

**PARLIAMENT OF KENYA  
THE SENATE**

**SENATE BILLS DIGEST**

**THE COOPERATIVES BILL, 2024 (NATIONAL ASSEMBLY BILLS NO. 7 OF 2024)**

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<b>Sponsor:</b>	Senate Majority Leader ( <i>National Assembly Bill sponsored by Hon. Kimani Ichung'wa, MP, Leader of Majority in the National Assembly</i> )
<b>Committee referred to:</b>	Standing Committee on Trade, Industrialization and Tourism
<b>Type of Bill:</b>	Ordinary Bill

**1. Background**

The cooperative sector in Kenya has been instrumental in contributing to both the country's micro-economic and macro-economic growth. Cooperative development has enabled economic empowerment of individuals and similarly, economic development in various sectors.

The sector has been regulated under the Cooperative Societies (Cap. 490) that was assented to on 22<sup>nd</sup> December, 1997 and commenced on 1<sup>st</sup> June, 1998. Since its enactment, the sector has undergone various changes, including the promulgation of the Constitution which sets out cooperative development as a devolved function.

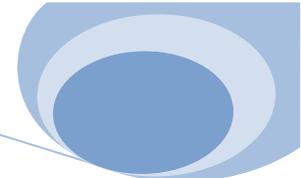
There is therefore need to review the regulatory framework to reflect the systemic and constitutional changes in the cooperative sector for purposes of enhancing efficiency, fairness, constitutionalism and protection of devolution.

The Cooperatives Bill, 2024 was passed by the National Assembly with amendments on 3<sup>rd</sup> December, 2024 and subsequently transmitted to the Senate. The Bill was read a first time on Wednesday, 12<sup>th</sup> February, 2025.

**2. Purpose of the Bill**

The proposed Bill intends to—

- (a) establish a legal framework that supports a sustainable and competitive cooperative sector within a devolved governance system;



- (b) enhance the promotion, registration, regulation and supervision of cooperatives;
- (c) set uniform norms and standards in the cooperative sector;
- (d) define the responsibilities of national and county governments and determine areas of joint jurisdiction; and
- (e) establish an inter-governmental relations framework and create a system for consultation and cooperation among counties.

The operationalization of the Bill will further be guided by the following cooperative principles—

- a) voluntary and open membership;
- b) democratic member control;
- c) economic participation by members;
- d) autonomy and independence; and
- e) education, training and information.

### **3. Overview of the Bill**

#### ***What institutional measures have been put in place to administer the provisions of the Bill?***

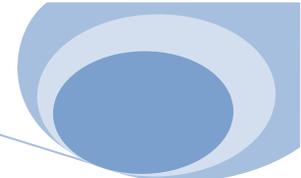
The Bill establishes the office of the Commissioner for Cooperative Development as an office in the Public Service with technical officers appointed through a competitive recruitment process by the Public Service Commission for purposes of implementing the Act.

The Commissioner for Cooperative Development will have such academic qualifications, competencies and experience in cooperative management and practice, along with membership in a professional body for cooperative practitioners in good standing.

#### ***What are the functions of the Office of the Commissioner for Cooperative Development?***

The principal responsibility of the Office of the Commissioner for Cooperative Development will be to promote the growth, development and regulation of cooperatives by –

- a) recommending national policy frameworks;
- b) coordinating intergovernmental relations;
- c) registering and maintaining a national registry of cooperatives;
- d) promoting cooperative federations;
- e) conducting inquiries, supervising and inspecting federations;



- f) capacity building for county governments;
- g) enforcing governance and ethics guidelines;
- h) maintaining a list of authorized auditing firms and registering audited financial statements, developing uniform norms and standards;
- i) promoting public-private partnerships and collaborating with government agencies; and
- j) establishing a national cooperative research and information centre, and performing other necessary functions.

The Commissioner will also prepare and submit financial and non-financial annual reports on cooperative performance and activities to the Cabinet Secretary in charge of cooperative development within six months after the end of each financial year.

***How has the Bill addressed the constitutional devolution of cooperative development and the role of counties in this?***

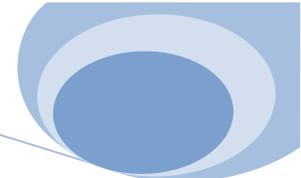
The Bill in clause 11 has established the office of the County Director for Cooperatives in each county as part of the County Public Service which shall be filled through a competitive recruitment process. The County Director will be required to have the necessary academic qualifications, competencies, and experience in cooperative management and practice, along with membership in a professional body for cooperative practitioners in good standing.

The County Public Service Boards in the respective counties shall be responsible for appointing technical officers to the office of the County Director for Cooperatives as required for implementing the provisions of the Act.

***What are the Functions of the County Director for Cooperatives?***

The principal responsibility of the County Director for Cooperatives shall be to enhance the promotion and formation of cooperatives and day-to-day supervision of cooperatives in the county by—

- a) formulating and implementing strategies, guidelines, and measures in cooperative matters, carrying out inspections, supervising elections and enforcing good governance;
- b) providing auditing services to cooperatives;
- c) conducting capacity building, promoting value addition and technology adoption;
- d) establishing a county cooperative research and information center;
- e) facilitating collaboration between primary and secondary cooperatives;
- f) collecting, analyzing, and disseminating data on cooperative activities; and
- g) developing strategies for governance improvement and cooperative growth.



The County Director will also be required to prepare and submit an annual report on the performance, activities and operations of the office and cooperatives within the county to the county executive committee member within three months after the end of the financial year.

***Has the Bill set out provisions for efficient inter-governmental coordination between the national and county governments in the regulation of cooperatives?***

Yes, clause 16 of the Bill has established the Inter-Governmental Cooperatives Relations Technical Forum, an unincorporated body comprising—

- a) the Commissioner of Cooperative Development who shall serve as the chairperson;
- b) the forty-seven county directors for cooperatives;
- c) the chief executive officer of the Sacco Societies Regulation Authority;
- d) an officer appointed by the Council of Governors; and
- e) a representative of the Apex Cooperative as an *ex-officio* member.

The Commissioner will be responsible for providing secretariat services to the forum and to further provide adequate annual budgetary allocations for funding its operations. The forum will further be mandated to meet at least twice a year.

***What will be the Functions of the Inter-Governmental Cooperatives Relations Technical Forum?***

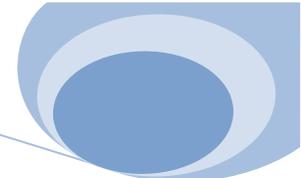
The forum shall provide a platform for—

- a) consultation among county governments on cooperative matters;
- b) consultation between national and county governments on cooperative matters;
- c) consideration of technical and policy proposals from the Forum in the cooperative sector;
- d) formulating guidelines on the promotion and supervision of cooperatives; and
- e) addressing any other matter provided in any written law or incidental to the growth and development of cooperatives in Kenya.

***How does the Bill propose to structure cooperatives?***

Clause 19 of the Bill has established a four-tier structure of cooperatives as follows –

- a) Primary Cooperatives;
- b) Secondary Cooperatives;
- c) Cooperative Federations; and
- d) Apex Cooperatives.



### ***What is a Primary Cooperative under the Bill?***

The Bill sets out that a Primary Cooperative is one that is defined by a singular specific objective and function. Accordingly, various types of primary cooperatives may be registered such as producer cooperatives, housing cooperatives, savings and credit cooperatives, savings and investment cooperatives, transport cooperatives, worker cooperatives and consumer cooperatives.

It is also important to note that unless expressly permitted by the Commissioner, a primary cooperative shall not be registered with multiple objects or undertake multiple objectives.

### ***What is a Secondary Cooperative under the Bill?***

Secondary cooperatives shall be cooperatives comprising of membership of two or more primary cooperatives with objectives such as—

- a) aggregation and warehousing of produce;
- b) provision of specialized services;
- c) processing and value addition;
- d) wholesale credit provision;
- e) lobbying and advocacy;
- f) joint sale organization;
- g) information and publicity, and
- h) education, training, and capacity building.

### ***What is a Cooperative Federation under the Bill?***

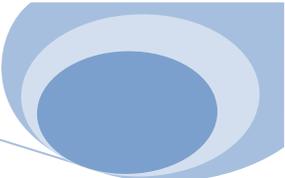
The Bill sets out that a Cooperative federation is one that draws its membership from both primary and secondary cooperatives and which shall—

- a) establish subsector standards for self-regulation;
- b) prescribe and enforce codes of conduct;
- c) conduct market research;
- d) provide education and training for its members;
- e) advocate for members; and
- f) lobby the government on cooperative matters.

### ***How will the Apex Cooperative be established under the Bill?***

The Bill sets out that the Apex Cooperative shall be a cooperative established at the national level of Government and which shall serve as the custodian and champion of the cooperative identity. The Apex Cooperative shall—

- a) represent and protect cooperative interests locally and internationally;

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- b) lobby governments on behalf of the cooperative sector;
  - c) promote education and training;
  - d) provides dispute resolution mechanisms;
  - e) offer shared legal and accounting services; and
  - f) serve as a national platform for cooperation among cooperatives.

The Apex Cooperative shall be required to prepare and submit an annual report including audited financial statements and the performance of affiliate cooperatives within four months after the end of its financial year.

The Cabinet Secretary will prescribe, through regulations, the manner of registration, regulation, governance, and management of the Apex Cooperative.

***What is the process of registering a cooperative under the Bill?***

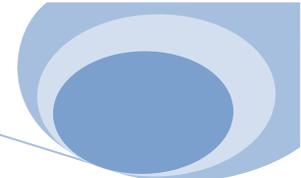
Clause 29 of the Bill details the registration process for cooperatives emphasizing the importance of aligning objectives with the welfare and economic interests of members and incorporating cooperative principles into by-laws. The cooperative registration procedure will involve submitting an application to the Commissioner of Cooperative Development in prescribed form and be signed by—

- a) ten persons representing at least twenty prospective members in the case of a primary cooperative;
- b) five primary cooperatives in the case of a secondary cooperative; and
- c) two secondary cooperatives in case of a cooperative federation.

The application shall be accompanied by documents such as a letter of no objection, economic viability appraisal, proposed by-laws, and minutes of pre-cooperative meetings.

Prior to application for registration, the promoters of a cooperative shall be required to hold a meeting of prospective members for purposes of appraising them on cooperative principles, compliance requirements and to determine the common bond or field of membership. If the Commissioner is satisfied that a Cooperative has complied with the provisions of the Act, the Commissioner shall register the Cooperative and its by-laws within a period not exceeding thirty days from the date of verification.

A certificate of registration, signed by the Commissioner shall serve as conclusive evidence of a cooperative's registration. It will be mandatory for the certificate to be prominently displayed at the head office and branches of the cooperative. Failure to comply may result in fines or imprisonment of the Board of Directors.



Once registered, a cooperative is deemed a body corporate with perpetual succession, granting it the power to own property, enter contracts and engage in legal proceedings.

***What are some of the issues or factors that can prevent the commissioner from registering a cooperative?***

The Commissioner shall not register a cooperative where the cooperative—

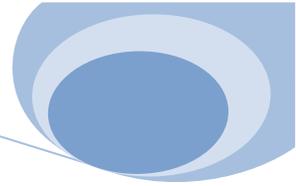
- a) in the opinion of the commissioner, already exists or there is existence a cooperative drawing its membership from the same common bond or field of membership and undertaking the same objectives as the proposed cooperative;
- b) has the same name as a name appearing in the national register of cooperatives;
- c) has a close phonetic resemblance to the name of a registered cooperative;
- d) differs from the name of another registered cooperative only by the addition of the name of a place, locality or region within Kenya;
- e) is identical to, or closely resembles that of a name that has been reserved by the Commissioner for use in connection with a proposed cooperative;
- f) is identical to or closely resembles the name of one or more of the promoters;
- g) is identical to or closely resembles, the name of a cooperative that has been dissolved, or whose registration has been cancelled; and
- h) on reasonable grounds, the commissioner believes that its use would involve the commission of a criminal offence.

Additionally, different types of cooperatives, such as investment, transport, and housing cooperatives, are required to incorporate specific words related to their specific sector in their names. Failure to do so may result in penalties, highlighting the need for precision in naming conventions.

The Bill further prevents unauthorized use of the term "Cooperative" and its derivatives where a business is not running the business of a cooperative. Similar restrictions apply to the term "Sacco" in the context of a savings and credit cooperative.

***Is there an appellate process where an applicant is aggrieved by the decision of the Commissioner?***

Yes, Cooperatives have the option to appeal against registration refusals, with the Cooperative Tribunal serving as the designated authority for addressing grievances.



***What are the qualifications for membership in a cooperative?***

A person must –

- a) have attained the age of eighteen years;
- b) have an employment, occupation or profession falling within the category or description of those for which the cooperative is formed; or
- c) be resident or occupy land within the cooperatives area of operation as described in the Cooperatives by-law.

An unincorporated or corporate body may become a member of a cooperative, only with the approval of the members at a general meeting.

***What are the rights of members in a cooperative?***

Members of a cooperative shall have a right to –

- a) attend and participate in decisions made at all general meetings;
- b) be eligible for election to any organ of a cooperative, subject to its by-laws;
- c) have the right to use all the facilities and services of the Cooperative subject to its by-laws; and
- d) have the right to access information relating to the cooperative and its subsidiaries

***What are the obligations of a member?***

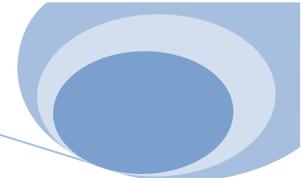
A member of a cooperative shall—

- a) observe and comply with all the cooperative by-laws and decisions taken by the relevant organs of the Cooperative in accordance with the by-laws;
- b) buy and pay up for shares or make any other payments provided for in the by-laws of the cooperative; and
- c) meet the debts of the Cooperative in case of insolvency.

***What are the duties of a Cooperative?***

Cooperatives are required to –

- a) maintain a registered physical address;
- b) keep a copy of the Act and by-laws at the registered office;
- c) prepare estimates of income and expenditure;
- d) keep proper books of account; and
- e) cause its financial statements to be audited at least once in every financial year.



***How will the Bill address and proper financial practices in cooperatives?***

The Bill requires cooperatives to keep the books of accounts at the registered office of the Cooperative or at such other place as may be determined by the cooperative and shall be at all times available for inspection by members

Every cooperative shall cause its financial statements to be audited at least once in every year and appoint an auditor at the cooperative's annual general meeting. Where a cooperative does not appoint an auditor, the Commissioner may appoint a person to fill the vacancy.

The Cooperative's financial statements must further conform to the International Financial Reporting Standards and include information on the financial position, income, changes in equity and cash flow. These statements must be approved by the board of directors and authenticated by the chairperson and any two other members of the board of directors.

Additionally, an auditor shall not present the audited financial statements at the annual general meeting unless the accounts have been approved by the Commissioner in the case of Cooperatives and the Sacco Societies Regulation Authority in the case of a Sacco.

Every cooperative shall file with the Commissioner an annual return together with a certified true copy of the audited financial statements of the Cooperative for each period of twelve months.

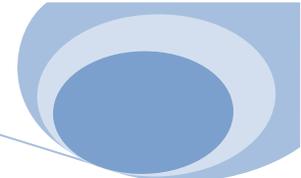
Failure to conduct an annual audit shall result in the members of the board of directors shall automatically lose their positions at the next general and shall not be eligible for re-election for three years unless the Commissioner is satisfied that the failure was due to circumstances beyond their control.

***What are the tools of Governance of Cooperatives?***

The principal tool of governance of a cooperative is its general meetings. The Bill sets out that the general meeting in which members shall have the right to attend, participate and vote shall be the supreme authority of a Cooperative.

The Bill further requires that in the first year of registration of a cooperative, the general meeting shall be held not later than one month after the receipt of the certificate of registration to—

- a) elect the board of directors and supervisory board;



- b) consider and approve estimates of income and expenditure for the ensuing financial year;
- c) determine the maximum borrowing powers of the cooperative;
- d) appoint the cooperative's bankers and auditors;
- e) fix the value of indemnity for the officers of the Cooperative; and
- f) receive reports and decide upon such other matters as may be necessary for the running of the Cooperative's business.

A Cooperative shall subsequently hold an annual general meeting within four months after the end of each financial year in which the members shall—

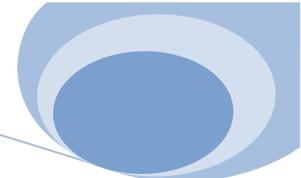
- a) consider and confirm minutes of the last meeting;
- b) consider any reports of the board of directors, supervisory board or commissioner or County Director for Cooperatives;
- c) consider and adopt financial statements;
- d) determine the distribution or investment of available surplus;
- e) consider and approve the annual estimates of income and expenditures for the ensuing year including the recurrent and capital expenditures;
- f) appoint, elect or approve members to the Cooperative's nomination committee for the ensuing year;
- g) fix the value of the indemnity for the officers of the Cooperative;
- h) appoint an auditor for the ensuing year; and
- i) transact any other general business of the Cooperative of which notice has been given pursuant to the by-laws.

Special general meetings may be convened by the board of directors for the purpose of approving annual estimates or discussing any urgent matters. A special general meeting may also be convened by written notice of such number of members as prescribed in regulations.

The Commissioner and County Director for Cooperatives have powers under the Bill to convene special general meetings and decide the matters to be discussed during the meeting.

***Does the Bill provide for virtual attendance of the general meetings of a cooperative?***

Cooperatives are required to hold physical general meetings, save for exceptional circumstances in which the meeting can be held virtually or a hybrid of virtual and physical.



This will further be conducted in compliance with such requirements as may be prescribed in regulations or any other written law.

***Can members delegate their attendance of a general meeting to a representative?***

Yes, The Bill permits cooperatives to prescribe provisions on delegated attendance in their by-laws.

A physical meeting with full attendance will however be required in a primary cooperative in respect of the following matters—

- a) dissolution of the cooperative;
- b) amalgamation or division of a cooperative;
- c) formation of subsidiary companies;
- d) acquisition of a majority shareholding of a company or any other entity or a takeover of a company in which the cooperative is a shareholder;
- e) liquidation or winding up of a subsidiary company of the cooperative;
- f) proposed change in the core business in respect of which the Cooperative was incorporated; and
- g) any other matter as the Cabinet Secretary may prescribe.

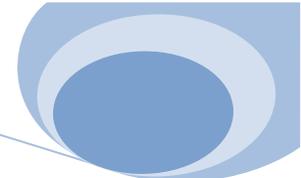
***What is the prescribed composition of a Board of Directors of a cooperative?***

Clause 62 Of the Bill provides that the Cooperative's Board of Directors must consist of five to nine members elected by the general meeting. Each member serves a three-year term and may be re-elected. The board members elect a chairperson and vice-chairperson from among themselves. As the governing body, the board is responsible for directing the Cooperative's affairs, including entering contracts, handling legal proceedings, and taking necessary actions to fulfill the Cooperative's objectives.

In forming its board of directors, a Cooperative must ensure that no more than two-thirds of the board members are of the same gender, as specified in its by-laws. Additionally, the board's composition should reflect regional representation, considering the Cooperative's geographical location and field of membership. Vulnerable members must also be represented in such manner as provided in the by-laws.

***Are there any prescribed grounds for ineligibility to serve in the Board of Directors?***

A person is ineligible to serve as a board member if they are not a member of the Cooperative, lack a minimum of secondary education (*unless exempted*), or engage in trading goods within the Cooperative for personal or third-party gain.



Additional disqualifications include failure to submit a wealth declaration or indemnity within the prescribed time, being bankrupt, of unsound mind or having a history of mismanagement or corruption. Furthermore, individuals charged with fiduciary duty-related offenses are ineligible.

***What are the responsibilities of the Board of Directors?***

The board of directors shall be responsible for the Cooperative's overall strategy, risk management, internal controls, policy formulation and oversight. They must appoint a chief executive officer (CEO) to handle the day-to-day operations. While the board may delegate some duties to the CEO or other officers, it remains accountable for overseeing the Cooperative's affairs.

***Are there any other supervisory or oversight boards in a cooperative?***

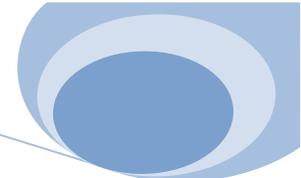
Yes, every Cooperative shall have a supervisory board composed of three members elected at a general meeting for a three-year term, with one member retiring annually and eligible for re-election.

The supervisory board's duties include verifying all Cooperative transactions, preparing periodic reports for board meetings, and presenting reports to the general meeting. It is responsible for reviewing internal controls including the internal audit program, findings, and recommending corrective actions. Additionally, it ensures financial records are accurate, reviews management reports, monitors ethical conduct and investigates complaints raised by members.

The board must submit quarterly reports within thirty days after each quarter to the board of directors and relevant authorities including to the County Director for Cooperatives, the Commissioner for Cooperative federations and the authority overseeing Saccos. The board of directors must allocate sufficient resources in the annual budget for the supervisory board's operations. The Cooperative's internal auditor will report to and provide technical support to the supervisory board.

***What measures have been put in place to ensure the suitability of directors in the board of directors and supervisory board?***

Every Cooperative shall have a nomination committee consisting of three to five members responsible for vetting and clearing candidates for professional or moral suitability to be elected to the board of directors or supervisory board.



The general meeting must approve the nomination committee annually, based on nominations in accordance with the Cooperative's by-laws and electoral policy.

In forming the nomination committee, the Cooperative must ensure representation as follows—

- a) the County Director for Cooperatives, who will serve as chairperson;
- b) the Chief Executive Officer of the Cooperative who will provide secretariat services; and
- c) at least three representatives from professional associations, government officials, or the religious community within the Cooperative's area of operation.

### ***What is the Procedure for amalgamation of cooperatives under the Act?***

**Step 1 (Resolution to amalgamate)** - Two or more Cooperatives can merge into a single Cooperative through a **special resolution** (preliminary resolution). This preliminary resolution is required to be sent to members, creditors, and other affected parties.

**Step 2 (second special general meeting)** - At least three months after the preliminary resolution, a second special general meeting must be held to review the resolution and any objections from members, creditors, or other stakeholders. The second meeting must also address—

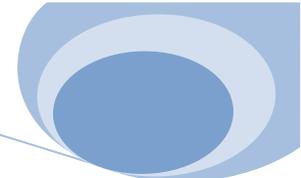
- a) repayment of share capital to members who opt out;
- b) settling debts of creditors who raise claims; and
- c) securing other claims as directed by the Commissioner.

**Step 3 (Final Approval & Registration)** - A **two-thirds majority** vote will be required to confirm the amalgamation. If the Commissioner is satisfied with the process, they will register the new Cooperative and its by-laws.

If the Commissioner declines to approve the merger, the affected Cooperatives can appeal to the Cooperative Tribunal.

### ***What are the Legal Effects of Amalgamation?***

- a) The previous Cooperatives dissolve and their registrations are canceled;
- b) assets and liabilities are transferred to the new cooperative;
- c) members automatically become part of the new cooperative; and
- d) unresolved claims against the old cooperatives can still be pursued against the newly formed cooperatives entity.



### ***What is the procedure for the division of a cooperative?***

**Step 1: (Preliminary Resolution)** - A cooperative (existing cooperative) can split into two or more new cooperatives through a special resolution (preliminary resolution). The resolution must outline how assets and liabilities will be shared and may specify areas of operation and member allocation in the new cooperatives.

**Step 2: (Notification to Stakeholders)** - the resolution must be sent to members, creditors and other affected parties. Members can opt out within two months of notification. Creditors can demand repayment within the same period. Other affected persons can object in writing.

**Step 3: (Special General Meeting)** - After three months, another special general meeting is held to review objections and confirm the resolution.

**Step 4: (Final Confirmation & Commissioner's Role)** - The resolution must pass with a two-thirds majority vote. The Commissioner shall then review and approve the division.

### ***What are the legal effects of the division of a cooperative?***

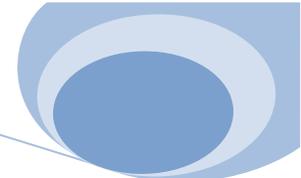
- a) The existing Cooperative is dissolved;
- b) new Cooperatives are registered and inherit the assets & liabilities in accordance with the resolution;
- c) members are allocated to new cooperatives as per the confirmed resolution; and
- d) unsettled claims against the old Cooperative can be pursued against the new ones.

### ***What are the rights and obligations of Cooperatives?***

Clause 69 of the bill mandates cooperatives dealing in agricultural produce to enter binding contracts with members, requiring them to sell their produce through the Cooperative. These contracts may impose penalties for breaches, with unpaid sums becoming debts secured against a member's property and future earnings. Cooperatives also have the right to first charge on goods or produce supplied to members, ensuring debts are repaid before other claims.

Employers who deduct member contributions but fail to remit them are liable for repayment with penalties and the Cooperative Commissioner can take legal action or appoint collection agents. Members' shares and deposits are also protected from external attachment except in cases of bankruptcy or dissolution.

Withdrawal from a Cooperative requires a sixty (60) day notice with provisions for refunding deposits and dividends but members remain liable for existing debts. The estate



of a deceased member inherits their Cooperative obligations and their shares are transferred to nominated beneficiaries or, in the absence of a nominee, the Unclaimed Financial Assets Authority. Finally, Cooperative records serve as primary legal evidence, and officers cannot be compelled to testify in court unless ordered by a tribunal.

***In what manner shall a cooperative's property and funds be utilized?***

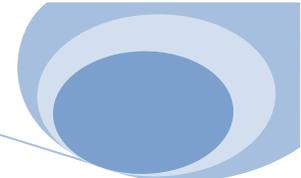
A cooperative's property and funds must only be used for the benefit of the cooperative and its members, in line with the law, regulations, and by-laws. Loans can only be given to members unless the by-laws specifically allow lending to non-members, subject to approval by a general meeting. Similarly, borrowing from non-members is permitted only under conditions outlined in the by-laws or relevant regulations.

Regarding investments, Cooperatives are allowed to invest their funds in shares of other cooperatives, approved trust fund investments, licensed banks, government securities, subsidiaries, and stock of statutory bodies or regulated companies. However, investments in non-core activities are subject to limitations.

If a Cooperative wishes to acquire majority shares in a company, it must first pass a special resolution in a general meeting, obtain approval from the Commissioner, appoint representatives to the company's board, and prepare consolidated financial statements incorporating the operations of all its subsidiaries.

Bonuses must be declared annually, and if reinvested, bonus certificates should be issued in place of cash payments. Dividends and bonuses can only be distributed if audited financial statements confirm the availability of surplus funds. Cooperatives are also required to maintain a reserve fund derived from their annual surplus. A portion of this reserve must be held in liquid assets such as cash or government securities. The reserve fund is indivisible, meaning no individual member can claim a specific share of it. In the event of dissolution, the fund's assets must first be used to settle the Cooperative's liabilities.

Finally, the distribution of a Cooperative's net surplus, including any undistributed funds from previous years, must follow regulations and by-laws. Cooperatives with subsidiaries are required to outline procedures for appointing directors and establishing reporting structures in their by-laws and articles of association. Additionally, the Cabinet Secretary is responsible for developing regulations governing the operations of holding Cooperatives.



### ***Can a Cooperative charge its property?***

Yes, a Cooperative may use its property as security for loans if explicitly allowed by its by-laws and approved by a special resolution in a general meeting. Any charge created must comply with relevant legal provisions and be registered with the Commissioner. The registration can be initiated by any interested party, and if done by someone other than the Cooperative, they have the right to recover registration costs from the Cooperative. Failure to register a charge within thirty days is an offence, making the board of directors and the Chief Executive Officers liable for fines.

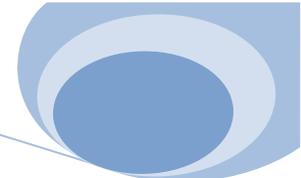
The Commissioner shall maintain a register of charges, including key details such as the property charged, the secured amount, and the beneficiaries. Once registered, the Commissioner shall issue a certificate as proof of compliance. The register shall be accessible to interested parties upon payment of a fee. If a charge is settled, the Commissioner may enter a memorandum of satisfaction in the register. Additionally, if a receiver or manager is appointed for a Cooperative's property, notification must be given to the Commissioner, who will record the appointment and any subsequent changes. Non-compliance with these requirements can result in fines of up to twenty thousand shillings per day.

Every Cooperative will be required to keep copies of charge instruments at its registered office and maintain an internal register detailing all charges, including descriptions of the charged property, amounts secured, and the names of charge beneficiaries. Any officer who knowingly omits required entries commits an offence and may face fines of up to fifty thousand shillings. Creditors and members have the right to inspect these records without a fee, subject to reasonable conditions set by the Cooperative. Denying access can lead to fines of up to twenty thousand shillings per day, imprisonment for up to a year, or both.

### ***What is the procedure of investigating the affairs of a Cooperative?***

The Commissioner has the authority to conduct an inquiry into a Cooperative's operations, finances, and by-laws either on their own initiative or upon request from the County Director for Cooperatives, the Authority, a liquidator, creditors, or at least one-third of the Cooperative's members. If irregularities are found, the Commissioner may dissolve the board of directors and appoint an interim board for up to ninety days. Non-compliance with requests for records can result in fines, suspension, or removal of officers and members.

If an inquiry reveals financial misconduct, such as misapplication or misappropriation of funds, the Commissioner can order the responsible person to repay or restore the money with interest or contribute compensation. This applies even if the act constitutes a separate



criminal offence. Aggrieved parties can appeal to the Cooperative Tribunal within thirty days, and further legal appeals can be made to the High Court.

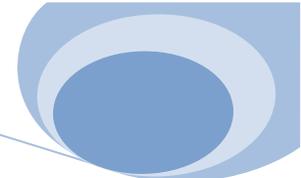
Orders for repayment or contributions made under Section 99 are enforceable as civil debts recoverable through the Cooperative Tribunal. The Commissioner or the County Director for Cooperatives may inspect a Cooperative's books upon a creditor's request, provided the creditor proves a valid outstanding debt and deposits security for inspection costs. The results of such inspections must be communicated to the creditor. The Commissioner has similar oversight over apex Cooperatives and federations, while County Directors oversee primary and secondary Cooperatives.

The Commissioner or County Director may also apportion inquiry or inspection expenses among the Cooperative, its officers, members, or creditors, with their decision being final. Any awarded expenses are enforceable as civil debts. Additionally, the Commissioner and County Directors can conduct impromptu inspections, and findings must be presented to the Cooperative's board for implementation. Officers and members must provide requested financial documents and cooperate with the inquiry. The Commissioner must report findings at a general meeting and provide copies of the report to relevant authorities, such as the County Director or the Sacco Societies Authority, where applicable. If the inquiry confirms governance failures, the Commissioner can take corrective actions against the board.

### ***How is a Cooperative Dissolved?***

The Commissioner for Cooperatives has the authority to initiate an inquiry into a cooperative's affairs, either on their own motion or upon request by relevant authorities, creditors, or members. During the inquiry, the Commissioner may dissolve the board and appoint an interim leadership, impose fines for non-compliance, or suspend officers who fail to provide required records. If fraud, mismanagement, or misconduct is discovered, responsible individuals may be ordered to repay misused funds or compensate the cooperative. Any decisions made during the inquiry can be appealed to the Cooperative Tribunal, with further legal recourse to the High Court. Additionally, cooperatives are subject to routine inspections, particularly if creditors request an audit and provide a deposit to cover expenses.

A cooperative can be dissolved if at least three-fourths of its members request it, an inquiry reveals serious financial or governance issues, or if the relevant authorities recommend its dissolution. Members who oppose the dissolution have up to two months to appeal the decision to the Cooperative Tribunal. Separately, the Commissioner may cancel a



cooperative's registration, effectively dissolving it, if it has fewer than the required number of members, fails to file returns for three years, remains inactive for twelve consecutive months, or deviates from its core purpose. Once registration is canceled, the cooperative ceases to exist as a corporate entity, and liquidation procedures begin.

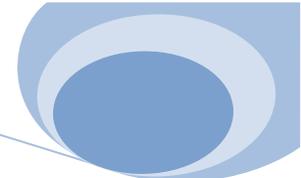
In the event of liquidation, the Commissioner appoints a liquidator to oversee the winding-up process, with broad powers to collect and distribute assets, investigate claims, determine member contributions, sell cooperative property, and file reports. The Commissioner retains supervisory authority over the liquidator, with the power to replace them, limit their actions, or order financial audits. Any disputes arising from the liquidation process can be referred to the Cooperative Tribunal, whose decisions are enforceable like a court order. Additionally, the law outlines offenses related to misconduct before or during liquidation, and the liquidator is required to report any suspected violations to the Commissioner, who may initiate legal action. This framework ensures that cooperatives operate transparently, protecting members' interests while holding mismanagement and misconduct accountable.

### ***What powers does the Cooperative Tribunal have?***

The Cooperative Tribunal is empowered under the Bill to investigate and set aside transactions at undervalue, preferential payments, extortionate transactions, and the validity of floating charges when a cooperative is in liquidation. It further empowers the liquidator and the Cooperative Tribunal to investigate and rectify financial misconduct to protect creditors and members.

If a cooperative enters into a transaction at undervalue, meaning it gives away assets for little or no return, the liquidator can apply to the Cooperative Tribunal to have the transaction set aside, provided it was made within the relevant period before liquidation. Similarly, if a cooperative gives a preference to certain creditors improving their financial standing unfairly, the Tribunal may void the act. A cooperative is presumed to have been improperly influenced if the recipient was closely connected to it unless evidence proves otherwise.

The law also addresses extortionate credit transactions, where a cooperative borrows money on unfair terms. If a transaction involves excessively high payments or violates fair dealing principles, the Commissioner for Cooperatives can apply to the Tribunal to revise or cancel the obligation. The Tribunal has the power to set aside debts, adjust loan terms, or reclaim payments from creditors who took advantage of the cooperative.



### ***How are disputes resolved?***

The Cooperative Tribunal, is a specialized body responsible for resolving disputes related to cooperative societies. It consists of a chairperson, a deputy chairperson, and at least five other members appointed by the Judicial Service Commission (JSC). The chairperson and deputy chairperson must be qualified to serve as judges of the High Court, while the other members must have at least ten years of experience in cooperative management, law, or related fields. Members serve for three years, renewable once, and work on a part-time basis with allowances determined by JSC and the Salaries and Remuneration Commission.

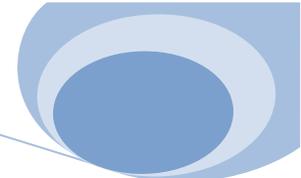
The tribunal has jurisdiction over disputes arising from cooperative business, governance, and financial matters. It handles cases involving cooperatives and their members, third parties such as creditors or employers, the Commissioner or County Director for Cooperatives, and the Sacco Societies Regulatory Authority (SASRA) in licensing and penalty disputes. Additionally, it resolves claims concerning surcharges, fines, refunds, debts, and non-remitted deductions by employers. The Chief Justice is tasked with establishing tribunal registries in counties based on the number of cases filed. The tribunal follows a simplified procedure, is not bound by strict rules of evidence, and holds public hearings unless there are special reasons for confidentiality.

The tribunal has the power to summon witnesses, investigate violations of cooperative laws, and issue enforceable rulings, similar to court decrees. Urgent matters, such as temporary injunctions and interlocutory orders, can be handled by the chairperson or deputy chairperson alone. Decisions are made by majority vote, with the chairperson having a casting vote when necessary. If a tribunal member has a conflict of interest, they must recuse themselves from the case. Appeals from the tribunal go to the High Court within 30 days, with further appeals permitted to the Court of Appeal.

To ensure fairness and efficiency, tribunal members and officers have legal immunity for actions taken in their official capacity, and contempt of the tribunal, such as disrupting proceedings or refusing to testify, is punishable by a fine. The tribunal also encourages alternative dispute resolution (ADR) where appropriate. Parties can choose to represent themselves or hire legal counsel. Overall, the Cooperative Tribunal provides an accessible and expert-driven mechanism for resolving disputes in the cooperative sector, ensuring that financial and governance matters are handled efficiently and justly.

### ***What issues shall be addressed through subsidiary legislation?***

The Cabinet Secretary may publish regulations to govern various aspects of cooperative societies. These Regulations may prescribe application procedures and forms for



cooperative registration, facilitate digital registration linked to county systems, and define revenue-sharing mechanisms between national and county governments.

Additionally, the Regulations may set by-law requirements and procedures, membership conditions, financial obligations, and fundraising mechanisms such as shares and debentures. They may also govern general meetings, board elections, and the roles of key cooperative officers, including the board of directors and supervisory board. Further provisions cover accounting standards, financial reporting, compliance certification, and the resignation or expulsion of members, along with related payments and liabilities.

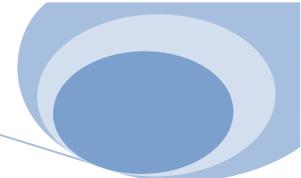
The Regulations may also define record-keeping practices, document inspections, and register maintenance, including provisions for deceased or incapacitated members' interests. They may regulate reserve funds, investments, and reporting requirements to county and national authorities. Additional powers include setting fees for cooperative services, liquidation procedures, and insolvency management, potentially allowing insolvent cooperatives to be placed under administration rather than liquidation under modified Insolvency Act provisions.

Other regulatory areas include the division of commodity cooperatives, formation of cooperative companies, operations of holding cooperatives, and the establishment of professional standards. The Regulations may also address prudential market standards, cooperative information and research funding, collateral guidelines for loans and mortgages, and virtual service protocols such as online meetings. Furthermore, the Cabinet Secretary may ensure Regulations are accessible in local languages, Braille, and sign language for members unfamiliar with English.

Finally, the Regulations may establish and operationalize funds for cooperative management, supervision, and development. They may also define the supervision procedures for primary and secondary cooperatives operating across multiple counties. These provisions aim to create a structured, transparent, and accountable framework for cooperative governance and operations.

### ***What are the transitional provisions in the Bill?***

If enacted, the Bill officially repeals the Co-operative Societies Act, 1997, but ensures continuity by preserving existing cooperatives, their by-laws, registers, and documents, which will now be recognized under the new Act. Any references to the repealed Act will be interpreted in line with the corresponding provisions of this new law. Furthermore, any lawful orders, directions, appointments, and acts under the old law will remain valid unless expressly revoked.



To ensure compliance with the new Act, existing cooperatives and officers must take necessary actions within a specified timeframe. The Commissioner for Cooperatives and County Directors for Cooperatives are empowered to issue circulars and guidance notes to aid in the transition.

Additionally, the Act repeals paragraph 7 of the Public Officer Ethics Regulations, 2003, dissolving the Ethics Commission for Cooperatives within twelve months. Members of this Commission will cease their roles either upon their tenure expiry or within twelve months, whichever is earlier. Any pending or ongoing cases before the Ethics Commission will be transferred to the relevant authorities as provided under the new Act.

Regarding administrative transitions, those already serving as Commissioner for Cooperative Development or County Directors for Cooperatives will retain their positions, provided they were appointed through the Public Service Commission or County Public Service Boards respectively.

County Assemblies may enact cooperative laws for primary and secondary cooperatives within their jurisdictions, but these must align with the new Act. If any county legislation contradicts the national Act, the national law will take precedence as per Article 191(3)(b) of the Constitution.

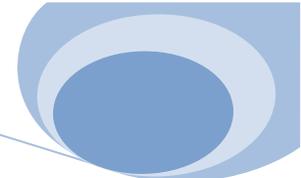
The Cooperative Tribunal established under the repealed Act will continue to operate, allowing the Chairperson and Vice-Chairperson to retain their positions, provided they meet the new Act's qualifications. Any pending cases before the Tribunal will proceed as if they were initiated under the new Act, subject to jurisdictional requirements.

Finally, any notices, orders, and acts lawfully executed under the repealed Act will remain valid until revoked, canceled, or terminated. These transitional provisions ensure a smooth shift from the old legal framework to the new Act, maintaining stability and continuity in cooperative governance.

## **Way Forward**

### ***What next?***

Pursuant to standing order 145 (5) of the Senate Standing Orders, the Standing Committee on Trade, Industrialization and Tourism shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee submits its report to the Senate.



***What is expected of the members of public?***

The members of the public are expected to present their views to the Standing Committee on Trade, Industrialization and Tourism for its consideration.

***Next steps***

The Bill was Read a First Time in the Senate on 12<sup>th</sup> February, 2025. Pursuant to standing order 148(1) of the Senate Standing Orders, the Standing Committee on Trade, Industrialization and Tourism is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee, therefore, by 14<sup>th</sup> March, 2025.

**Any comments on the Bill may be submitted to the Office of the Clerk of the Senate, 1<sup>st</sup> Floor, Main Parliament Buildings, Nairobi, Kenya, through P.O. Box 41842-00100, Nairobi, Kenya or email: [clerk.senate@parliament.go.ke](mailto:clerk.senate@parliament.go.ke) and copied to [tradeindtourismcomm.senate@parliament.go.ke](mailto:tradeindtourismcomm.senate@parliament.go.ke).**

**Note:**

1. The Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill.
2. The Digest does not have any official legal status.