general meeting.
- (11) A true copy of the minutes of the general meeting certified by the Secretary and the person chairing the meeting shall be forwarded to the Registrar within 7 days of the meeting.
- (12) Where the Secretary fails to submit the minutes of proceedings to the Registrar as provided in subsection (11), he shall commit an offence.
- (13) The Secretary shall, at least 7 days before a general meeting, make available for inspection by the members the minutes of proceedings of the last general meeting.

#### **44. Quorum at general meetings**

- (1) Where a society consists of -
  - (a) not more than 40 members, one half of the number of members or 5 members, whichever is the lesser;
  - (b) more than 40 and less than 400 members, one quarter of the number of members or 40, whichever is the lesser;
  - (c) more than 400 and less than 800 members, one quarter of the number of members or 80, whichever is the lesser;
  - (d) more than 800 and less than 1600 members, one quarter of the number of members or 160, whichever is the lesser; or
  - (e) more than 1600 members, one quarter of the number of members or 200, whichever is the lesser,

shall constitute the quorum for the purposes of the general meeting.

- (2) Notwithstanding subsection (1), where a general meeting is convened by the Registrar, the members present at such meeting shall be deemed to form a quorum.
- (3) Where, within 30 minutes after the time fixed for any general meeting other than a general meeting convened by the Registrar, the number of members present is not sufficient to form a quorum, the meeting shall -
  - (a) where the meeting was convened at the request of the members, be considered as dissolved; or

- (b) in any other case, stand adjourned to the same day, two weeks following the adjourned meeting at the same time, place and with the same agenda.
- (4) Where a meeting is adjourned under subsection (3), the Secretary shall, not later than 48 hours after the meeting is adjourned, cause a notice to that effect to be posted at the registered office of the society.
- (5) Where at a meeting which is held following the adjourned meeting, a quorum is not present within 30 minutes from the time appointed for the meeting, the members present shall be deemed to form a quorum.

**45. Voting at general meetings**

- (1) Subject to section 34, a member of a primary society shall have one vote, which shall be exercised in person and not by proxy.
- (2) A member of a secondary or tertiary society shall have as many votes as may be provided for in the rules.
- (3) A decision at a general meeting shall be taken by a simple majority of votes cast.
- (4) Voting shall be conducted in accordance with the rules.
- (5) The assistance of the Electoral Commissioner's Office may be sought for the conduct of an election at a general meeting at the society's expense.

**PART VIII - MANAGEMENT OF SOCIETIES**

**46. Composition of management**

- (1) Every society shall have -

- (a) a Board;
  - (b) a President;
  - (c) a Secretary; .
  - (d) a Treasurer; and
  - (e) an internal controller.
- (2) A society may, in its rules, provide for such other office bearers as it considers necessary.
- (3) (a) The President shall be the Chairperson of the Board and shall be appointed according to the rules.
- (b) No person shall hold office as President of a society for a continuous period of more than 3 years.
- (4) Where the Treasurer or the Secretary is not a director of the Board, the Treasurer or Secretary may attend a meeting of the Board, but he shall not have a right to vote.

#### **47. The Board**

- (1) Subject to this Act and the rules, a society shall be managed by a Board.
- (2) The Board shall comprise not less than 3 and not more than 9 directors elected in accordance with the rules.
- (3) No alteration in the rules shall invalidate any prior act of the Board which would have been valid if that alteration had not been made.

- (4) The Board shall not sell, lease or dispose of any immovable property of the society unless -
- (a) such sale, lease or disposal is expressly set out on the agenda of the general meeting;
  - (b) the members at the general meeting have approved such sale, lease or disposal; and
  - (c) the Registrar is informed at least 15 days in advance of the meeting at which such a sale, lease or disposal of the immovable property of the society is to be approved.
- (5) No payment effected or contract, dealing or transaction entered into by the society shall be invalidated where the party to whom the payment has been made or with whom the contract, dealing or transaction has been entered into, has acted in good faith.
- (6) For the purposes of subsection (5), a party shall be deemed to have acted in bad faith if, at the time of any payment, contract, dealing or transaction, that party had knowledge of the fact that the society, the Board or the person with whom he was dealing was acting in breach of this Act or the rules.
- (7) Subject to subsection (8), the Board may -
- (a) appoint such sub-committees of its own directors as it may determine; and
  - (b) delegate to the sub-committee any of its powers and functions.
- (8) No decision of a sub-committee shall be implemented unless such decision has been ratified by the Board.

(9) Notwithstanding subsection (5), any payment made or contract, dealing or transaction entered into in breach of subsection (8) shall be null and void.

(10) (a) Subject to paragraph (c), where the Registrar is of opinion that a Board -

(i) has persistently failed to perform, or is negligent in the performance of, its duties;

(ii) has committed, is committing or is about to commit an act which is prejudicial to the interests of the society or its members; or

(iii) is otherwise not functioning properly,

he may, subject to the approval of the Permanent Secretary, by written order, remove the Board and appoint a person to manage the affairs of the society on such terms and conditions as he may determine.

(b) The Registrar may, before making an order under sub-section (a), take such steps as he thinks necessary to safeguard the interests of the society.

(c) No order under subsection (a) shall be made unless the Board has been given a reasonable opportunity of showing cause against the making of the proposed order.

(d) Subject to the control and directions of the Registrar, a person appointed under subsection (a) shall -

(i) have all the powers of the Board or of any officer; and

- (ii) take such action as may be necessary in the interests of the society.
- (e) The remuneration of a person appointed under subsection (a) and the costs, if any, incurred in the management of the society, shall be paid out of the funds of the society.

**48. Qualifications of directors**

- (1) No person shall be eligible to serve as a director or remain a director if he
  - (a) is under 18 years of age;
  - (b) is involved directly or indirectly in any activity which is in conflict with or is likely to be prejudicial to the activities of the society;
  - (c) has been convicted of an offence involving fraud, dishonesty or financial malpractice;
  - (d) is an undischarged bankrupt;
  - (e) has been convicted of an offence under this Act;
  - (f) has been found to have misused, mismanaged or misappropriated the funds of a society; or
  - (g) is in arrears with the repayment of a loan from a society.
- (2) Where a director has any interest, direct or indirect, in any matter before the Board, he shall, as soon as reasonably practicable, disclose to the Board the nature of his interest, and shall not take any part in the deliberation of the Board relating to that matter.
- (3) Subsection (1)(a) shall not apply in relation to a school society.

**49. Election of directors**

- (1) At the annual general meeting of the society, the directors shall be elected according to the rules.
- (2) An outgoing director or Secretary shall remit a newly elected Board any book, document or any property of the society which was remitted to him in the capacity as director or Secretary.
- (3) A person who fails to comply with subsection (2) shall commit an offence.

**50. Government nominees**

- (1) Where the Government has -
  - (a) guaranteed the repayment of debentures issued by, or loans, advances or overdrafts made to, a society; or
  - (b) given financial assistance in any form to a society,

the Minister may, in addition to the elected directors, appoint not more than 5 persons to sit on the Board of the society and such persons shall be deemed to be directors.
- (2) Any member appointed under subsection (1) shall sit on the Board on such terms and conditions as may be determined by the Minister and shall be eligible for reappointment.

**51. Non-member as director**

- (1) Subject to the rules, a person not being a member may be elected as director.

- (2) For the purposes of subsection (1), the number of persons who are not members and who may be elected as directors shall not exceed one third of the total number of directors or such lower proportion as may be provided in the rules.
- (3) A person, who is not a member, may only stand as candidate for election as a director if he is recommended by a majority of the Board.
- (4) Where a person who is not a member of a society is elected as a director, he shall be issued with such number of ordinary shares as the Board may determine on payment of the appropriate fee and he shall be refunded the share at par value when he ceases to be a director.

## **52. Duties of directors**

- (1) It shall be the duty of the directors of a society -
  - (a) to exercise their powers in accordance with this Act and within the limits and subject to the conditions and restrictions imposed by the rules;
  - (b) to obtain the authorisation of the general meeting before doing any act or entering into any transaction for which the authorisation of a general meeting is required by this Act or by the rules;
  - (c) to exercise their powers honestly, in good faith, in the best interests of the society and for the respective purposes for which such powers are explicitly or implicitly conferred;
  - (d) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

- (e) to account to the society for any monetary gain, or the value of any other gain or advantage obtained by them, in connection with the exercise of their powers;
- (f) not to make use of, in a personal capacity, either directly or indirectly, or divulge any confidential information received by them on behalf of the society as directors;
- (g) not to compete or be in conflict with the society or become director or officer of any competitor of the society;
- (h) if they have any interest, whether direct or indirect, immediate or prospective, in any contract or transaction or proposed contract or proposed transaction with the society, to declare each of their respective interests to the meeting of directors of the society at which the contract or transaction is first taken into consideration or to the first meeting of directors held after the interest arises, whichever is the earlier, and in such declaration to state the nature and extent of their respective interests and the effect or probable effect on them of the contract or transaction;
- (i) not to use any assets of the society for any illegal purpose or purpose in breach of paragraphs (a) to (c);
- (j) not to do, or knowingly allow to be done, anything by which the society's assets may be damaged or lost otherwise than in the course of carrying out its business;
- (k) to cause to keep proper accounting records and make such records available for audit and inspection; and
- (l) to disclose any family link he may have with any employee of the society.

### **53. Removal of directors**

- (1) A director shall cease to hold office if -
  - (a) he fails to meet the requirements for eligibility provided by section 48 or by the rules during his term of office;
  - (b) he fails to attend 3 consecutive meetings of the Board without reasonable cause;
  - (c) he resigns by notice in writing, and his resignation is duly approved by the board;
  - (d) he is removed from office in terms of subsection (2); or
  - (e) in case of a secondary or tertiary society -
    - (i) the primary or secondary society which he represents, makes a written request for his removal;
    - (ii) the primary or secondary society which he represents contravenes this Act or is dormant, in liquidation or wound up; or
    - (iii) he ceases to be a member of the primary or secondary society he represents.
- (2) A director may be removed from office by a resolution of a general meeting provided that not less than 7 days prior notice is issued to him of the intended resolution.
- (3) Where a vacancy on the Board arises as a result of the removal under subsection (2) or the death, resignation or insanity of any director, and the number of directors falls below the minimum prescribed by this Act, the

Board shall fill the vacancy, pending the next general meeting, by co-opting from the members.

- (4) Notwithstanding subsection (3), the number of members co-opted shall not exceed 2 or one quarter of the Board of directors, whichever is the lower.
- (5) Where more than 2 directors or more than one quarter of the total number of directors, whichever is the lesser, cease to be directors of the society under subsection (1), the Board shall, within 30 days of such occurrence, initiate procedures for convening a general meeting for the purpose of electing new directors to fill the vacancies.

#### **54. Meetings of directors**

- (1) The Board shall meet as often as the interest of the society requires and at least once every month.
- (2) The meeting shall be convened -
  - (a) by the President of the society or, in his absence, by any director elected to act as President;
  - (b) at the request of 2 directors or one third of the total number of directors of the society, whichever is the higher; or
  - (c) by the Registrar.
- (3)
  - (a) A decision of the Board shall not be valid unless a quorum is present.
  - (b) A majority of the number of directors of the Board shall constitute a quorum.

- (4) Every decision shall be taken by a majority of votes.
- (5) In case of equality of votes, the Chairperson shall have a casting vote.
- (6) The proceedings at all Board meetings shall be recorded in minutes which shall, subject to subsection (7), be signed by the President and by the Secretary.
- (7) The rules may provide for all directors to sign the minutes.
- (8) The minutes shall be approved at the next Board meeting.

**55. Internal controller**

- (1) A society shall appoint at least one internal controller.
- (2) The internal controller shall be appointed by the society at its annual general meeting on terms and conditions determined by the general meeting.

**56. Functions, powers and duties of internal controller**

- (1) The internal controller shall ensure that the affairs of the society are conducted in accordance with the rules and this Act and in particular shall
  - (a) ensure that all the activities follow approved policies and established procedures;
  - (b) ensure that all the books of the society are up to date at all times;
  - (c) carry out inspections of the money, stocks, books and other assets of the society;

- (d) ascertain the authority and validity of all expenditures, payments, loans and advances, as the case may be; and
  - (e) examine the accounts of the society at regular intervals and ensure that all transactions of the society are properly recorded in the respective books, accounts and other documents.
- (2) In the exercise of his functions, the internal controller shall have access to all books, accounts and documents of the society and shall have power to call upon any person to produce any information or such books, accounts and documents as he deems necessary.
  - (3) The internal controller shall, within 15 days from the end of each quarter, make a report of his findings in 2 copies, one to be forwarded to the Registrar and the other to the Board.
  - (4) Where the internal controller fails to submit his quarterly report within the required time limit, the Registrar may require that such report be submitted within a delay fixed by the Registrar.
  - (5) Where the internal controller fails to submit his report within the delay fixed by the Registrar, the Registrar may appoint an inspector at the expense of the society to inquire into its affairs.
  - (6) The inspector appointed under subsection (5) shall submit his report within 30 days of his appointment or such time as the Registrar may decide.
  - (7) The internal controller shall, at least 7 days before the next annual general meeting, make an annual report which shall be accessible at the seat of the society.

**57. Revocation of internal controller**

- (1) After taking cognizance of the report of the inspector, the Registrar may -

- (a) revoke the internal controller; and
  - (b) appoint a new internal controller at the expense of the society.
- (2) The internal controller appointed under subsection (1) shall be appointed for a maximum period of 6 months within which period the Registrar shall cause a general meeting to be held in accordance with section 43.

**58. Liabilities of internal controller**

- (1) The internal controller shall keep any information obtained in the exercise of his functions confidential.
- (2) The internal controller shall be personally liable for any loss sustained or damage caused by wilful disclosure of confidential information or by any act or omission in breach of any duty cast upon him by law.

**59. Notification to Registrar**

- (1) A society shall inform the Registrar in writing of -
- (a) the names, occupations, addresses and academic and professional qualifications and experience of its directors within 14 days of their election, and in the case of an internal controller within 14 days of his appointment; and
  - (b) any changes in the composition of its Board or the internal controller within 14 days of such change.
- (2) Where the society fails to comply with subsection (1), it shall commit an offence and, without prejudice to section 44 of the Interpretation and General Clauses Act, the Secretary shall commit the like offence.

**60. Contracting out management of a society**

- (1) A society may contract out the management of its business on such terms and conditions as it may determine to a management organisation provided that a resolution to that effect has been passed at a special meeting of the society.
- (2) The Registrar shall be informed of the decision and a copy of the contract shall be submitted to the Registrar within 7 days of the resolution.

**PART IX - PROPERTY AND FUNDS OF SOCIETIES**

**61. Funds of societies**

The funds of a society shall consist of -

- (a) such membership fee as may be provided for by the rules;
- (b) any payment made in respect of shares subscribed pursuant to this Act and the rules;
- (c) any undistributed net surplus required to be allocated to the Reserve Fund;
- (d) any undistributed net surplus allocated to any fund established under the rules;
- (e) grants, donations and other contributions from public or private donors legally obtained;
- (f) loans from members, other societies, banks and public or private financial institutions;

- (g) deposits from members and other societies;
- (h) surplus in terms of patronage refund, the disbursement of which is deferred subject to conditions provided by the rules;
- (i) any other contribution by members to the capital of the society pursuant to the rules; and
- (j) premiums arising on the issue of shares.

## **62. Shares**

- (1) No share shall be issued at less than its par value.
- (2) Subject to the rules, shares may be issued to members of society with calls spread over a period of time where
  - (a) at least 10% of the amount is paid by the members on subscription; and
  - (b) the aggregate period up to the final call does not exceed 18 months.
- (3) Shares shall be registered and indivisible.
- (4) No share shall be transferred by a member unless the share has been fully paid up by him.
- (5) No individual shall hold more than 30% of the issued share capital of a society.
- (6) Subject to subsection (7), a society shall in its rules fix the maximum number of shares, or a maximum percentage of the share capital of the society, that any member may hold.

- (7) Where all the members of a society are societies -
  - (a) the rules shall not limit the percentage of shares that may be held by any member; and
  - (b) any restriction on the percentage of shares that may be held by any member shall be of no effect.
  
- (8) Where, for the purposes of a merger of two or more societies, shares are issued for consideration other than cash, the societies shall not merge unless the merger has been approved at the general meetings of the societies involved with the merger.
  
- (9) Where shares are to be issued in consideration of any property other than cash, such shares shall not be issued unless -
  - (a) a proper valuation certificate has been issued by a qualified valuer or such other person who may be qualified for that purpose; and
  - (b) the approval of the general meeting of the society to which the property has to be transferred has been obtained.

### **63. Conditions for membership participation**

A society shall, in its rules, lay down the conditions for members' participation in the capital of the society including the minimum contribution that each member has to make -

- (a) in the form of a fixed minimum number of shares; or
  
- (b) in the form of a number of shares in proportion to the business done by the member with the society.

**64. Reserve Fund**

- (1) Every society shall maintain a Reserve Fund into which shall be paid not less than 10% of its surplus.
- (2) Where the Minister is satisfied that a society has accumulated adequate funds in its Reserve Fund, the Minister may, upon application by the society, authorise the society to contribute a lesser percentage of its surplus to the Reserve Fund than the percentage referred to in subsection (1).
- (3) Subject to subsection (1), a society may maintain special reserve funds into which shall be paid such part of its surplus as may be provided in the rules or as may be approved by the general meeting.
- (4) A society shall not pay dividend out of a Reserve Fund.
- (5) A society may, from its Reserve Fund, issue bonus shares to its members.

**65. Order of distribution of net surplus**

The surplus of a society shall be distributed in the following order of priority -

- (a) Reserve Fund;
- (b) dividend on preference shares, both redeemable and non-redeemable;
- (c) special reserve funds;
- (d) bonus to employees;
- (e) bonus to a member in proportion to the business done by the member with the society; and

- (f) dividend on ordinary shares.

**66. Payment of bonus and dividend**

- (1) No assets of a society, other than its surplus, shall be distributed by way of bonus or dividend or otherwise among its members.
- (2) No society shall pay any bonus or dividend or distribute any part of any special reserve fund unless the annual balance sheet has been certified by an auditor and has been approved by the general meeting.
- (3) Notwithstanding subsection (2), no society shall pay dividend on ordinary shares unless the payment has been approved by the general meeting.

**67. Investment of assets**

- (1) A society may invest its assets in such manner as may be provided in its rules or decided by the general meeting.
- (2) When investing the assets of the society, the Board shall consider the liquidity as well as the security aspect of the investments.
- (3) The rules shall specify the amount of the assets -
  - (a) which the board may invest without the approval of the general meeting; and
  - (b) above which the board shall have to obtain the approval of the general meeting before investing the assets.
- (4) Where a report has been prepared by an inspector, auditor or internal controller, and, from the reports, the Registrar has reason to believe that the investment policy carried out by the Board is not in the interests of the

members, the Registrar may direct the society to hold a general meeting within such time as the Registrar may specify for the purpose of considering the reports and reviewing the investment policy, if need be, of the society.

- (5) Where upon a written complaint by -
- (a) one-fifth of the total number of members or 2 members, whichever is higher; and
  - (b) the members referred to in paragraph (a) hold not less than 20% of the ordinary shares or not less than 30% of the preference shares of the society, if any,

the Registrar has reason to believe that the investment policy carried out by the Board is not in the interests of the members, he may take action as specified in subsection (4).

**68. Restrictions on borrowing**

- (1) The rules shall make provisions for the conditions under which the society may receive loans and deposits from its members and non-members.
- (2) A society shall not contract a loan or receive a deposit except as provided in its rules.

**69. Restrictions on loans and credit sales**

A society shall not grant a loan or allow any credit -

- (a) to any person other than a member; and
- (b) except as provided in its rules.

## **70. Termination of existence**

A society shall cease to exist -

- (a) at the expiry of the period of 3 months where the ordinary share capital falls below 5,000 rupees and so remains for a period of 3 months;
- (b) where, at any point in time, the audited accounts show that the sum of its accumulated losses exceeds the sum of its issued share capital and any amount standing in its Reserve Fund; or
- (c) where the Registrar so decides under section 98.

## **PART X – ACCOUNTS, RECORDS AND AUDIT**

### **71. Financial year**

- (1) The financial year of a society shall be the period starting on 1 July and ending on 30 June in the next year.
- (2) The first financial year of a society shall start from the date of its registration and end on 30 June next following.

### **72. Keeping of accounts and records**

- (1) Every society shall keep proper books of accounts and other books for the purpose of recording all transactions relating to its undertakings, funds, activities and properties.
- (2) A society shall -

- (a) ensure that all payments are authorised and correctly made and that adequate control is maintained over its income, its expenditure, assets and liabilities;
  - (b) keep all accounts and records in such manner that they truly reflect the financial situation of the society so that the internal controller or the auditor can have access to them at all reasonable times; and
  - (c) ensure that all accounts in respect of a financial year are drawn up and audited in accordance with the provisions of this Act and its rules.
- (3) Subject to subsection (4) and to such directives as may be issued by the Registrar, a society shall maintain one or more bank accounts -
- (a) into which all money received by it shall be paid; and
  - (b) out of which all payments required to be made by it shall be paid.
- (4) The rules shall state the amount that may be kept by the society in the form of petty cash.

### **73. Operating and freezing bank accounts**

The Registrar may -

- (a) certify to the banks concerned the persons who are entitled to sign cheques or other documents on behalf of a society;
- (b) freeze the account of a society in a bank; or
- (c) give to the bank instructions regarding the operation of the account,

where, in his opinion, such measures are necessary to prevent loss or misuse of funds.

#### **74. Audit**

- (1) Subject to subsection (2), every society shall at its first annual general meeting and at each subsequent annual general meeting appoint the Registrar or an auditor through an ordinary resolution of its members to -
  - (a) hold office from the conclusion of the meeting until the conclusion of the next annual general meeting; and
  - (b) audit the financial statements of the society for the accounting period next after the meeting.
- (2)
  - (a) A society shall not appoint the Registrar as auditor where its annual turnover exceeds 10 million rupees.
  - (b) Where the Registrar is appointed, he shall audit or cause to be audited the accounts of the society by a person designated by him in writing.
- (3) Where a society appoints a person other than the Registrar as auditor, it shall so inform the Registrar within 14 days of the appointment.
- (4) Every society shall, within a period of 2 months after the closing of the financial year, submit to the Registrar or to the auditor, as the case may be, the final accounts and balance sheet together with all relevant documents as well as such statistical returns as may be required by the Registrar or the other appointed auditor.
- (5)
  - (a) The Registrar or the auditor shall, within 3 months after the receipt of the final accounts and balance sheet together with all relevant

documents, submit a report on the audit carried out to the President of the society.

- (b) The auditor shall also submit a copy of his report to the Registrar.
- (6) For the purposes of this section -
- (a) the person appointed or designated under subsection (1) or (2) shall, at all times, have access to the documents and other property belonging to, or in the custody, of a society; and
  - (b) every past or present officer or member or any heir, successor or agent of the past officer or member shall furnish such information regarding the transactions of the society or the management of its affairs as may be required by the person appointed or designated under subsection (1) or (2).

#### **75. Non-remuneration of Registrar**

Where the Registrar is appointed as auditor of a society, he shall not be remunerated.

#### **76. Persons not eligible to act as auditor**

No person shall carry out the audit of a society, or prepare an audit report regarding a society, if he -

- (a) has been a director, manager or employee of the society during the current year and the immediately preceding year;
- (b) is a person who is a partner or in the employment of a director or an employee of the society;
- (c) is a person who is a receiver in respect of the property of the society;

- (d) is a person who is not ordinarily resident in Mauritius;
- (e) is a person who is indebted in an amount exceeding 10,000 rupees to the society unless the debt is in the ordinary course of business;
- (f) has been expelled as a member from the society; or
- (g) has an interest in the society.

**77. Powers and duties of auditors**

- (1) An auditor shall have access at all reasonable times to all books and accounts of a society, all vouchers in support of them and all relevant books, papers and writings in the possession of or control of the society relating to them.
- (2) An auditor may require from any member of the Board, any officer including the internal controller, any employee or any member such information and explanations as may be necessary for the purpose of the examination or audit.
- (3) An auditor shall, while auditing the accounts of a society, assess -
  - (a) the financial situation of the society and the functioning of its decision-making bodies; and
  - (b) the degree to which procedures set out in the rules or in any other relevant documents of the society are being complied with.
- (4) Where the auditor finds any shortcoming in the books or in the procedures of the society, he shall recommend such remedial actions and measures as he deems fit.

- (5) An auditor shall, within 15 days of the completion of the audit, submit a copy of his findings together with the audit report and the audited accounts of the society to the Board and to the Registrar.

**78. Findings of auditor**

- (1) The findings of the auditor submitted under section 77(5) shall include -
  - (a) a list of transactions and agreements, if any, between the society and its members or third parties not covered by the rules or not duly authorised or likely to cause damage to the society; and
  - (b) an appraisal of the management performance and the working of the decision-making bodies of the society.
- (2) Where the Board decides not to implement any recommendation contained in the findings of the auditor, it shall so inform the Registrar in writing and give reasons for the non-implementation.

**79. Audit report**

- (1) The audit report submitted under section 77(5) shall include -
  - (a) a statement as to whether the auditor had access to all accounts, books, records and relevant information required while carrying out the audit;
  - (b) a statement, as to whether, in the opinion of the auditor, proper accounting records have been kept and proper internal control systems maintained; and
  - (c) a statement as to whether the accounts prepared by the society give a true and fair view of the affairs of the society.

- (2) The audit report shall be submitted at the annual general meeting for consideration.

**80. Liability of auditors**

- (1) In carrying out an audit, the auditor and any person assisting him shall -
- (a) exercise prudence and diligence and maintain the standards of the auditors' profession;
  - (b) keep all information on internal matters of the society obtained during the exercise of his functions confidential; and
  - (c) be jointly and severally liable for any loss sustained or damage caused by -
    - (i) gross negligence in the performance of his duties;
    - (ii) failure to meet the standards of the profession; or
    - (iii) wilfully disclosing confidential information obtained during the audit to persons other than those authorised under this Act.
- (2) Where an auditor or any person assisting him in audit work uses information in respect of the internal matters of the society obtained during the audit for his personal advantage or for the advantage of third persons, he shall commit an offence.

**PART XI - INQUIRY**

**81. Inquiry on a society**

(1) The Registrar may -

- (a) on the application of not less than one tenth of the total number of members or 2 members, whichever is the higher, holding at least -
  - (i) 10% of the ordinary shares of a society; or
  - (ii) 30% of the preference shares of a society, if any;
- (b) on the application of any creditor of the society;
- (c) on a resolution of the Board;
- (d) on a resolution of a general meeting;
- (e) where the internal controller fails to forward the quarterly report to the Registrar within 2 months of the end of the quarter in breach of section 56(3); or
- (f) where he thinks fit,

appoint an inspector to inquire into the affairs of a society or such aspects of the affairs of a society as are specified in the instrument of appointment and to make a report on his investigation in such form and manner as the Registrar shall direct.

(2) Where an application is made under subsection (1)(a) or (b), the Registrar may, before appointing an inspector, require the applicant to provide -

- (a) the reasons and the grounds for the application; and

- (b) such security as the Registrar thinks fit to cover the cost of the inquiry.
- (3) An inspector appointed under subsection (1) shall submit his findings within such period as may be specified by the Registrar in the instrument of appointment.
- (4) Where, from a report of an inspector, it appears to the Registrar that proceedings in the interests of the members ought to be brought by the society -
  - (a) for the recovery of any sum in respect of any fraud, misfeasance or other misconduct -
    - (i) in connection with the promotion or formation of that society; or
    - (ii) in the management of its affairs; or
  - (b) for the recovery of any property of the society which has been misapplied or wrongly retained,he may bring proceedings for that purpose in the name of the society.

## **82. Investigation and remedies**

- (1) Where, in the course of an audit, inquiry or inspection or the winding up of a society, it is found that any officer or past officer of the society has -
  - (a) made any payment contrary to this Act or to the rules;
  - (b) caused any deficiency or loss by gross negligence or misconduct;or

(c) misappropriated or fraudulently retained any property of the society,

the Registrar may, on his own motion or on the application of an interested party, cause an investigation to be made into the conduct of that person.

(2) No investigation under subsection (1) shall be made except within -

(a) 10 years of the date on which the act occurred; or

(b) one year of the date on which the act comes to the notice of the Registrar,

whichever period first elapses.

(3) The Registrar may, after an investigation under subsection (1), where he is satisfied that there are good grounds for doing so, make a written order requiring a person specified in that subsection or, where the person is dead, his legal representative, to repay or restore the property with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar thinks fit.

(4) The Registrar may, on an audit, inquiry or inspection, require any officer or any person in his capacity of member or legal representative of a deceased officer or member, having under his control or in his custody any money or other property mentioned in subsection (1) of a society, to deliver to him the money or property.

### **83. Powers of inspectors**

(1) Every person concerned shall, where requested to do so, produce to an inspector any document, book or record in his custody, and shall give to the inspector all assistance in connection with the inquiry.

- (2) An inspector may, by written notice, require any person, who in the opinion of the inspector may give relevant evidence, to appear for examination.
- (3) A notice under subsection (2) may require any person, on whom the notice is served, to produce any document, book or record in his custody.
- (4) Where any document, book or record has been produced to the inspector, the inspector may retain the document, book or record for such time as he considers necessary for the purpose of the inquiry and where the document, book or record is required by the society, the inspector shall allow an officer of the society to have access to the document, book or record during such time as he considers reasonable.
- (5) An inspector may cause notes of an examination under this section to be recorded and reduced to writing and to be read to and signed by the person examined and the notes may thereafter be used as evidence in any legal proceedings against that person.

#### **84. Costs of inquiry**

- (1) The expenses in relation to an inquiry by an inspector, including the costs of any proceedings brought by the Registrar in the name of the society, shall be paid by -
  - (a) the society; or
  - (b) where the Registrar so directs, by the applicant.
- (2) Where a society fails to pay the whole or any part of the sum which it is liable to pay under subsection (1), the sum due may be paid out of the Fund.

## PART XII - DISPUTES AND ARBITRATION

### 85. Disputes

(1) Notwithstanding any other enactment, where a dispute relating to the rules, management, business or liquidation of a society arises -

- (a) among members, past members or persons claiming through members, past members or nominees of deceased members;
- (b) between a member, past member or person claiming through a deceased member and the society, its Board, an officer or legal representative of a deceased officer;
- (c) between a surety of a member, past or deceased member or a surety of an employee of a society whether past or deceased and the society;
- (d) between the society or the Board and an officer, other than a dispute arising between the society or its officers in their capacity as employees;
- (e) between the society and any other society; or
- (f) between the society and its debtors or its creditors,

such dispute may be referred by either party to the Registrar for arbitration.

(2) Where a dispute is referred to the Registrar, he may -

- (a) hear and determine the dispute; or

- (b) refer it to an arbitrator appointed by him for hearing and determining the dispute.
- (3) A creditor of a society, in relation to a dispute between the society and the creditor, may opt for the matter to be settled by arbitration.
- (4) Any person feeling aggrieved by an award of an arbitrator may appeal, within 21 days of the award, to the Tribunal.

**86. Appointment of arbitrator**

For the purposes of this Part, the Registrar may, subject to the approval of the Permanent Secretary, appoint as an arbitrator

- (a) an auditor;
- (b) a person who has held the office of Registrar;
- (c) a person who holds or has held an office not below the level of Senior Co-operative Officer; or
- (d) a person who has knowledge of and experience in the subject matter of the dispute.

**87. Procedure for arbitration**

- (1) An arbitrator may, in relation to a dispute, make a provisional order to preserve the existing state of affairs.
- (2) The arbitrator shall record a brief note of evidence of the parties and witnesses who deponed before him and, on the evidence produced by either side, shall give a written award.

- (3) Where a party who has been served with a summons to attend before the arbitrator fails to do so, the dispute may be adjudicated upon in his absence.
- (4) The arbitrator shall give an award or decision within 60 days of his appointment.
- (5) Where an arbitrator is unable to give an award or decision within 60 days of his appointment, or within such extended time as is approved by the Registrar, the Registrar may appoint another arbitrator within 15 days of the removal of the first arbitrator.

**88. Attachment before award**

- (1) Where an arbitrator is satisfied, on affidavit evidence, that a party to a dispute is, with the intent to delay or obstruct the execution of any award that may be made, about to dispose of his property or any other assets, the arbitrator may apply to the Tribunal for an order for the provisional attachment of the property of the party.
- (2) Where an application is made under subsection (1), the Tribunal may, unless adequate security is furnished by the party against whom the order is sought, grant a provisional attachment order and such order will be valid and effective as a Court order.

**89. The Co-operative Tribunal**

- (1) There is established a Co-operative Tribunal which shall consist of -
  - (a) a Chairperson who -
    - (i) is a law practitioner; and

- (ii) shall be appointed by the Attorney-General, after consultation with the Minister; and
- (b) 2 other persons with wide experience in co-operative matters who shall be appointed by the Minister.
- (2) The Minister may appoint other members as and when required to serve on the Tribunal.
- (3) The Chairperson and members referred to in this section shall be appointed on such terms and conditions as the Minister may determine.

**90. Proceedings of the Tribunal**

- (1) The Tribunal shall have the powers to hear and determine any appeal lodged under this Act.
- (2) The Tribunal shall sit at such place and time as the Chairperson of the Tribunal shall determine.
- (3) Subject to any regulations made by the Minister, any case before the Tribunal shall be instituted and conducted -
  - (a) as far as possible in the same manner as proceedings in a civil matter before a District Court;
  - (b) in accordance with the law of evidence in force in Mauritius; and
  - (c) in public, except where the Tribunal orders otherwise with the agreement of all the parties or in the public interest.

**91. Powers of the Tribunal**

- (1) The Tribunal may -

- (a) make such orders for requiring the attendance of persons and the production of articles or documents, as it thinks necessary or expedient;
  - (b) take evidence on oath and may for that purpose administer oaths; and
  - (c) on its own motion, summon and hear any person as witness.
- (2) Any person who -
- (a) fails to attend the Tribunal after having been required to do so under subsection (1);
  - (b) without reasonable cause, refuses to take an oath before the Tribunal or to produce any article or document when required to do so by the Tribunal;
  - (c) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal; or
  - (d) at any sitting of the Tribunal -
    - (i) wilfully insults the Chairperson or any member; or
    - (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal,

shall commit an offence.

## **92. Determination of the Tribunal**

- (1) Where there is a disagreement among the members, the decision of the majority shall be the determination of the Tribunal.
- (2) Subject to section 93, a decision, an award or finding of the Tribunal on any cause or matter before it, shall be final and binding on the parties.
- (3) Any person who fails to comply with a decision or an award of the Tribunal within 15 days of such award or such decision shall commit an offence except where the person proves that the delay in complying with such a decision or award has been caused by factors outside his control.
- (4) The Tribunal may make such order as to costs as may be prescribed and such an order shall be enforced in the same manner as an order for costs in proceedings before a Court.

**93. Appeal**

- (1) Any party who is dissatisfied with the decision or award of the Tribunal as erroneous in law may appeal to the Supreme Court.
- (2) Any party wishing to appeal to the Supreme Court under subsection (1) shall, within 21 days of the date of the decision or award of the Tribunal -
  - (a) lodge with, or send by registered post to, the Chairperson of the Tribunal a written application requiring the Tribunal to state and sign a case for the opinion of the Supreme Court on the grounds stated in it; and
  - (b) forward a copy of his application by registered post to the other party.
- (3) An appeal under this section shall be prosecuted in the manner provided for by the rules made by the Supreme Court.

## PART XIII – AMALGAMATION, MERGER AND CONVERSION OF SOCIETIES

### 94. Amalgamation

- (1) Any two or more societies may resolve to amalgamate into one society.
- (2) A resolution under subsection (1) shall be passed at a special general meeting of each amalgamating society.
- (3) Where an amalgamation involves the transfer of liabilities by one society to another, the amalgamating societies shall give not less than 3 months' notice of the amalgamation to all creditors of the amalgamating societies.
- (4) Any creditor of any of the amalgamating societies shall be entitled to a refund of any sum due to him if he makes a written request to this effect at least one month before the date fixed for the amalgamation.
- (5) Any member of the amalgamating societies may, notwithstanding the rules, by notice in writing addressed to his society at least one month before the date fixed for the amalgamation, declare his intention not to become a member of the new society and he shall, subject to this Act, be entitled to a refund of his share in the amalgamating society.
- (6) After receiving an application for registration of the proposed amalgamated society in accordance with section 14, the Registrar shall register the amalgamated society if he is satisfied that -
  - (a) the proposed rules of the new society are in conformity with this Act; and
  - (b) all requirements set out in this section have been complied with.

- (7) Where the Registrar refuses to register the proposed amalgamated society, any aggrieved society may appeal to the Tribunal within 21 days of the refusal.
- (8) On registration of the amalgamated society, the registration of the amalgamating societies shall be cancelled.
- (9) The registration of the amalgamated society shall be sufficient conveyance to transfer the assets and liabilities of the amalgamating societies to the amalgamated society and the members of the amalgamating societies shall become members of the amalgamated society.
- (10) The creditors of the amalgamating societies or any other persons having claims against the amalgamating societies, and whose claims were not satisfied prior to the registration of the amalgamated society, may pursue such claims against the amalgamated society.

## **95. Merger**

- (1) A society may, at a special general meeting called for that purpose, resolve to merge with another society by transferring its assets and liabilities to that other society which is prepared to accept the assets, liabilities and members of the transferring society.
- (2) The receiving society may accept the assets, liabilities and members of the transferring society under subsection (1) provided that a resolution to that effect has been passed at a special general meeting of the receiving society.
- (3) The transferring society shall give not less than 3 months' notice of the merger to all its creditors.

- (4) A creditor of the transferring society shall be entitled to a refund of any sum due to him if he makes a written request to this effect at least one month before the date fixed for the merger.
- (5) A member of the transferring society may, notwithstanding the rules, by notice in writing addressed to the society at least one month before the date fixed for the proposed transfer, declare his intention not to become a member of the receiving society and he shall be entitled to a refund of his share.
- (6) Where the Registrar has received an application for cancellation of the registration of the transferring society and is satisfied that all the requirements of this section have been complied with, he may approve the proposed transfer of assets and liabilities and further cancel the registration of the transferring society.
- (7) Any society, which is aggrieved by a decision of the Registrar under subsection (6), may appeal to the Tribunal within 21 days of the date of the decision.
- (8) The resolution referred to in subsection (2), together with the approval of the Registrar under subsection (6), shall be sufficient conveyance to transfer the assets and liabilities of the transferring society to the receiving society and the members of the transferring society shall become members of the receiving society.
- (9) A creditor of the transferring society or any other person having a claim against the transferring society, and whose claim was not satisfied before the cancellation of the registration of the transferring society, may pursue such claim against the receiving society.

**96. Conversion into another class of society**

- (1) A society may resolve to convert the society into another class of society.

- (2) A resolution under subsection (1) shall be passed at a special general meeting of the society.
- (3) Wherever a conversion involves the transfer of liabilities of the society to the proposed society, the society shall give not less than 3 months' notice of the conversion to the creditors.
- (4) A creditor of the society shall be entitled to a refund of any sum due to him if he makes a written request to that effect at least one month before the date fixed for the conversion.
- (5) A member of the society may, notwithstanding the rules, by notice in writing addressed to the society at least one month before the date fixed for the conversion, declare his intention not to become a member of the new society and the member shall be entitled to a refund of his share.
- (6) Where, after receiving notice of the proposed conversion, the Registrar is satisfied that -
  - (a) the requirements of this section have been complied with;
  - (b) all dissenting members and creditors have received the sums due to them; and
  - (c) all legal conditions necessary for the conversion of the society have been fulfilled,he may register the new converted society.
- (7) Where the Registrar refuses to register the proposed converted society, any aggrieved society may appeal to the Tribunal within 21 days of the date of the refusal.

## **PART XIV - DISSOLUTION AND LIQUIDATION OF SOCIETIES**

### **97. Voluntary dissolution**

- (1) Subject to subsection (2), a member of a society may apply to the Registrar for the dissolution of the society.
- (2) No application shall be made under subsection (1) unless -
  - (a) the member has obtained the consent in writing of not less than 75% of the total number of members; and
  - (b) those members referred to in paragraph (a) hold –
    - (i) not less than 75% of the ordinary shares; and
    - (ii) in the case of a society which has preference shares, not less than 75% of the preference shares.
- (3) The Registrar shall, on receipt of an application under subsection (1), appoint an inspector to -
  - (a) investigate into the affairs of the society for the purposes of the dissolution; and
  - (b) evaluate the assets and liabilities of the society.
- (4) Where the Registrar, after obtaining the report of the inspector, is satisfied that the society may be dissolved, he may issue an order directing the society to be wound up.

### **98. Power to order dissolution**

- (1) The Registrar may, after carrying out an inquiry, issue an order directing that a society be wound up where -
  - (a) the society has contravened this Act;
  - (b) the society has failed to comply with any condition as to registration or management imposed by this Act or the rules;
  - (c) the number of members falls below the minimum required level;
  - (d) the share capital falls below 5,000 rupees for a period of more than 3 months; or
  - (e) where the sum of the share capital plus reserves is less than the accumulated losses of the society.
- (2) No order under subsection (1) shall be made unless the society has been given a reasonable opportunity of showing cause against the making of the proposed order.
- (3) Where the Registrar is of opinion that a society in respect of which an order under subsection (1) has been made should continue to exist, he may, at any time before the cancellation of its registration, revoke the order.
- (4) A society, in respect of which an order under subsection (1) has been made, may appeal to the Tribunal within 21 days of the order.

## **99. Appointment of liquidator**

- (1) Where the Registrar has made an order for winding up a society, he shall appoint a liquidator on such terms and conditions as he thinks fit.
- (2) No person shall be appointed as liquidator unless he is an auditor.

- (3) A liquidator shall, on appointment -
  - (a) take immediate control of all the assets of the society and of all books, records and other documents pertaining to its business; and
  - (b) take such steps as he thinks necessary to prevent loss or deterioration of, or damage to, the assets.
  
- (4) Where an appeal is made against an order to wind up a society -
  - (a) all proceedings under the order shall be stayed until the appeal is determined; and
  - (b) the property of the society shall remain vested under the control of the liquidator.

**100. Powers of liquidator**

- (1) Subject to section 101, a liquidator may sue and be sued in the name and on behalf of the society and may, subject to such directions as he may receive from the Registrar -
  - (a) carry on the business of the society so far as may be necessary for the beneficial winding up of its affairs;
  - (b) fix, by notice in the Gazette and 2 newspapers, a day on which creditors, whose claims are not recorded in the books of the society, shall state their claims for payment, failing which such claims shall be excluded from any distribution;
  - (c) investigate all claims against the society and decide on the priority arising between claimants;

- (d) refer to the Registrar for arbitration any matter which under section 85 may be a matter of dispute;
- (e) give such directions, in relation to the collection and realisation of the assets of the society, as may be necessary for the winding up of the affairs of the society;
- (f) pay claims against the society, including interest payable, up to the date of the winding up order according to the respective priorities, if any, in full or to such extent as the assets of the society permit;
- (g) make any compromise or composition with creditors of the society;
- (h) call such general meetings of members or such meetings of creditors as may be necessary for the proper conduct of the liquidation;
- (i) determine whether any person is a member, past member or nominee of a deceased member;
- (j) determine the debts due by members of the society and ensure their collection;
- (k) arrange, with the approval of the Registrar, for the distribution of the assets of the society;
- (l) determine by what persons and in what proportions the costs of the liquidation are to be borne; and
- (m) do all such other things as may be necessary for winding up the society and distributing its assets.

- (2) Any person aggrieved by a determination of the liquidator under subsection (1)(c), (j) or (l) may appeal to the Tribunal within 21 days of the determination.
- (3) The liquidator shall not determine the debt due by a member under subsection (1)(j) unless the member has been given a reasonable opportunity of showing cause against the proposed determination.

#### **101. Duties of liquidator**

- (1) A liquidator shall deposit the funds and other assets of a dissolved society which are collected by him, or which come into his possession as liquidator, in such manner and in such place as the Registrar may from time to time direct.
- (2) A liquidator shall -
  - (a) not less than once every month, submit to the Registrar a report stating the progress made in the winding up of the affairs of the society; and
  - (b) on completion of the liquidation proceedings, submit a final report and hand over all books, registers and accounts relating to such proceedings kept by him to the Registrar.
- (3) A liquidator shall terminate the winding up process within one year of his appointment or within such extended time as the Registrar may approve.

#### **102. Protection of liquidator**

Where a society is in the course of winding up, no action shall be instituted against the liquidator, the society or its members except by leave of the Registrar and subject to such terms and conditions as he thinks fit.

### **103. Powers of Registrar to control liquidation**

- (1) The liquidator shall exercise his powers in accordance with the liquidation order of the Registrar, who may at any time -
  - (a) rescind or vary any determination made by a liquidator and make a new order;
  - (b) call for all documents and assets of the society;
  - (c) require the liquidator to submit such reports as the Registrar may ask;
  - (d) order the liquidator to repay any money or restore any property which belongs to the society;
  - (e) order the auditing of the liquidator's accounts and authorise the distribution of the assets of the society;
  - (f) refer any dispute between a liquidator and any other party to arbitration;
  - (g) where the liquidation process goes beyond the period of one year or such period as may be fixed by the Registrar or where any complaint has been made to the Registrar on the conduct of the liquidator, remove the liquidator from office; and
  - (h) in case of death, incapacity or removal of the liquidator, appoint another liquidator.
- (2) The decision of an arbitrator on any matter referred to him under subsection (1)(f) shall be disposed of within 60 days of the reference.

- (3) Any party aggrieved by the decision of an arbitrator under subsection (1)(f) may appeal to the Tribunal within 21 days of the decision.
- (4) The Registrar may make an order for the remuneration of the liquidator, which remuneration shall be included in the costs of liquidation and shall be payable out of the proceeds from the disposal of assets in priority to all other claims.

#### **104. Disposal of assets on liquidation**

- (1) Where a society is wound up, its assets shall be applied to the payment, in the following order of priority, of -
  - (a) the costs of the liquidation;
  - (b) all privileged creditors;
  - (c) all deposit liabilities to its creditors;
  - (d) all other liabilities of the society;
  - (e) dividend in arrears on preference shares;
  - (f) redeemable preference shares held by its members;
  - (g) preference shares held by its members;
  - (h) ordinary shares held by its members;
  - (i) a dividend or bonus to its members; and
  - (j) any balance to the Fund.

- (2) Where the liquidation of a society has been closed, the liquidator shall give notice of the closing of the liquidation in the Gazette and in 2 newspapers.
- (3) Notwithstanding any other enactment, any claim against a society shall be barred after 3 years from the date of the last publication of the notice under subsection (2).
- (4) The Registrar may, after the expiry of 15 days after the 3 years specified in subsection (3), cancel the registration of the society.

**105. Imprisonment for fraud**

- (1) Where a society, against which an order for winding up under section 98 or an order of a liquidator under section 100 or an award or decision of an arbitrator under section 87 has been made, disposes of its property with intent to defraud or delay the execution of the order, award or decision, the person, in whose favour the order, award or decision has been made, may make an affidavit of the facts and apply to the District Court having jurisdiction in the area where the registered office of the society is situated for an order calling upon the society to be examined before the Court.
- (2) The Court may, on an application under subsection (1), issue an order directing an officer responsible for the management of the society to appear before the Court.
- (3)
  - (a) an officer against whom an order is issued under subsection (2) shall be examined, but not on oath, before the Court in relation to his property and to the property disposed of under subsection (1).
  - (b) After an examination under paragraph (a), witnesses may, with the leave of the Court, be heard on both sides.

- (4) Where an officer against whom an order is issued under subsection (2) -
- (a) does not attend Court, the Court may issue a warrant ordering that the officer be arrested and brought before it;
  - (b)
    - (i) attends Court but, without reasonable cause, refuses to furnish such information as may be required of him by the Court; or
    - (ii) is found, after his examination, to have -
      - (A) caused the society to incur its debts fraudulently; or
      - (B) secreted or disposed of property of the society in fraud of the rights of creditors of the society,
- the Court may order the officer to be imprisoned unless he pays any claim against him or furnishes security in such sum as the Court may determine.

## **PART XV - CO-OPERATIVE DEVELOPMENT ADVISORY BOARD**

### **106. Establishment of the Advisory Board**

There is established, for the purposes of this Act, the Co-operative Development Advisory Board.

### **107. Objects and functions of the Advisory Board**

The objects and functions of the Advisory Board shall be to -

- (a) promote development of the co-operative sector;

- (b) promote business entrepreneurship in co-operatives;
- (c) encourage the co-operative movement to take advantage of investment opportunities at national and regional levels;
- (d) ensure coordination and cooperation with organizations concerned with co-operative activities;
- (e) carry out research and commission studies on co-operative business sectors and related fields;
- (f) promote the clustering of co-operative activities through the creation and development of Co-operative Business Service Centres;
- (g) formulate national policies and strategies; and
- (h) advise the Minister generally on any matter relating to co-operative development.

**108. Composition of the Advisory Board**

- (1) The Advisory Board shall consist of -
  - (a) a Chairperson appointed by the Minister;
  - (b) the Permanent Secretary or his representative;
  - (c) the Registrar or his representative;
  - (d) the Director of the National Institute for Co-operative Entrepreneurship or his representative;

- (e) a representative of the Ministry responsible for the subject of agriculture;
  - (f) a representative of the Ministry responsible for the subject of women's rights;
  - (g) a representative of the Ministry responsible for the subject of youth;
  - (h) the Director of the National Handicraft Promotion Agency or his representative;
  - (i) a representative from a tertiary society; and
  - (j) 2 persons appointed by the Minister.
- (2) The Secretary for Co-operative Development or his representative shall act as secretary of the Advisory Board.
- (3) The Advisory Board may co-opt other members as and when required.
- (4) The Chairperson and the members specified in subsection (1)(j) shall hold office for a period of 2 years and be eligible for re-appointment.
- (5) The Chairperson and members shall be paid such fees or allowances as the Minister may determine.

**109. Meetings of the Advisory Board**

- (1) The Advisory Board shall regulate its meetings and proceedings in such manner as it thinks fit.
- (2) 6 members shall constitute the quorum.

## **PART XVI - NATIONAL INSTITUTE FOR CO-OPERATIVE ENTREPRENEURSHIP**

### **110. Establishment of the Institute**

- (1) There is established, for the purposes of this Act, the National Institute for Co-operative Entrepreneurship.
- (2) The Institute shall be a body corporate.

### **111. Objects of the Institute**

- (1) The objects of the Institute shall be to -
  - (a) provide facilities and engage in research and training for the promotion and development of co-operative entrepreneurship, philosophy, principles and values;
  - (b) act as a centre for the consolidation and development of the co-operative movement through education and training and for the exchange of information in the field of co-operatives; and
  - (c) promote and develop capacity building through entrepreneurship and business leadership.
- (2) The Institute may, for the purposes set out in subsection (1), conduct its activities in such manner as it deems fit.

### **112. Functions of the Institute**

- (1) The Institute shall have such functions as, in its opinion, are necessary to further most effectively its objects.

- (2) Without prejudice to the generality of subsection (1), the functions of the Institute shall be to -
- (a) organize and conduct co-operative management and information technology courses;
  - (b) organize and conduct examinations and award certificates on its own or in collaboration with other recognized bodies;
  - (c) establish links with foreign training institutes and organizations; and
  - (d) provide consultancy and advisory services in the field of co-operatives.

### **113. Powers of the Institute**

- (1) The Institute shall have such powers as are necessary to enable it to effectively discharge its functions.
- (2) In the discharge of its functions, the Institute may -
- (a) employ resource persons;
  - (b) use resource persons from universities and other institutions;
  - (c) enter into agreement or other relationship with other institutions, at national and international levels, including the incorporation within the Institute of any other institution and the taking over of property, rights, privileges and liabilities of any such institution;
  - (d) lay down the conditions under which trainees may be admitted to the Institute and the disciplinary provisions to which such trainees shall be subject; and

(e) levy such fees as it deems fit.

#### **114. The Council**

- (1) The Institute shall be managed by a Council which shall consist of -
  - (a) a Chairperson to be appointed by the Minister;
  - (b) the Permanent Secretary or his representative;
  - (c) the Registrar or his representative;
  - (d) the Secretary for Co-operative Development or his representative;
  - (e) a representative of the Ministry responsible for the subject of economic development;
  - (f) a representative of the Ministry responsible for the subject of training; and
  - (g) 3 persons with experience and knowledge in the field of co-operatives, education and business to be appointed by the Minister.
- (2) The Chairperson and the members specified in subsection 1(g) shall hold office for a period of 2 years and be eligible for re-appointment.
- (3) The Chairperson and members shall be paid such fees or allowances as the Minister may determine.
- (4) The Council shall regulate its meetings and proceedings in such manner as it thinks fit.
- (5) 5 members shall constitute the quorum.

**115. Director of the Institute**

- (1) There shall be a Director of the Institute who shall be the Chief Executive of the Institute and be responsible to the Council for the management of the Institute.
- (2) The Director shall be appointed by the Council with the approval of the Minister and shall hold office on such terms and conditions as it thinks fit.
- (3) In the exercise of his functions, the Director shall act in accordance with such directions as he may receive from the Council.

**116. Appointment of employees**

- (1) The Council may appoint, on such terms and conditions as it may determine, such employees as it considers necessary for the proper discharge of its functions under this Act.
- (2) Every employee shall be under the administrative control of the Director.

**117. Legal proceedings**

- (1) Service of process by or on behalf of the Director shall be equivalent to service by or on behalf of the Institute.
- (2) The Institute shall act, sue and be sued, implead or be impleaded under its corporate name.

**118. Annual report of the Institute**

The Institute shall, not later than 6 months after the close of a financial year, submit an annual report on its activities for that financial year to the Minister.

**119. Execution of documents**

- (1) Subject to subsection (2), all documents shall be deemed to be executed by or on behalf of the Institute if signed by the Chairperson of the Council or by the Director.
- (2) Every cheque of the Institute shall be signed by -
  - (a) the Director; and
  - (b) any other person designated by the Council.

**120. General Fund**

- (1) The Institute shall establish a General Fund -
  - (a) into which all money received by the Institute shall be paid; and
  - (b) out of which all payments required to be made by the Institute shall be effected.
- (2) The Institute shall derive its funds from -
  - (a) the Consolidated Fund;
  - (b) any dues or fees levied by the Institute; and
  - (c) any other source approved by the Minister.

**121. Donations and legacies**

Article 910 of the Code Napoleon shall not apply to the Institute.

**122. Offences for use of the name or logo of the Institute**

Any person who, without the authority of the Institute, uses its name or logo shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year and to a fine not exceeding 10,000 rupees.

**123. Exemption from duties and charges**

Notwithstanding any other enactment, the Institute may, subject to the approval of the Minister responsible for the subject of finance, be exempt from the payment of any duty, levy, rate, charge, fee or tax.

**PART XVII - MISCELLANEOUS**

**124. The Co-operative Development Fund**

- (1) There is set up, for the purposes of this Act, a Co-operative Development Fund.
- (2) Any money payable under this Act, including any fees, charges and surcharges and any surplus arising on the liquidation of a society, shall be paid and credited to the Fund.
- (3) The Fund may receive such grants or donations as may be made to it.
- (4) The Fund shall be administered by a committee consisting of -
  - (a) the Permanent Secretary or his representative, who shall be the Chairperson;
  - (b) the Registrar or his representative;
  - (c) the Secretary for Co-operative Development or his representative;

- (d) a representative of the Ministry responsible for the subject of finance;
  - (e) a representative of a tertiary society; and
  - (f) 4 persons with experience and knowledge in the field of finance, business or management appointed by the Minister.
- (5) The committee may, with the approval of the Minister, use money from the Fund for the promotion and development of co-operatives and the payment of fees incurred in the application of this Act.

#### **125. Report**

The Registrar shall submit to the Minister an annual report on the operation of this Act not later than 6 months after the end of the financial year.

#### **126. Regulations**

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Without prejudice to the generality of his power under subsection (1), the Minister may, by regulations -
  - (a) amend the Schedules;
  - (b) provide for the levying and payment of fees and charges;
  - (c) make special provisions concerning any activity being carried out by a society or any class of societies;

- (d) set up any advisory council or advisory committee as he deems appropriate and publish the composition of such council or such committee; and
- (e) provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.

**127. Directives and guidelines by the Registrar**

- (1) The Registrar may give directives to societies -
  - (a) for the proper implementation of the provisions of this Act; and
  - (b) as to the manner and form in which information destined to him has to be submitted.
- (2) The Registrar may, from time to time, issue guidelines, including guidelines on the rules of societies, on any matter under this Act.
- (3) Any person who fails to comply with the directives of the Registrar under this section shall commit an offence.

**128. Authorised officers**

- (1) The Minister may designate a public officer for the purpose of performing duties under subsection (2).
- (2) In any proceedings under this Act before an arbitrator, the Tribunal, a liquidator or the Registrar, an officer designated under subsection (1) shall have the powers and privileges, and may perform the duties, of an usher in the service or execution, as the case may be, of any notice, summons, warrant or order relating to those proceedings.

**129. Service of notices**

Every notice issued or order made under this Act or the rules may be served -

- (a) subject to section 128, by an usher of a District Court; or
- (b) by registered post.

**130. Offences**

(1) Any officer or member who -

- (a) wilfully makes a false report or furnishes false information or fails to maintain accounts or maintains false accounts;
- (b) does not deposit money collected by him on behalf of a society, and meant to be deposited in the bank account of the society, in the said bank account within 3 days of its collection;
- (c) makes use of the funds raised by him to transact any unauthorised business; or
- (d) destroys, mutilates, alters, falsifies or secretes any book, paper or security, or makes any false or fraudulent entry in any register, book, accounts or document, belonging to the society,

shall commit an offence.

(2) Any person who -

- (a) after being requested to do so in accordance with this Act, fails to  
-

- (i) produce any document or property belonging to a society of which he has the control or custody; or
    - (ii) furnish any information or produce any book or record; or
  - (b) otherwise contravenes this Act,
- shall commit an offence.
- (3) Any person who, or any group of persons which, carries on business in contravention of section 18 or 21 shall commit an offence.
  - (4) Any person who, or group of persons which, contravenes section 18 or 21 shall be jointly and severally liable for any liability incurred by the society as a result of any business carried on in pursuance of the contravention.
  - (5) Any person who commits an offence under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

### **131. Jurisdiction**

Notwithstanding -

- (a) section 114(2) of the Courts Act; and
- (b) section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try any offence under this Act and may impose any penalty provided by this Act.

### **132. Use of computer system**

Notwithstanding anything to the contrary in the other provisions of this Act, the Permanent Secretary may authorise -

- (a) any application or notification required under this Act;
- (b) the payment of any registration fee; and
- (c) the performance of any other act or thing which is required to be done under this Act,

to be made, notified or done electronically in such manner and through such computer system as may be approved by him.

### **133. Repeal**

The following enactments are repealed -

- (a) the Cooperative Societies Act; and
- (b) the Mauritius Co-operative Institute Act.

### **134. Consequential amendments**

- (1) The Finance and Audit Act is amended in the Schedule by deleting the item -

Cooperatives Assistance Fund

and replacing it by the following item in the appropriate alphabetical order

-

Co-operative Development Fund

- (2) The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule, by deleting the item -

Mauritius Co-operative Institute

and replacing it by the following item in the appropriate alphabetical order

-

National Institute for Co-operative Entrepreneurship

### **135. Savings and transitional provisions**

- (1) In this section, "repealed Act" means the Cooperative Societies Act repealed by section 133.
- (2) (a) Notwithstanding section 18(1), every society which, upon the coming into operation of this Act, was registered as a cooperative society under the repealed Act, may carry on business for a period of one year from the coming into operation of this Act without being registered as a society under this Act.
- (b) Where the society applies for registration under this Act within that period of one year, it may carry on business until the date on which it is registered or on which its application is refused or withdrawn.
- (3) All proceedings which, upon the coming into operation of this Act, were pending before the Cooperative Tribunal established under the repealed Act shall continue to be heard by the Cooperative Tribunal as if the repealed Act was still in force.
- (4) Any money which, upon the coming into operation of this Act, was outstanding on the accounts of the Cooperative Assistance Fund and of

the Audit and Development Account established under the repealed Act shall be deemed to belong to the Co-operative Development Fund.

**136. Commencement**

- (1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.
- (2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the twenty second day of March two thousand and five.

Ram Ranjit Dowlutta  
Clerk of the National Assembly

**FIRST SCHEDULE**  
(section 3)

**Oath**

I, ..... being appointed .....  
do hereby swear/solemnly affirm that I shall not, on any account and at any time, disclose, otherwise than with the authorization of the Court or where it is strictly necessary for the performance of my duties, any confidential information obtained by me by virtue of my official capacity.

Taken before me .....the Master and Registrar of the Supreme Court  
on.....

## **SECOND SCHEDULE**

(section 11)

### **Rules of Societies**

#### **Part (a) - Name, address and objects of society**

1. Name of society
2. Address of society
3. Type of society
4. Objects of society
5. Minimum number of members

#### **Part (b) - Membership**

6. Eligibility for membership
7. Obligation of membership
8. Rights of the member
9. Fines payable by any member for non-compliance with rules
10. Withdrawal of the member
11. Termination of membership
12. Expulsion of member

#### **Part (c) - Shares**

13. Types of shares the society can issue
14. Limit on the number of shares held by any member
15. Procedure for shares to be issued

#### **Part (d) - Sources of funds**

16. Sources over and above those at section 61

#### **Part (e) - Office bearers of the society**

17. Office bearers of the society

#### **Part (f) - Directors**

18. Number of directors
19. Election of directors
20. Rotation of directors
21. Possibility to co-opt directors
22. Eligibility for directors
23. Quorum for Board of directors
24. Limits on the powers of directors
25. Sub-committees, if any.

#### **Part (g) - Organs of control**

26. Internal controller
27. Audit of society

#### **Part (h) - Functioning of society**

28. Investment policy of society
29. Credit policy, if applicable, of society
30. Loans or deposits from members
31. Confidentiality

#### **Part (i) - General Meetings**

- 32. Matters that may be raised at an annual general meeting
- 33. Quorum at general meetings
- 34. Voting power of members

**Part (j) - Special decisions**

- 35. Amalgamation
- 36. Merger
- 37. Conversion

**Part (k) - Amendment of rules**

- 38. Procedure for amendment

**Part (l) - Disputes**

- 39. Settlement of dispute by arbitration.

**THIRD SCHEDULE**

(sections 14, 18 and 20)

**Fees, Fines and Penalties**

**1. Fees accruing to the Co-operative Development Fund**

Section 14(1)(e)	Application fee	Rs500.00 per application
Section 18(6)(a)	Annual fee	Rs200.00 per society
Section 20(3)	Fee per copy of rules	Rs50.00 per copy

**2. Fines accruing to the Co-operative Development Fund**

		Per Day Rupees	Maximum Rupees
Section 18(7)	Annual fee surcharge	10	500

**FOURTH SCHEDULE**

(section 2)

**Class of society**

	Class of Society	Objects
1.	Consumer society	--- To obtain, produce, process, distribute goods to, or perform other services for, its members and share among its members the profits derived from the supply, production, processing or distribution in such proportion as may be fixed by the rules.
2.	Farming society	--- To promote the development of land and better methods of cultivation.
3.	General society	--- To perform any act which is not specified in this column in respect of items 1, 2, 4, 5, 6, 7 or 8.
4.	Housing society	--- To provide its members with residential accommodation.
5.	Industrial society	--- To produce and dispose of the goods of its

members on a collective basis.

6. Marketing society --- To market any produce.
7. Multi-purpose society --- To have for objects the objects of any 2 or more of the societies specified in items 1, 4, 5 and 8.
8. Resource society --- To obtain for its members the credit, goods or services required by them.