

PARLIAMENT OF KENYA



*Paper laid by
Chairperson D.C on
Trader Industries
Cooperatives
Hon. Rega, MP
Tuesday 3/7/2018*

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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT-SECOND SESSION

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND
COOPERATIVES

REPORT ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2)
BILL, 2018

(NATIONAL ASSEMBLY BILL NO. 13)

Directorate of Committee Services

The National Assembly,

Parliament Buildings, Continental House, Room 402

NAIROBI

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CHAIRPERSON'S FOREWORD

On behalf of the Departmental Committee on Trade, Industry and Cooperatives in pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the The Statute Law (Miscellaneous Amendment) (No. 2) Bill, 2018 (National Assembly Bill No. 13).

This report contains the Committee's proceedings of the consideration of The Statute Law (Miscellaneous Amendment) (No. 2) Bill, 2018 (National Assembly Bill No. 13) that was published on 10th April, 2018 and read a First Time on 18th April, 2018. In processing the Bill, the Committee invited comments from the public by placing an advert in the Daily Nation on Monday 7th May, 2018 pursuant to Article 118 of the Constitution. Stakeholders submitted written memoranda for consideration by the Committee. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill.

In considering the Bill, the Committee noted that the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 (National Assembly Bill No. 13) proposes to amend various Acts of Parliament. However, the Committee on Trade, Industry and Cooperatives is in charge of processing amendments in relation to a total of 3 laws. They are: The Cooperative Societies Act, (Cap. 490), The Sacco Societies Act (No. 14 of 2008) and The Micro and Small Enterprises Act, 2012, (No. 55 of 2012).

The Committee appreciates the assistance provided by the Office of the Speaker and of the Clerk of the National Assembly that enabled it to discharge its functions in considering The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 (National Assembly Bill No. 13).

I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations of the submissions by different stakeholders on the Bill.

Pursuant to provisions of Standing Order 199 (6), and on behalf of the Departmental Committee Trade, Industry and Cooperatives, it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 (National Assembly Bill No. 13).

HON. KANINI KEGA, M.P (CHAIRPERSON)

EXECUTIVE SUMMARY

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 (National Assembly Bill No. 13) propose to amend various Acts of Parliament. However, the Committee on Trade, Industry and Cooperatives is in charge of processing amendments in relation to a total of 3 laws. They are: The Cooperative Societies Act, The Sacco Societies Act and The Micro and Small Enterprises Act.

The Committee placed an advert in the dailies on Monday 7th May, 2018, calling for memoranda from the public on. The Committee received written memoranda from several stakeholders and oral submissions from The Ministry of Industry, Trade and Cooperates. The Committee deliberated on and considered the views of the stakeholders and some were adopted by the committee.

The Committee recommends rejected the proposed amendments to The Cooperatives Societies Act (Cap 490) and The Sacco Societies Act No. 14 of 2008 and the adoption of the proposed amendments to the The Micro and Small Enterprises Act No. 55 of 2012

It is worth noting that even though the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 (National Assembly Bill No. 13) should ideally contain minor and consequential amendments, some of the proposed amendments in the Bill seem to contain many and substantive amendments which may negate the philosophical principle behind the introduction of the “omnibus” Bill.

1.0 INTRODUCTION

1.1 Establishment of the Committee

The Departmental Committee on Trade, Industry and Cooperatives is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may be deemed necessary, and as may be referred to the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.2 Mandate of the Committee

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee:-

Trade, securities exchange, consumer protection, pricing policies, commerce, industrialization including special economic zones, enterprise promotion and development including small and medium-size enterprises, intellectual property, industrial standards, anti-counterfeit policies and co-operatives development.

In executing its mandate, the Committee oversees the Ministry of Industry, Trade and Cooperatives.

1.3 Committee Membership

The Committee on Trade, Industry and Cooperatives was constituted by the House on Thursday 14th December, 2017 and comprises of the following Members:-

Chairperson	Hon. Kanini Kega, MP
Vice Chairperson	Hon. Cornelly Serem, MP
Members	Hon. Alexander Kimutai Kigen Kosgey, MP
	Hon. Alois Musa Lentoimaga, MP
	Hon. Anab Mohamed Gure, MP
	Hon. Andrew Mwadime, MP
	Hon. Bunyasi John Sakwa, MP
	Hon. Daniel Maanzo, MP
	Hon. Wanyonyi Ferdinand, MP
	Hon. James Mukwe, MP
	Hon. Jones Mlolwa, MP
	Hon. Kipruto Moi, MP
	Hon. Murungi Kathuri, MP
	Hon. Gichimu Robert, MP
	Hon. Kimani Patrick Wainaina Jungle, MP
	Hon. Korir Generali Nixon Kiprotich, MP
	Hon. Nduati Joseph Ngugi, MP
	Hon. Wachira Rahab Mukami, MP
	Hon. (Dr.) Wilberforce Oundo, Phd, MP

1.4 Committee Secretariat

Mr. Erick Nyambati	-	Clerk Assistant III	(Lead Clerk)
Ms. Nuri Kitel Nataan	-	Clerk Assistant III	
Mr. Peter Mwaura	-	Legal Counsel I	
Mr. Chelang'a Rotich Maiyo	-	Research Officer III	
Mr. Yaqub Ahmed	-	Media Relation Officer III	

2.0 BACKGROUND INFORMATION

The Statute Law (Miscellaneous Amendments) (No.2) Bill, 2018 (National Assembly Bill No. 13) was published on 10th April 2018, and read a first time on 18th April, 2018, and thereafter committed to various Departmental Committees for consideration pursuant to Standing Order 127.

The Bill proposes several amendments to various Acts of Parliament. The Departmental Committee on Trade, Industry and Co-operatives considered the proposed amendments to The Cooperatives Societies Act (Cap 490), The Sacco Societies Act No. 14 of 2008 and The Micro and Small Enterprises Act No. 55 of 2012.

The Bill proposes to amend; The Co-operatives Societies Act, (Cap. 490) to create a new form of members of co-operative societies by creating a new class of members targeted towards social impact investments. The Bill seeks to safeguard member rights in the democratic choice in co-operative societies by giving the Cabinet Secretary supervisory powers to prevent oppression of members by creation of such new classes. It also seeks to limit the voting powers of social impact members to specific resolutions; maintenance and operation of the proposed Special Fund, investment committee, remuneration of the special fund trustee and similar affairs, The Sacco Societies Act, (No. 14 of 2008) to create an exception to the restricted investments that a Sacco society is permitted to make. The Bill seeks to provide for the establishment of a Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible for receiving and investing g the Special Fund, and further amend The Micro and Small Enterprises Act to create a conducive environment for investors.

3.0 PUBLIC PARTICIPATION

Following the call for memoranda from the public on Monday 7th May, 2018, the Committee received written memoranda from The Ministry of Industry, Trade and Cooperatives, The Council of Governors, Kenya Union of Sacco and Cooperative Alliance of Kenya. The Committee deliberated on and considered the views of the stakeholders as follows;-

3.1 Cooperative Societies Act, (Cap. 490)

On amendments in the Cooperative Societies Act, (Cap. 490), stakeholders submitted as follows, that;-

3.1.1 Ministry of Industry Trade and Cooperatives

The Ministry opposed the proposed creation of a class of ‘social impact members’ on account of the fact that, the proposed amendment negates the philosophy, principles and values of the cooperative movement.

Further, exemption of the said members from payment of subscription fees violates principle number three of the cooperative movement on equality of members.

Further, that the approval of the resolution creating a category ‘special class members’ flies in the face of section 3 of the Cooperative Societies Act. The Ministry was of the view that the role of the Cabinet Secretary is limited to providing services which may be required for the efficient operation of cooperatives and the administration of the provisions of the Act.

In sum, the Ministry submitted that cooperatives are by nature an association of persons, not capital and that any attempts to provide otherwise ought not be entertained.

3.1.2 Council of Governors

The Council submitted that an inter-governmental technical committee should be formed to review the entire principal Act since it was formed prior to the formation of county governments.

The Council further submitted that the Cooperatives Act does not take cognizance of counties yet the Sacco Societies Act makes reference to the Sacco Act on several occasions.

3.1.3 KUSCCO

KUSCCO held the view that the proposed definition was unnecessary and that it does not fit within the context of cooperative societies as defined by the International Cooperative Alliance (ICA).

The union was opposed to the creation of a new class of members on the ground that the said members will operate outside the primary rules and principles of cooperative societies.

KUSCCO further submitted that the proposed amendments violate the International cooperative principles on open voluntary membership and democratic control.

Further, that the proposed amendment was a violation of international principle number three on economic member participation.

KUSCCO was opposed to the proposed amendment on the ground that approval of resolutions passed at the annual general meeting is a function of the Commissioner of cooperatives whilst the function of the Cabinet Secretary is limited to handling appeals emanating from the decisions of the Commissioner of Cooperatives.

Further, that the proposed amendment was an attempt to create a Board within a Board.

The union also opposed the amendment on the ground if carried as currently drafted the special class members will only champion their interests.

The union opposed the amendment on the ground that the provision greatly limits the rights of ordinary members and accords preferential treatment to the special class members.

In sum, KUSCCO was of the view that the proposed amendments were discriminatory.

3.1.4 Cooperative Alliance of Kenya

The Cooperative Alliance of Kenya submitted that cooperative principles require that members of a cooperative rank equally. No member of a cooperative movement should be accorded preferential treatment above other members.

Further, that the proposed amendment was both exclusionary and discriminatory as it seeks to make the rights of ordinary members subject to the rights of the proposed Special Class Members.

3.2 The Sacco Societies Act, 2008 (No. 14 of 2008)

On amendments in The Sacco Societies Act, 2008 (No. 14 of 2008), stakeholders submitted as follows, that;-

3.2.1 Ministry of Industry Trade and Cooperatives

The Ministry submitted that it was opposed the proposed creation of a Special Fund since the same exists in the Cooperatives Act section 90A “Cooperative Fund”

The Ministry was further opposed to the creation of an Investment Fund since this would be tantamount to creating a parallel governance structure outside section 28 which provides that the Board shall be the governing body of the society.

That the proposed Investment Committee is an amorphous body since it neither a Committee of the Board nor management.

Creation of the proposed Special Fund Trustee will run parallel to the existing structure under the Sacco Societies Regulatory Authority (SASRA).

The Ministry is in the process of under taking wholesome review of the National Cooperative Policy. The exercise will result in a more comprehensive, guided and informed review of the cooperatives laws proposed for amendment.

3.2.2 KUSCCO

The union submitted that—

Section 2

- (a) The proposed definition was unnecessary; and
- (b) The proposed definition violates the cooperative principle which is the ground norm of the cooperative sector.

Section 17

submitted that—

- (a) It was opposed to the proposed creation of a new class of members on the ground that as currently structure, the said members stand to operate outside the core principles of the cooperative movement.

Section 19

submitted that—

- (a) It was opposed to the proposed amendment on the ground if carried, the special class members will only champion their interests thus defeating the principle of bipartisanship in the cooperative sector.

Section 21

submitted that—

- (a) It was opposed to this amendment on the ground that the provision limits the rights of ordinary members and accords preferential treatment to the special class members.

3.2.3 Co-operative Alliance of Kenya

Submitted that the proposed amendments were out rightly discriminatory.

Further that the proposed amendment violate the basic cooperative principles including the principle on the economic participation of members

4.0 CONSIDERATION OF THE BILL

The Committee deliberated on the Bill as follows—

CLAUSE BY CLAUSE ANALYSIS

The Committee during its fourteenth Sitting analyzed the proposed amendments clause by clause and made its recommendations as follows—

4.1 Cooperatives Societies Act, (Cap. 490)

Section 2

Insert the following new definition in proper alphabetical sequence-

“social impact member” means a member belonging to a class established under section 17(2);

Committee Recommendation

THAT the proposed amendment to section 2 of the Cooperative Societies Act, be deleted.

Justification

The provision sought to be introduced through the proposed amendment violates the cooperative principle on equality of members. The proposed amendment if carried will segregate the sector by according preferential treatment to the proposed social impact members.

Section 17 Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1) -

(2) The annual general meeting of a co-operative society may resolve by ordinary resolution to create a class of social impact members of the co-operative society.

(3) The social impact members under subsection (2) shall be exempted from payment to the society in respect of membership of the society.

(4) A resolution of the annual general meeting of a co-operative society under subsection (2) shall be subject to the approval of the Cabinet Secretary.

Committee Recommendation

THAT the proposed amendment to section 17 of the Cooperative Societies Act, be deleted.

Justification

The proposed amendment seeks to make provision for the passing of a resolution creating a class of social impact members at the Annual General Meeting of a cooperative society. The proposed amendment violates the equality principle of the cooperative movement.

Further, the proposed exemption of social impact members from payment of membership fee is as discriminatory as it is unfair.

Section 19

Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1)—

(2) Notwithstanding subsection (1), social impact members shall only vote on resolutions relating to the special fund, the investment committee, the special fund trustee and the matters incidental thereto.

(3) The members of the society, other than social impact members shall not be entitled to vote on matters reserved for the social impact members.

Committee Recommendation

THAT, the proposed amendment to section 19 of the Cooperative Societies Act, be deleted.

Justification

The proposed amendment seeks to accord preferential treatment to social impact members by requiring them to vote only on resolutions relating to the special fund, the investment committee, the special fund trustee and matters incidental thereto.

Section 21 (a)

Insert the expression “subject to section 19(2) and 19(3) of this Act,” at the beginning of the paragraph.

Committee Recommendation

THAT, the proposed amendment to section 21(a) of the Cooperative Societies Act be deleted.

Justification

The proposed amendment seeks to amend a non-existent section. The principal Act contain a any provision numbered section 21 (a).

4.2 Sacco Societies Act, 2008 (No. 14 of 2008)

Section 2

Insert the following new definitions in proper alphabetical sequence -

“Advisory Board” the Advisory Board constituted under section 47B(4)(c);

“eligible person” means a member of the Sacco society in which the relevant Special Fund has been established who satisfies the criteria set out in this Act, the regulations and the by-laws of the Sacco Society;

“Investment Committee” means a committee established under section 47B;

“social impact member” has the meaning assigned to it in the Co-operative Societies Act;

“Special Fund” means a fund established under section 47A;

“Special Fund Investment Policy” means the policy formulated by the Investment Committee to govern investments from the Special Fund; and

“Special Fund Trustee” means the trustee of the Special Fund constituted under section 47C.

Committee Recommendation

THAT the proposed amendment to section 2 of the Sacco Societies Act, be deleted.

Justification

The proposed amendment seeks to introduce new definitions whose primary objective is to provide for the creation of structures which are contrary to the cooperative principles and the existing provisions of the principal Act. Further, it is noteworthy that the proposed amendments particularly violate principle number three of the cooperative principles on equality of contributions among members.

Further, there is no inter-play between existing structures in the Sacco sector and the proposed amendments.

Section 38

Insert the following expression at the beginning of the subsection -

“Subject to Part IVA of the Act,”

Recommendation

THAT the proposed amendment to section 38(1) of the Sacco Societies Act, be deleted.

Justification

The proposed amendment seeks to create a Special Fund under the principal Act. The special fund proposed to be created under the proposed new Part IVA does not synchronize with existing structures in the Sacco movement. Therefore, the failure to synchronize with existing structures in the Sacco movement renders the proposed Special Fund inoperable under the prevailing Sacco societies regime.

New Insert the following parts immediately after section 47—

PART IVA - THE SPECIAL FUND

47A. (1) A Sacco society may establish a fund to be known as the Special Fund.

(2) There shall be paid into the Special Fund monies received from the social impact members.

(3) The Investment Committee shall determine the amount of contribution into the Special Fund by social impact members.

(4) The Special Fund shall be applied towards -

- (a) providing start-up and early stage financing to an eligible person with respect to viable innovations as assessed by the Investment Committee;
- (b) the remuneration of the Special Fund Trustee and the members of the Investment Committee; and
- (c) taxes, costs and other charges which may accrue as a result of operation of the Special Fund.

(5) Any investments from the Special Fund shall be in accordance with the Special Fund Investment Policy.

(6) A document involving a function under subsection (4) shall be validly executed if signed by the Special Fund Trustee, and a member of the Investment Committee who is authorized by the Investment Committee, and any further requirement stipulated in the by-laws of the Sacco society.

(7) All income from the Special Fund shall be distributed by the Special Fund trustee as approved by the Investment Committee among the social impact members pro rata their contribution to the Special Fund.

(8) The Sacco society shall have a first charge over things or articles produced with the aid of money lent to an eligible person from the Special Fund

(9) The Sacco society shall have a first charge over the share or interest in the capital and on the deposits of an eligible person, and upon any dividend, bonus or accumulated funds payable to an eligible person in respect of any debt due from such person to the Sacco society, and the Sacco society may set off any sum credited or payable to such eligible person towards the payment of any such debt

(10) A Sacco society that establishes a Special Fund shall make such provisions under its by-laws for the better carrying out of this section.

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act, be deleted.

Justification

The Special Fund proposed to be created under the proposed new Part IVA violates existing structures in the cooperative movement. Establishing the Fund would be tantamount to creating a parallel governance structure outside the provisions of the Act. The Act provide that the Board shall be the governing body of the society.

Additionally, the proposed restriction of the surplus funds that emanate from the Special Fund to Special Impact Members only is out rightly discriminatory.

Further, the Fund has no relation to structures currently existing under the principal Act.

PART IVB - THE INVESTMENT COMMITTEE

47B. (1) A Sacco society with a Special Fund shall establish an Investment Committee.

(2) The Investment Committee shall comprise of four members appointed by the social impact members.

(3) A person is qualified for appointment to the Investment Committee if that person—

(a) holds a degree in economics from a university recognized in Kenya;

(b) holds a degree in finance from a university recognized in Kenya;

(c) holds a degree in law from a university recognized in Kenya; or

(d) holds a degree in the field of operation in which the Sacco society predominantly operates from a university recognized in Kenya.

(4) The members of the Investment Committee shall have at least six years professional experience in their above respective fields.

(5) The members of the Investment Committee shall not be members of the relevant Sacco society.

(6) The functions of the Investment Committee shall include -

(a) considering and approving applications by eligible persons for financing from the Special Fund;

(b) formulating the Special Fund Investment Policy;

(c) appointing such number of members to the Advisory Board as it deems necessary to provide relevant technical input, including: project management, legal and general advisory services to the eligible person in relation to a project financed with funds from the Special Fund;

(d) to determine the terms of reimbursement of all reasonable costs incurred by the Advisory Board; and

(e) to determine the provisions to be made for capital and recurrent expenditure for the operation of the Special Fund.

47C. The Special Fund Investment Policy shall stipulate investment criteria to be applied by the investment committee including—

- (a) the minimum and maximum investment amounts in any single eligible person,
- (b) the investment rules and the investment process including minimum commitment and investment periods and procedures for draw down,
- (c) exposure limits to individual eligible person,
- (d) the preferred mode of divestiture from the eligible person;
- (e) disclose a clear strategy for the diversification of investments in the eligible person; and
- (f) criteria for determining whether an investment shall be by way of debt or equity

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act be deleted

Justification

The proposed Investment Committee is an amorphous body because it is neither a Committee of the Board nor management. The proposed Investment Committee seeks to serve partisan interests this is discriminatory.

PART IVC - THE SPECIAL FUND TRUSTEE

47D. (1) A Sacco society with a Special Fund shall have a Special Fund Trustee

(2) A Special Fund Trustee shall be appointed by the social impact members on such terms the social impact members shall deem necessary

(3) A Special Fund Trustee shall -

- (a) be a body corporate having a paid-up capital of not less than five million Kenya Shillings,
- (b) be empowered by its memorandum and articles of association to undertake trusts;
- (c) not be a member of the relevant Sacco society, and

(d) have a demonstrable track record of at least three years as a trustee or in the alternative, one or more of its directors or partners shall have a demonstrable track record in the management of a trust for a period of at least three years

(4) The functions of the Special Fund Trustee shall include -

- (a) taking into custody the special fund, any income accruing to it and any security furnished pursuant to any investment made from the Special Fund and holding such funds, income or security for the benefit of social impact members,
- (b) managing, controlling and administering the Special Fund in such manner and for such purpose as best promotes the objects for which the Special Fund is established;
- (c) investing any monies of the Special Fund not immediately required for the purposes for which the Special Fund is established,
- (d) keeping proper books and records of account with respect to income, expenditure, liabilities and assets of the Special Fund,
- (e) collecting and maintaining the income of social impact members including maintenance of individual membership records;
- (f) providing members with their individual financial records; and
- (g) such other functions as may be allocated to it by the by-laws of the Sacco society.

(5) The Special Fund Trustee shall be remunerated for their service from the Special Fund

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act be deleted.

The proposed creation of a Special Fund Trustee contradicts the existing structure under the Sacco Societies Regulatory Authority (SASRA) Therefore, if passed, the provision is likely to occasion needless operational conflicts in the sector.

4.3 Micro and Small Enterprises Act, 2012 (No. 55 of 2012)

Section 4

- (1) Insert the word “associations” immediately after the word “Enterprises”.
- (2) Insert the word “associations” immediately after the word “Enterprises”.
- (3) Insert the words “Associations and Umbrella Organizations” immediately after the word “Enterprises”.

Committee Recommendation

Agreed to

Section 29 Insert the following subsection immediately after subsection (2) -

- (4) The Authority shall have its headquarters in Nairobi and may establish such other offices in the Counties as it deems appropriate.

Committee Recommendation

Agreed to

Section 31 Insert the following paragraphs immediately after paragraph (k) -

- (l) to undertake accreditation of business development service providers; and
- (m) to perform any other function necessary for the implementation of this Act or other written law.

Committee Recommendation

Agreed to

Section 48 Insert the words “County Governments” immediately after the word “agencies”.

Committee Recommendation

Agreed to

Section 49 Insert the words “County Governments” immediately after the word “agencies”.

Committee Recommendation

Agreed to

Section 51

- (5) Insert the following paragraph immediately after paragraph (d) –
(da) such monies as may be appropriated by Parliament.
- (6) Delete the words “treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund” and substitute therefor the expression “accordance with the Public Finance Management Act, 2012”.

Committee Recommendation

Agreed to

Section 53

- (1) Delete the expressions “Community-based organization” and “non-governmental organizations”.
- (4) Delete and substitute therefor the following subsection-
 - (4) The Fund shall be managed in accordance with the Public Finance Management Act, 2012.

Committee Recommendation

Agreed to

5.0 COMMITTEE OBSERVATIONS

The Committee made the following observations on the proposed Bill;

1. The Cooperative Societies Act,

The Principal Act provides for the constitution, registration and regulation of the cooperatives in the country and related policies. The proposed amendment seeks to introduce a new type of membership of the cooperative societies called social impact membership, with the approval of the Cabinet Secretary. The purpose of this is to make use of the established legal framework of the cooperatives to create a system of social impact investment. However, the social impact member will not pay membership fees and voting rights will be limited to resolutions regarding the special fund, investment committee and the special fund trustee.

2. The Sacco Societies Act

This Act provides for licensing, regulation, supervision and promotion of the Sacco Societies in the country and also establishment of the Sacco Societies Regulatory Authority.

The main amendment here is the provision for a possible establishment of a special fund into which social impact members will contribute money for social impact investment that is meant to be borrowed by eligible persons for the purpose of funding their start-ups and viable innovations.

In particular, the amendment provides for the establishment of a Special Fund, Investment Committee, Advisory Board of the Investment Committee, Special Fund Trustee which is a corporate administrator of the special fund and the eligible persons within the specific Sacco Society where the special fund is established.

It is worth noting that the proposed new form of membership of the Cooperative Societies and the elaborate framework of operating the new arrangement intends to make use of the already established legal framework and success of the cooperatives movement in Kenya. Nevertheless, it is evident that there is no provision as to the benefits likely to accrue to the Sacco Society that may establish such special fund since the beneficiaries seem to be solely, the social impact members. In addition, there is no provision as to the contingent liabilities that may arise on account of establishing and operating this new system within the Saccos.

3. The Micro & Small Enterprises Act.

The Micro & Small Enterprises Act provides for the promotion, development and regulation of the Micro and Small Enterprises in the country and also establishment of the Micro & Small Enterprises Authority.

The main thrusts of the proposed amendment are two-fold: first, there is the introduction of an additional function to the Micro and Small Enterprises Authority which is to undertake accreditation of business development service providers. The second one relates to the

introduction of new source of funding to the Micro and Small Enterprises Fund as Parliamentary Appropriation. Since part of the payouts from the fund is meant to fund SMEs, then this latter proposal may be considered alongside the fact that funding for SMEs may be achieved through the already existing Kenya Industrial Estates (KIE) mechanism or the now proposed social fund under the SACCO Societies legislation.

6.0 COMMITTEE RECOMMENDATION

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee recommends the Bill be approved and passed by the House as follows—

The Cooperative Societies Act, (Cap. 490)

THAT, the amendments proposed to the Cooperative Societies Act, (Cap. 490) be deleted.

Justification

The Committee proposed that the amendments proposed to the Act be deleted for the following reasons—

1. The proposed exemption of the “social impact members” from payment of subscription fees violates principle number three of the cooperative movement on equality of members. The principle provides that members of a cooperative shall rank equally.
2. The proposed amendments further violate the cooperative principle on open and democratic control of a cooperative entity by its members.
3. The proposed amendment that a resolution to create a class of “social impact members” passed a by members at the annual general meeting should be approved by the Cabinet Secretary was a violation of the provisions of the principal Act and the pecking order within the cooperative. The structures in the sector require that the Commissioner of Cooperatives approves resolutions of the annual general meeting whereas the Cabinet Secretary handles appeals which emanate from resolutions approved by the Commissioner.
4. Cooperatives are by nature and association of persons, not capital. The proposed amendments, if carried are likely to overhaul this globally recognized practice thereby converting cooperatives to associations of capital.
5. The proposed definition of the term “social impact member” is unnecessary as it does not fit within the context of cooperative societies as defined by the International Cooperative Alliance (ICA).
6. The proposed amendments were structured in such a manner as to create an avenue for the proposed social impact members to operate outside the primary rules of cooperative societies. If carried, the amendment will accord the proposed “social impact members” an undue advantage over ordinary members.

7. The proposed amendments were exclusionary and discriminatory they sought to subject the cooperative rights of ordinary members to the rights of the proposed Special Class Members.
8. The Ministry submitted that it was not consulted on account of the proposed amendments and further submitted, that the proposed amendments negate the philosophy, principles and values of the cooperative movement.
1. Finally, the Ministry submitted that efforts were underway to initiate wholesome review of the National Cooperative Policy. The outcome of the exercise will result a more comprehensive, informed and guided review of the respective Cooperative Societies Act (Cap. 490)

The Sacco Societies Act, No. 14 of 2008

THAT, the amendments proposed to the Sacco Societies Act, No. 14 of 2008 be deleted.

Justification.

The Committee proposed that the amendments proposed to the Act be deleted for the following reasons—

2. The International Cooperative Alliance defines a cooperative society as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise. The proposed amendments fail to take cognizance provisions of the International Cooperative Alliance and the foundations upon which the sector is grounded.
3. The creation of the proposed Investment Fund is tantamount to creating a parallel governance structure outside the provisions of the Act. The Act provides that the Board shall be the governing body of the society.
4. The Investment Committee proposed to be created under the Bill is an amorphous body because it is neither a Committee of the Board nor part of the management team. Further, the proposed Investment Committee lacks interplay with the structures already existing within the Sacco societies movement.
5. Additionally, structures akin to the proposed Investment Fund exist in the relevant legislations, namely the Sacco Societies Act, No. 14 of 2008 and the Cooperatives

Societies Act (Cap. 490). Particularly, section 90A of the Cooperatives Act establishes the Cooperatives Development Fund. The Fund is established for the general purpose of promoting the overall interests of the Cooperative sector in Kenya.

6. In as much as the amendments may be viewed as providing Saccos with an additional source of income, the idea fallacious because Sacco have the option of accessing external capital from banks or capital venture companies.
7. Further, the operations of the proposed Special Fund Trustee will run parallel to the existing structures under the Sacco movement, particularly the Sacco Societies Regulatory Authority (SASRA).
8. The restriction of the surplus which emanates from the Special Fund to Special Impact Members only is out rightly discriminatory.
9. The proposed amendment to grant the investment committee the power to develop a Special Fund Investment Policy is susceptible to abuse to the disadvantage of Saccos and their members. In that, the investment committee may opt to invest funds in spheres where the Sacco and its members have no interest or control.
10. The core objective of the entities proposed to be created and subsequently aligned to the Special Fund is to further partisan interests. For instance, the proposed amendments provide that the Special Fund Trustee shall be remunerated from the Special Fund but does not provide a mechanism for setting and review of the remuneration.
11. Finally, the Ministry of Industry, Trade and Cooperatives submitted that it was in the process of under taking wholesome review of the National Cooperative Policy. The outcome of the review exercise will result a more comprehensive, informed and guided review of the Sacco Societies Act, No. 14 of 2008.

The Micro and Small Enterprises Act, No. 55 of 2012

THAT, the amendments to the Micro and Small Enterprises Act be adopted as proposed.

7.0 DEPARTMENTAL COMMITTEE ON SPORTS CULTURE AND TOURISM

The Departmental Committee on Sports Culture and Tourism considered the proposed amendments to The Betting, Lotteries and Gaming Act (Cap 131) contained in The Statute Law (Miscellaneous Amendments) (No.2), Bill 2018 and made the following recommendations, that:-

General Recommendations:

1. The Betting, Gaming and Lotteries Act should to be rationally amended, there is need for a comprehensive review of the existing legislation with regard to the provisions of the Fourth Schedule of the Constitution on the shared function of betting and lotteries between National Government and counties;
2. That the provisions on penalty sections in the existing legislation need to be revised to consolidate all the fort eight (48) offences under a common regulatory framework to ensure that all elements of the industry are properly regulated and to curb unfair competition among the various platforms within the industry and harmonized penalties;
3. There is need to clearly anchor different tax regimes for different form of gaming and lotteries in law since their operations are different;
4. The Committee recommends that specific regulations for online gaming platforms be developed, to safeguard the public against fraud, while keeping in check avenues for abuse on those platforms;
5. Revenue generated from the betting, lotteries and gaming industry should be well channeled to supporting sports development in the country.

The Specific recommendations on the Statute Law Miscellaneous (Amendments) Bill 2018 on Betting Gaming and Lotteries Act ('the Act')

Based on the above general recommendations the committee made the following recommendations on the proposals under the Statute Law (Miscellaneous Amendments) (No. 2) Bill 2018—

(i) Section 2 of the Act

- (a) by inserting the following new definitions in the proposed amendment to section 2 in its proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to betting, lotteries and gaming.”;

“lottery turnover” means the total lottery gross turn over less amounts paid to charities, prizes and discounts”;

- (b) by deleting the proposed definition of “Minister”;
- (ii) **Section 3 of the Act:** by deleting the proposed amendment to section 3(2A) and by deleting the proposed amendments to section 3(10),
 - (iii) **Section 5 of the Act:** by deleting the proposed amendment to section 5(3) and by deleting the proposed amendment to section 5(4),
 - (iv) **Section 6 of the Act:** by deleting the proposed amendment to section 6(1),
 - (v) **Section 8 of the Act:** by deleting the proposed amendment to section 8(3),
 - (vi) **Section 10 of the Act:** by deleting the proposed amendment to section 10(2);
 - (vii) **Section 11 of the Act** by deleting the proposed amendment to section 11(4),
 - (viii) **Section 29A of the Act:** by deleting the proposed amendment to section 29A(1);
 - (ix) **Section 36 of the Act:** by deleting the proposed amendment to section 36(1)(a) and (b) and 36(2),
 - (x) **Section 44A of the Act:** by deleting the proposed amendment to section 44A(1),
 - (xi) **Section 53 of the Act:** by deleting the proposed amendment to section 53(1);
 - (xii) **Section 54 of the Act:** by deleting the proposed amendment to section 54(2)(b),
 - (xiii) **Section 55 of the Act:** by deleting the proposed amendment to section 55(1),
 - (xiv) **Section 55A of the Act:** by deleting the proposed amendment to section 55A(1)
 - (xv) **Section 59B of the Act** by deleting the proposed amendment to section 59B(1),
 - (xvi) **Section 59 of the Act** by deleting the proposed amendment to section 59(2), and
 - (xvii) **Section 61 of the Act:** by deleting the proposed amendment to section 61

8.0 DEPARTMENTAL COMMITTEE ON LANDS

The Departmental Committee on Lands considered the proposed amendments to The Urban Areas and Cities Act No 13 of 2011 contained in The Statute Law (Miscellaneous Amendments) (No 2), Bill 2018 and the following recommendation, that-

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee approved the proposed amendments to the Urban Areas and Cities Act, 2011 as proposed in the Bill.

9.0 THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

The Departmental Committee on Labour and Social Welfare considered the proposed amendments to The National Employment Authority Act contained in The Statute Law (Miscellaneous Amendments) (No.2), Bill 2018 and made the following recommendations, that:-

The Committee approved the proposed amendments to The National Employment Authority Act as proposed in the Bill.

10.0 THE DEPARTMENTAL COMMITTEE ON TRANSPORT, PUBLIC WORKS AND HOUSING

The Departmental Committee on Transport, Public Works and Housing considered the proposed amendments to The Urban Area and Cities Act, No. 13 of 2011 contained in The Statute Law (Miscellaneous Amendments) (No.2), Bill 2018 and made the following recommendations, that:-

The National Assembly adopts the amendment to the Urban Area and Cities Act, No. 13 of 2011 as proposed in the Bill.

11.0 THE DEPARTMENTAL COMMITTEE ON HEALTH

The Committee having considered the Bill and the submissions from the stakeholders makes the following recommendations;

- i. The proposed amendments on the Title to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.
- ii. The proposed amendments on the long title to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.
- iii. The proposed amendments on Section 1 to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.
- iv. The proposed amendments on Section 2 to;

Delete the word “Hospital” appearing in the definition of the term “Board” and substitute therefor the word “Health”.

Delete the word “Hospital” appearing in the definition of the term “card” and substitute therefor the word “Health”.

Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”.

Delete the definition of the word “Minister” and substitute therefor the following new definition- “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health be ADOPTED.

v. That a further amendment be inserted in section 2 by inserting the following new definition in proper alphabetic sequence- “Ministry” means the ministry for the time being responsible for matters relating to health.

vi. The proposed amendments to Section 3 (1) to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.

vii. The proposed amendment to section 3(2)(a) be further amended by deleting subparagraph (ii) of paragraph (a).

Justification: An introduction of the requirement of the employer to match the contribution of the employee may be abrupt and cause an unforeseen economic burden on the part of the employer. Moreover Treasury had submitted before the House proposals to levy an additional tax of 2% on cellular money transfer to fund Universal Health Coverage.

viii. The proposed amendments to Section 4(1) to Delete the word “Hospital” and substitute therefor the word “Health” be ADOPTED.

ix. The proposed amendment to section 4(1)(e) be deleted and substituted therefor the following new paragraph- “(e) the Director General for health or his or her representative”

Justification: this is to align the Act with the recently enacted Health Act No. 21 of 2017, which establishes the office of the Director General for health, who shall be the technical advisor to the Government on all matters relating to health within the health sector.

x. Proposed amendments to Sections 4 (1) (f) (g), (h), (i) and (j) be DROPPED.

Justification: The Committee finds the retainment of these stakeholders in the board as good for representation, diversity and oversight. These representatives represent those who majorly fund the board. The proposed amendments also contradicts Section 5 (1)(e) of the Act which provides that one of the objects and functions of the Board is to protect the interests of contributors of the fund. Moreover, having a Board whose majority of members are appointed by the Cabinet Secretary would weaken the independence and oversight mandate of the Board.

xi. Proposed insertion of a new Section 4 (1) (k) reading “one person nominated by the Council of Governors with knowledge and experience relating to health” be ADOPTED.

xii. The proposed amendments to Section 5(1) to Insert the following new paragraph immediately after paragraph (f)- “(fa) to administer employee benefits on behalf of the national government, the county governments and employers in respect of their employees” be further

amended by inserting the words “as provided under section 22(3) of this Act” immediately after the word “benefits”.

Justification: It is important to expressly state in clear terms that the benefits provided for under the new paragraph are those contemplated under section 22(3) of the Act, so as to avoid ambiguity.

xiii. The proposed amendment to section 10 be further amended to provide that the Chief Executive Officer shall serve for a term of three years renewable for one further term of three years.

Justification: Leaving it upon the Board to prescribe the term of the Chief Executive Officer may lead to unforeseen abuse. It is therefore imperative to set a clear tenure of the Chief Executive Officer expressly in the Act.

xiv. The proposed amendment to section 15(2) be further amended by DELETING the proposed new paragraph (c).

Justification: This amendment lacks consideration of cost implications to employers and would therefore impose unforeseen financial burden on employers. In mitigation, Treasury submitted before the House that it would levy an additional 2% tax on cellular money transfers to fund Universal Health Coverage.

xv. The proposed Deletion of Section 16 (3) (c) be ADOPTED.

xvi. The proposed amendments to Section 16 (4) by deleting and substituting thereof with the following subsection – “(4) No sum deducted from the salary or other remuneration of an employee by his employer in accordance with the provisions of this Act shall be recoverable from the employer by that employee, after it has been remitted to the Fund” be ADOPTED.

xvii. The proposed Deletion of Section 21 (5) (a) be ADOPTED.

Further, that section 21 (1) be amended by deleting the word “Hospital” and substituting therefor the word “Health”.

Justification: This amendment serves to bring this section in line with the amendments proposed in the Bill, so as to change the name of the card from the National Hospital Insurance Card to the National Health Insurance Card.

xviii. The proposed amendment of section 22(3) be ADOPTED.

Further, section 22 be amended in subsection (3) by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”.

Justification: This amendment serves to eliminate the word “Minister” which is no longer in use and substitute it with the constitutionally recognized term of “Cabinet Secretary”.

xix The proposed amendments to Section 23 (1) be further amended by deleting the word “maintain” and substituting therefor the words “cause to be kept”.

Justification: The amendment is necessary as the function of keeping and maintaining registers is performed by the officers of the Board on behalf of the Board

xx. The proposed Deletion of Section 23 (2) be ADOPTED

xxi The proposed Deletion of Section 24 be ADOPTED.

xxii The proposed Deletion of Section 25 (2) (b) and (c) be ADOPTED.

xxiii The proposed deletion of section 25(3) be ADOPTED

Further that the deleted section 25(3) be substituted by a new subsection creating the offence of printing or manufacturing a fake or illegal NHIF card as below-

“(3) Any person who-

(a) prints, manufactures or issues the National Health Insurance cards in circumstances other than as contemplated in this Act;

(b) misuses the card for purposes not contemplated in this Act,

(c) fraudulently obtains or uses a card to obtain benefits, or

(d) misrepresents himself or herself in relation to the cards,

commits an offence and is liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both ”

Justification: There is need to have a provision creating the offence of printing or manufacturing fake NHIF cards, as well as imposing a penalty for the same. There should not be a vacuum in the law in respect to the offence.

xxiv The proposed amendments to Section 26 (a) by deleting and substituting thereof with the following subsection – “(a) any matters incidental to payment and collection of any contribution under this Act or to the issue or replacement of cards under this Act” be ADOPTED

Further, that section 26 be further amended in the opening sentence by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”

Justification: the amendment serves to delete the word “Minister” which is no longer in use and to substitute therefor the term “Cabinet Secretary” as provided in the Constitution

xxv. That a new amendment be introduced to section 29(1) by inserting a new paragraph to provide for regulations prescribing the manner and procedure of entering into contracts between the Board and health service providers as below-

“(d) prescribing the manner and procedure of entering into contracts between the Board and the health service providers”

Justification: the Board should enter into contracts with health service providers as provided for in the regulations, but this power shall be exercised in consultation with the Cabinet Secretary.

xxvi. The proposed amendment in section 30 to insert a new subsection immediately after subsection (1) be DROPPED.

Justification: Giving the NHIF Board the power to enter contracts with foreign health service providers may lead to abuse during the negotiation process.

xxvii. The proposed amendments to Section 30 (3) be further amended by deleting the proposed new subsection (3) and substituting therefor the following new subsection- “The Board shall use the regulations prescribed under section 29(1) (d) of this Act to enter into contracts with health service providers.”

Justification: This amendment retains the power of the Board to enter into contracts with health service providers, but such contracts shall only be entered into in terms of the regulations prescribed by the Board in consultation with the Cabinet Secretary.

xxviii. The proposed amendments to Section 30 by insertion of new sub-sections Insert the following new subsections immediately after subsection (3)-

(4) The Board shall, by notice in the Gazette and in such other manner as the Board may deem appropriate, declare the health service providers referred to in subsection (1) to be contracted health service providers for purposes of this Act.

(5) A declaration under this section shall be subject to fulfillment by the health service provider of such criteria, including meeting quality standards set by the Ministry.

(6) Every contracted health service provider shall be issued with such identification as may be prescribed by the Board and such identification shall be displayed in a conspicuous position in the health services providers premises.

(7) The Board shall terminate the contract with any health service provider where such health service provider fails to meet the criteria prescribed under subsection (5).

(8) Upon termination of a contract under subsection (7), the Board shall, by notice in the Gazette, revoke the declaration made under subsection (4) be ADOPTED.

xxix. The proposed amendment to section 30 to insert a new subsection (9) be further amended to provide for a fine of five hundred thousand shillings for the offence of displaying an identification without the authority of the Board.

Justification: the proposed new subsection (9) as contained in the Bill creates an offence without prescribing a penalty. In the absence of a penalty under this subsection, the general penalty in section 45 of the Act of a fine not exceeding fifty thousand shillings may be too lenient to impose on a health service provider which does not comply with the requirements prescribed by the Board.

xxx. The proposed amendment to section 34(1) be further amended by deleting the words “in quoted equities, fixed income, property, guaranteed funds, fixed deposit accounts and”.

Justification: The Fund requires liquid assets to respond to its core mandate, and investment in some of these options may not always allow for convenient access to the funds as and when it may be needed by the Fund to discharge its mandate.

xxxi. The proposed amendment to section 36 be ADOPTED.

xxxii. The proposed amendments to Section 43 to Delete the words “Workmen’s Compensation Act” and substitute therefor the expression “Work Injury Benefits Act (Cap. 236)” be ADOPTED.

Further, that the section be amended by deleting the expression “(Cap. 236) and substituting therefor the expression “No. 13 of 2007”.

Justification: This amendment is necessary for purposes of correct referencing of the Act.

xxxiii. The proposed amendments to First Schedule Paragraph 1 to the word” Hospital” appearing in the definition of the term “appointed day” and substitute therefor the word “Health”, and to Delete the word “Hospital” appearing in the definition of the term “Fund” and substitute therefor the word “Health”, be ADOPTED.

12.0 DEPARTMENTAL COMMITTEE ON EDUCATION AND RESEARCH

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 seeks to make various wide ranging amendments to various statutes. The amendments to the Technical and Vocational Education and Training Act, No.29 of 2013 were committed to the Departmental Committee on Education and Research and it made the following recommendation,

SCHEDULE

THAT the Schedule to the Bill be amended —

In the proposed amendments to the Technical and Vocational Education and Training Act, 2013-
by deleting the proposed amendments to section 2;

by inserting the expression “(1)” immediately after the expression “s. 46”;

by inserting the following new paragraph immediately after the proposed new paragraph (ba) in
the proposed amendments to section 46 –

“Delete the word “three” appearing in paragraph (d)(iv) and substitute therefor the word “two”;

by deleting the proposed amendments to section 52;

by deleting the proposed amendments to section 58.

Justification: (sections 2, 52 and 58)The realignment of the Acts to the Constitution, meant that
education training should be placed in the education docket. Allowing the proposed amendments
to sections 2, 52 and 58 means going back to the previous regime.

TVETA has brought in a regulatory position for all institutions providing education and training
between basic and university education for coherence and ensuring recognition of national
qualifications and portability of competencies internationally.

Section 46 – The proposed amendments are to ensure the composition of the Council are as per
the MWONGOZO principles whereby a Board should have a maximum of nine members.

13.0 DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 seeks to make various wide
ranging amendments to various statutes. As far as the Departmental Committee on Finance and
National Planning is concerned the Bill was seeking to amend the Statistics Act (No. 4 of 2006)
and the Public Procurement and Asset Disposal Act, 2015, (No. 33 of 2015).

Having considered the Bill and engagement with the National Treasury, the Committee made the
following amendments;

SCHEDULE

THAT the Schedule to the Bill be amended—

in the proposed amendments to the Statistics Act by —

Inserting the following new amendment—

s.5(3) Insert the word “preferably” immediately after the word “degree”;

in the proposed section 6(1) (d) by deleting the words “and ensuring discipline among the staff”,

Inserting the following new amendment—

s.8 (1) Delete and substitute thereof the following new subsection-

The Director-General shall be recruited through a competitive process by the Board and appointed by the President, with the approval of the National Assembly.

by deleting the following proposed amendment to section 8(2) –

“Delete the expression “an advanced degree in a relevant field as specified in section 5(3)” and substitute therefor the expression “a degree in statistics, economics, demography or mathematics”.

in the proposed new section 8A by-

(i) in paragraph (a) by deleting the word “postgraduate”;

(ii) deleting paragraph (c) and substituting thereof the following new paragraph-

(c) is a registered Certified Public Secretary in good standing with the Institute,

(2) in the proposed amendments to the Public Procurement and Asset Disposal Act –

in the proposed amendment to section 2 by inserting the following definition—

“publicize” has the meaning assigned to it under the Public Finance Management Act,

by deleting the proposed amendment to section 7(2) and substituting therefor the following new amendment-

s 7(2) Insert the following new paragraphs immediately after paragraph (l)-

(la) to develop and promote the training and capacity development for procurement and supply chain management services cadre at the national level;

(lb) to support the training and capacity development for

procurement and supply chain management services cadre at the county level;

(lc) develop and manage the state portal on procurement and asset disposal and ensure that it is available and easily accessible.

in the proposed amendments to section 9(1) by inserting the following new amendment-

Renumber the existing paragraph (s) as (t)

by deleting the proposed amendment to section 41 (1) (j) and substituting therefor the following new amendment—

s. 41 (1) Insert the following new paragraph immediately after paragraph (i)—

(j) is determined by the review Board to have filed a request that is frivolous or vexatious or made solely for the purpose of delaying the procurement or procurement or performance of a contract.

in the proposed amendment to section 46 (4) (c) by deleting the word “an” appearing before the word “officer” and substituting therefor the words “a qualified and experienced procurement”

by inserting the following new amendment—

s. 55(1) Delete the expression “section 38” and substitute therefor the expression “section 41”

in the proposed amendment to section 121(4) by inserting the word “entity” immediately after the word “procuring”;

in the proposed amendment to section 124 by deleting the expression “alternative selection methods” and substituting therefor the expression “single source selection”

by deleting the proposed amendment to section 139 (4).

14.0 DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 seeks to make various wide ranging amendments to various statutes. As far as the Departmental Committee on Agriculture and Livestock is concerned the Bill was seeking to amend The Dairy Industry Act (Cap. 336), The Crops Act, 2013 (No. 16 of 2013) and The Fisheries Management and Development Act, 2016 (No. 35 of 2016).

Having considered the Bill the Committee made the following recommendations:-

1. The Dairy Industry Act (Cap. 336)

Clause (3) The Committee proposes deletion.

Clause (19) The Committee proposes deletion.

Clause (20) The Committee proposes deletion.

Clause (31) The Committee proposes deletion.

Clause (33) The Committee proposes deletion.

2. The Crops Act, 2013 (No. 16 of 2013)

The Committee agreed to the proposals contained in the Bill.

3. The Fisheries Management and Development Act, 2016 (No. 35 of 2016)

Clause 86.(3) The Committee Proposes deletion.

Clause 88.(1) The Committee Proposes the deletion of the words “including in” after national jurisdiction.

15.0 DEPARTMENTAL COMMITTEE ON ENERGY

The Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 seeks to make various wide ranging amendments to various statutes. As far as the Departmental Committee on Agriculture and Livestock is concerned the Bill was seeking to amend The Energy Act, 2006 (No. 12 of 2006)

Having considered the Bill, the Committee recommends that, the clause in the Statute law (Miscellaneous Amendments) (No.2) Bill, 2018 that seeks to make amendment to the statute-the Energy Act, 2006 (No.12 of 2006 be rejected by the House.

SIGNED..........DATE.....*20/06/2018*.....

HON. KANINI KEGA, M.P (CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVE

DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY & COOPERATIVES



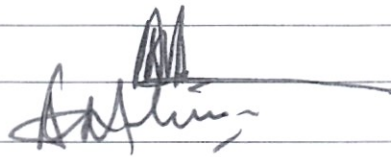
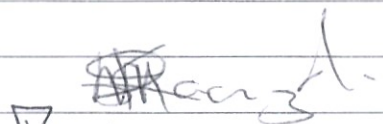
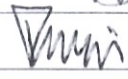
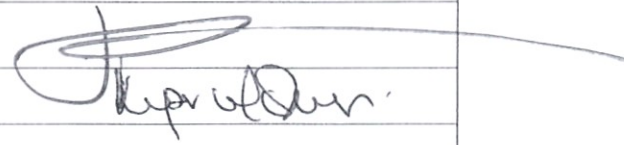
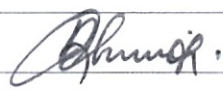
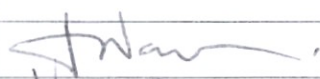


ADOPTION LIST

Clerk's Chambers
National Assembly
NAIROBI

National Assembly

Agenda: The report on The Statute Law (Miscellaneous Amendment) (No. 2) Bill, 2018

Date: 19th June, 2018

NO.	NAME	SIGNATURE
1.	Hon. Kanini Kega, M.P. – Chairperson	
2.	Hon. Cornelly Serem, M.P. – Vice Chairman	
3.	Hon. Alexander Kimutai Kigen Kosgey, MP	
4.	Hon. Alois Musa Lentoimaga, MP	
5.	Hon. Anab Mohamed Gure, MP	
6.	Hon. Andrew Mwadime, MP	
7.	Hon. Bunyasi John Sakwa, MP	
8.	Hon. Daniel Maanzo, MP	
9.	Hon. Wanyonyi Ferdinand, MP	
10.	Hon. James Mukwe, MP	
11.	Hon. Jones Mlolwa, MP	
12.	Hon. Kipruto Moi, MP	
13.	Hon. Murungi Kathuri, MP	
14.	Hon. Gichimu Robert, MP	
15.	Hon. Kimani Patrick Wainaina Jungle, MP	
16.	Hon. Korir Generali Nixon Kiprotich, MP	
17.	Hon. Nduati Joseph Ngugi, MP	
18.	Hon. Wachira Rahab Mukami, MP	
19.	Hon. Dr. Wilberforce Oundo, Phd, MP	

ERIC NYAMBATI
FOR: CLERK OF THE NATIONAL ASSEMBLY

**MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY 7TH JUNE, 2018
IN ROOM 26 IN KICC, AT 10.30 AM.**

PRESENT

1. Hon. Kanini Kega, MP – **Chairperson**
2. Hon. Cornelly Serem, MP – **Vice Chairperson**
3. Hon. Daniel Maanzo, MP
4. Hon. James Mukwe, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Kipruto Moi, MP
7. Hon. Gichimu Robert, MP
8. Hon. Wachira Rahab Mukami, MP
9. Hon. (Dr.) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Alois Musa Lentoimaga, MP
3. Hon. Andrew Mwadime, MP
4. Hon. Bunyasi John Sakwa, MP
5. Hon. Murungi Kathuri, MP
6. Hon. Wanyonyi Ferdinand, MP
7. Hon. Anab Mohamed Gure, MP
8. Hon. Kimani Patrick Wainaina Jungle, MP
9. Hon. Korir Generali Nixon Kiprotich, MP
10. Hon. Nduati Joseph Ngugi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1	Mr Erick Nyambati	Clerk Assistant III
2	Ms Nuri K. Nataan	Clerk Assistant III
3	Mr Josphat Motonu	Fiscal Analyst I
4	Mr Peter Mwarua	Legal Counsel II
5	Mr Chelanga Muryo	Research Officer III
6	Mr Richard Sang	Sergeant at Arms

MIN. NO.059/DC-N/2018

PRELIMINARIES

The Chairperson called the meeting to order at 10 30 am and proceeded to say the prayer. He thereafter invited the Legal Counsel to brief the Committee on the Statute Law

MIN. NO.060/DC-N/2018

BRIEF ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 1 AND 2) BILL, 2018

The Committee was briefed by the legal counsel as follows, that -

The Bills proposes to amend.

1 The Co-operatives Societies Act, (Cap 490) to create a new form of members of co-operative societies by creating a new class of members targeted towards social impact investments. The Bill seeks to safeguard member rights in the democratic choice in co-operative societies by giving the Cabinet Secretary supervisory powers to prevent oppression of members by creation of such new classes. It also seeks to limit the voting powers of social impact members to specific resolutions, maintenance and operation of the proposed Special Fund, investment committee, remuneration of the special fund trustee and similar affairs.

2 The Sacco Societies Act, (No 14 of 2008) to create an exception to the restricted investments that a Sacco society is permitted to make. The Bill seeks to provide for the establishment of a Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible for receiving and investing the Special Fund.

3. The Micro and Small Enterprises Act to create a conducive environment for investors.
4. The Export Processing Zones Act to create a conducive environment for investors in the manufacturing sector and promoting value addition.
5. The industrial property act to align the definitions in the act with the constitution.
6. The Anti-Counterfeit Act, 2008 to make provisions relating to the Board and
7. The Competition Act to provide for the mode of appointment of chairpersons of the Competition Authority

The Committee was further informed that, it is worth noting that even though The Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12 and 13) should ideally contain minor and consequential amendments, some of the proposed amendments in the Bill seem to contain many and substantive amendments which may negate the philosophical principle behind the introduction of the “omnibus” Bill.

MIN. NO.061/DC-N/2018

CONSIDERATION OF MEMORANDA

The Committee received and considered memoranda from the following stakeholders as follows,

1. Ministry of Industry Trade and Cooperatives

Cooperative Societies Act

The Ministry opposed the proposed creation of a class of ‘social impact members’ on account of the fact that, the proposed amendment negates the philosophy, principles and values of the cooperative movement.

Further, exemption of the said members from payment of subscription fees violates principle number three of the cooperative movement on equality of members.

Further, that the approval of the resolution creating a category ‘special class members’ flies in the face of section 3 of the Cooperative Societies Act. The Ministry was of the view that the role of the Cabinet Secretary is limited to providing services which may be required for the efficient operation of cooperatives and the administration of the provisions of the Act.

In sum, the Ministry submitted that cooperatives are by nature an association of persons, not capital and that any attempts to provide otherwise ought not be entertained.

Sacco Societies Act

The Ministry submitted that it was opposed the proposed creation of a Special Fund since the same exists in the Cooperatives Act section 90A “Cooperative Fund”

The Ministry was further opposed to the creation of an Investment Fund since this would be tantamount to creating a parallel governance structure outside section 28 which provides that the Board shall be the governing body of the society.

That the proposed Investment Committee is an amorphous body since it neither a Committee of the Board nor management.

Creation of the proposed Special Fund Trustee will run parallel to the existing structure under the Sacco Societies Regulatory Authority (SASRA).

The Ministry is in the process of under taking wholesome review of the National Cooperative Policy. The exercise will result in a more comprehensive, guided and informed review of the cooperatives laws proposed for amendment.

2. Council of Governors

The Council submitted that an inter-governmental technical committee should be formed to review the entire principal Act since it was formed prior to the formation of county governments.

The Council further submitted that the Cooperatives Act does not take cognizance of counties yet the Sacco Societies Act makes reference to the Sacco Act on several occasions.

3. KUSCCO

Cooperative Societies Act

KUSCCO held the view that the proposed definition was unnecessary and that it does not fit within the context of cooperative societies as defined by the International Cooperative Alliance (ICA).

The union was opposed to the creation of a new class of members on the ground that the said members will operate outside the primary rules and principles of cooperative societies.

KUSCCO further submitted that the proposed amendments violate the International cooperative principles on open voluntary membership and democratic control.

Further, that the proposed amendment was a violation of international principle number three on economic member participation.

KUSCCO was opposed to the proposed amendment on the ground that approval of resolutions passed at the annual general meeting is a function of the Commissioner of cooperatives whilst the function of the Cabinet Secretary is limited to handling appeals emanating from the decisions of the Commissioner of Cooperatives.

Further, that the proposed amendment was an attempt to create a Board within a Board.

The union also opposed the amendment on the ground if carried as currently drafted the special class members will only champion their interests.

The union opposed the amendment on the ground that the provision greatly limits the rights of ordinary members and accords preferential treatment to the special class members.

In sum, KUSCCO was of the view that the proposed amendments were discriminatory.

Sacco Societies Act

The union submitted that—

Section 2

- (a) The proposed definition was unnecessary; and
- (b) The proposed definition violates the cooperative principle which is the ground norm of the cooperative sector.

Section 17

submitted that—

- (a) It was opposed to the proposed creation of a new class of members on the ground that as currently structure, the said members stand to operate outside the core principles of the cooperative movement.

Section 19

submitted that—

- (a) It was opposed to the proposed amendment on the ground if carried, the special class members will only champion their interests thus defeating the principle of bipartisanship in the cooperative sector.

Section 21

submitted that—

- (a) It was opposed to this amendment on the ground that the provision limits the rights of ordinary members and accords preferential treatment to the special class members.

4. Cooperative Alliance of Kenya

Cooperative Societies Act

The Cooperative Alliance of Kenya submitted that cooperative principles require that members of a cooperative rank equally. No member of a cooperative movement should be accorded preferential treatment above other members.

Further, that the proposed amendment was both exclusionary and discriminatory as it seeks to make the rights of ordinary members subject to the rights of the proposed Special Class Members.

Sacco Societies Act

Submitted that the proposed amendments were out rightly discriminatory.

Further that the proposed amendment violate the basic cooperative principles including the principle on the economic participation of members

5. Anjarwalla & Khanna Co. Advocates

Anjarwalla & Kahanna Co. advocates submitted that—

Section 32 The proposed provision is arbitrarily broad. It will compel importers to pay for searches with the Anti-Counterfeit Authority. Too much would be lost waiting for searches. The provision does not limit its application to good imported in the course of trade. If carried it would be an offence to import any kind of goods for personal use into Kenya.

Recommendation

Deletion of the provision

Section 34

S 34B (1) Registration of Trademarks is a matter for the Kenya Industrial Properties Institute (KIPI).

This will be tantamount to unnecessary duplication of tasks amongst government agencies. Thus burdening investors and impacting negatively on the ease of doing business in Kenya. The provision flies in the face of the principle of territoriality in trademarks and IP rights The provision as read together with the offence created under section 32(j) presumes that the trademark or intellectual property mark will as of right have been registered in Kenya. This is not practicable as it is possible to use IP rights without registering them.

S. 34B (2) The section accords the Authority power to approve or decline applications for recordation trademarks.

It however fails to provide a criterion for such approval and denial.

Recommendation

The criterion for such approval or denial should be set-out expressly.

The same should be limited to confirmation that the documentary proof of currency and validity of the registration mark at KIPI.

S, 34B (3) The proposed section requires that the citizenship and political jurisdictional details be availed at the point of seeking registration.

Recommendation

The requirement to provide citizenship details should be expunged.

S. 34B(6) The proposed section proposes to that the recordation of a trademark shall be in force for one year only.

This time frame is unreasonably short in the importation business.

This will reduce the ease of doing business in Kenya.

Recommendation

Validity of the recordation of the trademark should be annexed to the validity of the corresponding registration at KIPi which is 10 years.

S. 34B(10) This section is on renewal of recordation. It appears the word “renewal” was left out.

Recommendation

Insert the phrase “for renewal of the recordation trademark” immediately after the words “written application”.

It is also proposed that the expulsion of the mandatory renewal of the recordation trademark.

S. 34B(13) This section requires the issues of an anti-counterfeit device upon payment of a specified fee. This will impact negatively on the ease of doing business in Kenya.

Recommendation

The security device should be issued free of charge or upon payment of a nominal fee.

S. 34B(14) The section proposes destruction of goods imported to Kenya and which do not bear the anti-counterfeit security device. As a general rule destruction of goods can only be undertaken on the strength of a court order. The section does not specify the meaning of originally imported into Kenya. Thus, it could be applied in retrospect.

Recommendation

Destruction of goods ought to be contingent upon—

- (a) Application by a holder of a certificate issued under the Act.
- (b) Issuance of a court order.

The Committee made the following observations on the proposed Bill;

1. The Cooperative Societies Act,

The Principal Act provides for the constitution, registration and regulation of the cooperatives in the country and related policies. The proposed amendment seeks to introduce a new type of membership of the cooperative societies called social impact membership, with the approval of the Cabinet Secretary. The purpose of this is to make use of the established legal framework of the cooperatives to create a system of social impact investment. However, the social impact member will not pay membership fees and voting rights will be limited to resolutions regarding the special fund, investment committee and the special fund trustee.

2. The Sacco Societies Act

This Act provides for licensing, regulation, supervision and promotion of the Sacco Societies in the country and also establishment of the Sacco Societies Regulatory Authority.

The main amendment here is the provision for a possible establishment of a special fund into which social impact members will contribute money for social impact investment that is meant to be borrowed by eligible persons for the purpose of funding their start-ups and viable innovations.

In particular, the amendment provides for the establishment of a Special Fund, Investment Committee, Advisory Board of the Investment Committee, Special Fund Trustee which is a corporate administrator of the special fund and the eligible persons within the specific Sacco Society where the special fund is established.

It is worth noting that the proposed new form of membership of the Cooperative Societies and the elaborate framework of operating the new arrangement intends to make use of the already established legal framework and success of the cooperatives movement in Kenya. Nevertheless, it is evident that there is no provision as to the benefits likely to accrue to the Sacco Society that may establish such special fund since the beneficiaries seem to be solely, the social impact members. In addition, there is no provision as to the contingent liabilities that may arise on account of establishing and operating this new system within the Saccos.

3. The Micro & Small Enterprises Act.

The Micro & Small Enterprises Act provides for the promotion, development and regulation of the Micro and Small Enterprises in the country and also establishment of the Micro & Small Enterprises Authority.

The main thrusts of the proposed amendment are two-fold: first, there is the introduction of an additional function to the Micro and Small Enterprises Authority which is to undertake accreditation of business development service providers. The second one relates to the

introduction of new source of funding to the Micro and Small Enterprises Fund as Parliamentary Appropriation. Since part of the payouts from the fund is meant to fund SMEs, then this latter proposal may be considered alongside the fact that funding for SMEs may be achieved through the already existing Kenya Industrial Estates (KIE) mechanism or the now proposed social fund under the SACCO Societies legislation.

4. The Export Processing Act,

The first amendment relates to Section 2 of the Act by introducing eligible activities in the Export Processing Zones. They comprise of agricultural activities preceding processing as well as value addition, aquaculture, dairy & ranching as well as silviculture. The second amendment is about opening up the criteria of declaring an Export Processing Zone to include a land and building or parts of them. The third amendment proposes to relax the qualifications of an EPZ developer or operator to reduce the minimum period of holding land for the EPZ activity from 30 to 10 years and building for 6 years.

5. The Industrial Property Act

The Industrial Property Act provides for promotion of inventive and innovative activities to facilitate the acquisition of technology through the grant and regulation of patents, utility models, technovations and industrial designs among others.

The main thrust of the proposed amendment to this Act is the alignment to the provisions of the Constitution of Kenya 2010 and other clarifications such as replacing “minister” with “Cabinet Secretary”; correcting some referencing errors as well as introducing a slightly more elaborate procedure for the application, examination, opposition and registration of patents.

6. The Anti-Counterfeit Act,

The proposed amendment in this Act relates to transforming the Anti-Counterfeit Agency into an Authority and introducing new definitions that is; consumer and counterfeit mark which are key in the functioning of the institution. Secondly, the Agency is proposed to be given additional functions which are policy advisory and research on intellectual property and counterfeit matters. Third, the Executive Director and inspectors from the Agency have been proposed to be given powers same as the Commissioner General for KRA and customs officer respectively, when dealing with importation of counterfeit goods. Fourth, it also prescribes elaborate provisions to address offenses under counterfeiting including a tip-off from consumers being able to trigger an inspection. Finally, the amendment proposes an elaborate procedure for recording and issuance of anti-counterfeit security device, at a prescribed fee, by the Agency, the trademarks for goods to be imported into the country. This will also extend to copyrights, trade names and other forms of intellectual property, and the Agency is proposed to be granted powers to seize and destroy counterfeit goods imported into the country but found without security device.

Ideally, the proposed amendments seek to strengthen the Anti-Counterfeit Agency in order to be in a position to address the proliferation of counterfeits into the country, thereby evading payment of necessary taxes and disregarding the intellectual property. The penalties have also been enhanced for deterrent.

7. The Competition Act,

This law provides for the promoting and safeguarding competition in the economy as well as protecting consumers from unfavorable market conduct.

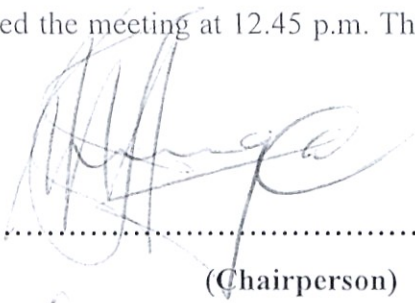
There is only one amendment is proposed for this Act, which is the change of the appointing authority of the chairperson of the Competition Authority from the Cabinet Secretary to the President. This is likely to give the Board of the authority a profile for effective performance of its functions.

MIN. NO.063/DC-N/2018

ADJOURNMENT

The Chairperson adjourned the meeting at 12.45 p.m. The date for the next meeting will be held on notice.

SIGNED.....



(Chairperson)

DATE.....

20/06/2018

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
TRADE, INDUSTRY AND COOPERATIVES HELD ON THURSDAY 14TH JUNE, 2018
IN CPA ROOM, MAIN PARLIAMENT BUILDING, AT 10.30 AM.**

PRESENT

1. Hon. Kanini Kega, MP – **Chairperson**
2. Hon. Cornelly Serem, MP – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Daniel Maanzo, MP
6. Hon. James Mukwe, MP
7. Hon. Kipruto Moi, MP
8. Hon. Gichimu Robert, MP
9. Hon. Kimani Patrick Wainaina Jungle, MP
10. Hon. Nduati Joseph Ngugi, MP
11. Hon. Wachira Rahab Mukami, MP
12. Hon. (Dr.) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Bunyasi John Sakwa, MP
3. Hon. Murungi Kathuri, MP
4. Hon. Jones Mlolwa, MP
5. Hon. Wanyonyi Ferdinand, MP
6. Hon. Anab Mohamed Gure, MP
7. Hon. Korir Generali Nixon Kiprotich, MP

IN ATTENDANCE

STAKEHOLDERS

1	Fanwel Kidenda	CEO EPZA
2	Charles W Mahinda	AG CEO Special Economic Zones Authority
3	Ms Doris Githua	Ministry of Industry, Trade and Cooperatives
4	Ms Maria Ouya	Corp Secretary EPZA
5	Mr Ephantus Mogere	Account Manager Legal Service EPZA
6	Mr. J O Adeio	DD ACA
7.	Dr John Akoth	DD ACA

NATIONAL ASSEMBLY

1	Mr Erick Nyambati	Clerk Assistant III
2	Ms. Nuri K Nataan	Clerk Assistant III
3	Mr Peter Mwaui	Legal Counsel II
4	Mr. Jonathan Lemurt	Fiscal Analyst
5	Mr Chelanga Maiyo	Research Officer III
6	Ms Wimfred Atieno	Audio Officer
7	Mr. Richard Sang	Scigeant at Arms

MIN. NO.064/DC-N/2018

PRELIMINARIES

The Chairperson called the meeting to order at 10 30 am and proceeded to say the prayer. Introductions were made thereafter and the stakeholders were invited to submit their views on the Statute Law (Miscellaneous Amendment) Bill, 2018.

MIN. NO.065/DC-N/2018

MEETING WITH STAKEHOLDERS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018

SPECIAL ECONOMIC ZONES AUTHORITY

The Chief Executive Officer (EPZA) Mr Mahinda submitted as follows, that,-

EPZA welcomes the proposed amendments as it will create a conducive environment for investors in the manufacturing sector and promoting value addition.

The proposed amendments seeks to broaden the list of eligible activities under the EPZ Act (Cap 517) of the Laws of Kenya

The proposal seeks to reduce the cost of value addition on local agricultural products by integrating the agricultural activities with direct value addition under the Export Processing Zones (EPZ) program as opposed to the current situation where the separation approach leads to increased costs as the agricultural activities are taxed and administered under a separate regulatory regime then the value addition is regulated under the EPZs. This will expand EPZ benefits to the agricultural activity and therefore make Kenya's value added agricultural products more competitive globally.

Commercial activities have been allowed under the EPZ Act since inception of the EPZ program. EPZA works with KRA Customs Services which is present at all EPZs and is mandated to collect revenue to ensure compliance and collect taxes on EPZ local sales.

The proposed amendment targets attraction of investments in Global Sourcing/Buying Houses (IPR own-ers/brand owners); Regional Distribution/Logistics Hubs (e.g. intermediate goods and consumables) with full taxes paid for domestic sales.

The current restriction makes Kenya unattractive as a regional trade logistics hub and denies local manufacturers ready access to critical inputs to support manufacturing investments.

ANTI-COUNTERFEIT AGENCY

The CEO ACA, Mr. Kidenda submitted as follows, that;-

The Agency welcome the proposed amendments as it will keep away counterfeits from the market and ensure fair competition and ease of doing business for legitimate businesses.

ACA's experience has shown that unbranded goods are a major source of IP infringements.

Kenya is under obligation to provide protection for trademarks registered in other countries under TRIPS and in respect of goods that are traded in the country. Therefore, IP protection must not be made voluntary in order to protect the IP owners, government, consumers and the general public from harmful counterfeit goods.

MIN. NO.066/DC-N/2018

COMMITTEE OBSERVATIONS

The Committee observed that,

The Bill seem to contain many and substantive amendments which may negate the philosophical principle behind the introduction of the “omnibus” Bill which should ideally contain minor and consequential amendments.

There was need to hold another consultative meeting with the Special Economic Zones Authority, Anti-Counterfeit Authority in conjunction with the Ministry of Industry, Trade and Cooperatives so that Members can be well informed regarding the proposed amendments. It was therefore recommended that the secretariat to organize a retreat on the same.

MIN. NO.067/DC-N/2018

ADJOURNMENT

The Chairperson adjourned the meeting at 12.45 p.m. The date for the next meeting will be held on notice.

SIGNED.....

(Chairperson)

DATE.....

MINUTES OF THE 16TH SITTING OF THE DEPARTMENTAL COMMITTEE ON TRADE, INDUSTRY AND COOPERATIVES HELD ON TUESDAY 19TH JUNE, 2018 IN COMMITTEE ROOM ON 4TH FLOOR PROTECTION HOUSE, AT 10.00 AM.

PRESENT

1. Hon. Kanini Kega, MP – **Chairperson**
2. Hon. Cornelly Screm, MP – **Vice Chairperson**
3. Hon. Alois Musa Lentoimaga, MP
4. Hon. Andrew Mwadime, MP
5. Hon. Daniel Maanzo, MP
6. Hon. Wanyonyi Ferdinand, MP
7. Hon. Jones Mlolwa, MP
8. Hon. Kipruto Moi, MP
9. Hon. Gichimu Robert, MP
10. Hon. Nduati Joseph Ngugi, MP
11. Hon. (Dr.) Wilberforce Oundo, Phd, MP

APOLOGIES

1. Hon. Alexander Kimutai Kigen Kosgey, MP
2. Hon. Bunyasi John Sakwa, MP
3. Hon. Murungi Kathuri, MP
4. Hon. James Mukwe, MP
5. Hon. Anab Mohamed Gure, MP
6. Hon. Kimani Patrick Wainaina Jungle, MP
7. Hon. Korir Generali Nixon Kiprotich, MP
8. Hon. Wachira Rahab Mukami, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1	Mr. Erick Nyambati	Clerk Assistant III
2	Ms. Nuri K. Nataan	Clerk Assistant III
3	Mr. Peter Mwaura	Legal Counsel II
4	Mr. Chelanga Maiyo	Research Officer III
5	Mr. Richard Sang	Sergeant at Arms

MIN. NO.068/DC-N/2018

PRELIMINARIES

The Chairperson called the meeting to order at 10:00 am and proceeded to say the prayer.

MIN. NO.069/DC-N/2018

CONSIDERATION OF THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2018

The Committee deliberated on the Bill as follows—

Clause By Clause Analysis

The Committee analyzed the proposed amendments clause by clause and made its recommendations as follows—

1. Cooperatives Societies Act, (Cap. 490)

Section 2

Insert the following new definition in proper alphabetical sequence-

“social impact member” means a member belonging to a class established under section 17(2).

Committee Recommendation

THAT the proposed amendment to section 2 of the Cooperative Societies Act, be deleted

Justification

The provision sought to be introduced through the proposed amendment violates the cooperative principle on equality of members. The proposed amendment if carried will segregate the sector by according preferential treatment to the proposed social impact members.

Section 17 Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1) -

(2) The annual general meeting of a co-operative society may resolve by ordinary resolution to create a class of social impact members of the co-operative society.

(3) The social impact members under subsection (2) shall be exempted from payment to the society in respect of membership of the society.

(4) A resolution of the annual general meeting of a co-operative society under subsection (2) shall be subject to the approval of the Cabinet Secretary.

Committee Recommendation

THAT the proposed amendment to section 17 of the Cooperative Societies Act, be deleted.

Justification

The proposed amendment seeks to make provision for the passing of a resolution creating a class of social impact members at the Annual General Meeting of a cooperative society. The proposed amendment violates the equality principle of the cooperative movement.

Further, the proposed exemption of social impact members from payment of membership fee is as discriminatory as it is unfair.

Section 19

Renumber the existing provision as subsection (1).

Insert the following new subsections immediately after subsection (1)—

(2) Notwithstanding subsection (1), social impact members shall only vote on resolutions relating to the special fund, the investment committee, the special fund trustee and the matters incidental thereto.

(3) The members of the society, other than social impact members shall not be entitled to vote on matters reserved for the social impact members.

Committee Recommendation

THAT, the proposed amendment to section 19 of the Cooperative Societies Act, be deleted.

Justification

The proposed amendment seeks to accord preferential treatment to social impact members by requiring them to vote only on resolutions relating to the special fund, the investment committee, the special fund trustee and matters incidental thereto.

Section 21 (a)

Insert the expression “subject to section 19(2) and 19(3) of this Act,” at the beginning of the paragraph.

Committee Recommendation

THAT, the proposed amendment to section 21(a) of the Cooperative Societies Act be deleted.

Justification

The proposed amendment seeks to amend a non-existent section. The principal Act contain a any provision numbered section 21 (a).

2. Sacco Societies Act, 2008 (No. 14 of 2008)

Section 2

Insert the following new definitions in proper alphabetical sequence -

“Advisory Board” the Advisory Board constituted under section 47B(4)(c);

“eligible person” means a member of the Sacco society in which the relevant Special Fund has been established who satisfies the criteria set out in this Act, the regulations and the by-laws of the Sacco Society;

“Investment Committee” means a committee established under section 47B;

“social impact member” has the meaning assigned to it in the Co-operative Societies Act;

“Special Fund” means a fund established under section 47A;

“Special Fund Investment Policy” means the policy formulated by the Investment Committee to govern investments from the Special Fund; and

“Special Fund Trustee” means the trustee of the Special Fund constituted under section 47C.

Committee Recommendation

THAT the proposed amendment to section 2 of the Sacco Societies Act, be deleted.

Justification

The proposed amendment seeks to introduce new definitions whose primary objective is to provide for the creation of structures which are contrary to the cooperative principles and the existing provisions of the principal Act. Further, it is noteworthy that the proposed amendments particularly violate principle number three of the cooperative principles on equality of contributions among members.

Further, there is no inter-play between existing structures in the Sacco sector and the proposed amendments.

Section 38

Insert the following expression at the beginning of the subsection -

“Subject to Part IVA of the Act,”

Recommendation

THAT the proposed amendment to section 38(1) of the Sacco Societies Act, be deleted.

Justification

The proposed amendment seeks to create a Special Fund under the principal Act. The special fund proposed to be created under the proposed new Part IVA does not synchronize with existing

structures in the Sacco movement. Therefore, the failure to synchronize with existing structures in the Sacco movement renders the proposed Special Fund inoperable under the prevailing Sacco societies regime.

New Insert the following parts immediately after section 47—

PART IVA - THE SPECIAL FUND

47A. (1) A Sacco society may establish a fund to be known as the Special Fund.

(2) There shall be paid into the Special Fund monies received from the social impact members.

(3) The Investment Committee shall determine the amount of contribution into the Special Fund by social impact members.

(4) The Special Fund shall be applied towards -

- (a) providing start-up and early stage financing to an eligible person with respect to viable innovations as assessed by the Investment Committee;
- (b) the remuneration of the Special Fund Trustee and the members of the Investment Committee; and
- (c) taxes, costs and other charges which may accrue as a result of operation of the Special Fund.

(5) Any investments from the Special Fund shall be in accordance with the Special Fund Investment Policy.

(6) A document involving a function under subsection (4) shall be validly executed if signed by the Special Fund Trustee, and a member of the Investment Committee who is authorized by the Investment Committee, and any further requirement stipulated in the by-laws of the Sacco society.

(7) All income from the Special Fund shall be distributed by the Special Fund trustee as approved by the Investment Committee among the social impact members pro rata their contribution to the Special Fund.

(8) The Sacco society shall have a first charge over things or articles produced with the aid of money lent to an eligible person from the Special Fund.

(9) The Sacco society shall have a first charge over the share or interest in the capital and on the deposits of an eligible person, and upon any dividend, bonus or accumulated funds

payable to an eligible person in respect of any debt due from such person to the Sacco society, and the Sacco society may set off any sum credited or payable to such eligible person towards the payment of any such debt.

(10) A Sacco society that establishes a Special Fund shall make such provisions under its by-laws for the better carrying out of this section.

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act, be deleted.

Justification

The Special Fund proposed to be created under the proposed new Part IVA violates existing structures in the cooperative movement. Establishing the Fund would be tantamount to creating a parallel governance structure outside the provisions of the Act. The Act provide that the Board shall be the governing body of the society.

Additionally, the proposed restriction of the surplus funds that emanate from the Special Fund to Special Impact Members only is out rightly discriminatory.

Further, the Fund has no relation to structures currently existing under the principal Act.

PART IVB - THE INVESTMENT COMMITTEE

47B. (1) A Sacco society with a Special Fund shall establish an Investment Committee.

(2) The Investment Committee shall comprise of four members appointed by the social impact members.

(3) A person is qualified for appointment to the Investment Committee if that person—

(a) holds a degree in economics from a university recognized in Kenya;

(b) holds a degree in finance from a university recognized in Kenya;

(c) holds a degree in law from a university recognized in Kenya; or

(d) holds a degree in the field of operation in which the Sacco society predominantly operates from a university recognized in Kenya.

(4) The members of the Investment Committee shall have at least six years professional experience in their above respective fields.

(5) The members of the Investment Committee shall not be members of the relevant Sacco society.

(6) The functions of the Investment Committee shall include -

(a) considering and approving applications by eligible persons for financing from the Special Fund;

(b) formulating the Special Fund Investment Policy;

(c) appointing such number of members to the Advisory Board as it deems necessary to provide relevant technical input, including: project management, legal and general advisory services to the eligible person in relation to a project financed with funds from the Special Fund;

(d) to determine the terms of reimbursement of all reasonable costs incurred by the Advisory Board; and

(e) to determine the provisions to be made for capital and recurrent expenditure for the operation of the Special Fund.

47C. The Special Fund Investment Policy shall stipulate investment criteria to be applied by the investment committee including—

(a) the minimum and maximum investment amounts in any single eligible person;

(b) the investment rules and the investment process including minimum commitment and investment periods and procedures for draw down;

(c) exposure limits to individual eligible person;

(d) the preferred mode of divestiture from the eligible person;

(e) disclose a clear strategy for the diversification of investments in the eligible person; and

(f) criteria for determining whether an investment shall be by way of debt or equity.

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act be deleted.

Justification

The proposed Investment Committee is an amorphous body because it is neither a Committee of the Board nor management. The proposed Investment Committee seeks to serve partisan interests this is discriminatory.

PART IVC - THE SPECIAL FUND TRUSTEE

47D. (1) A Sacco society with a Special Fund shall have a Special Fund Trustee.

(2) A Special Fund Trustee shall be appointed by the social impact members on such terms the social impact members shall deem necessary.

(3) A Special Fund Trustee shall -

- (a) be a body corporate having a paid-up capital of not less than five million Kenya Shillings;
- (b) be empowered by its memorandum and articles of association to undertake trusts;
- (c) not be a member of the relevant Sacco society; and
- (d) have a demonstrable track record of at least three years as a trustee or in the alternative, one or more of its directors or partners shall have a demonstrable track record in the management of a trust for a period of at least three years.

(4) The functions of the Special Fund Trustee shall include -

- (a) taking into custody the special fund, any income accruing to it and any security furnished pursuant to any investment made from the Special Fund and holding such funds, income or security for the benefit of social impact members;
- (b) managing, controlling and administering the Special Fund in such manner and for such purpose as best promotes the objects for which the Special Fund is established;
- (c) investing any monies of the Special Fund not immediately required for the purposes for which the Special Fund is established;
- (d) keeping proper books and records of account with respect to income, expenditure, liabilities and assets of the Special Fund;
- (e) collecting and maintaining the income of social impact members including maintenance of individual membership records;
- (f) providing members with their individual financial records; and
- (g) such other functions as may be allocated to it by the by-laws of the Sacco society.

(5) The Special Fund Trustee shall be remunerated for their service from the Special Fund.

Recommendation

THAT the proposed amendment to section 47 of the Sacco Societies Act be deleted.

The proposed creation of a Special Fund Trustee contradicts the existing structure under the Sacco Societies Regulatory Authority (SASRA). Therefore, if passed, the provision is likely to occasion needless operational conflicts in the sector.

3. Micro and Small Enterprises Act, 2012 (No. 55 of 2012)

Section 4

- (1) Insert the word “associations” immediately after the word “Enterprises”.
- (2) Insert the word “associations” immediately after the word “Enterprises”.
- (3) Insert the words “Associations and Umbrella Organizations” immediately after the word “Enterprises”.

Committee Recommendation

Agreed to

Section 29 Insert the following subsection immediately after subsection (2) -

- (4) The Authority shall have its headquarters in Nairobi and may establish such other offices in the Counties as it deems appropriate.

Committee Recommendation

Agreed to

Section 31 Insert the following paragraphs immediately after paragraph (k) -

- (l) to undertake accreditation of business development service providers; and
- (m) to perform any other function necessary for the implementation of this Act or other written law.

Committee Recommendation

Agreed to

Section 48 Insert the words “County Governments” immediately after the word “agencies”.

Committee Recommendation

Agreed to

Section 49 Insert the words “County Governments” immediately after the word “agencies”.

Committee Recommendation

Agreed to

Section 51

(5) Insert the following paragraph immediately after paragraph (d) –

(da) such monies as may be appropriated by Parliament.

(6) Delete the words “treasury bills, treasury bonds or other securities issued by the Government and any income from the investments shall be credited to the Fund” and substitute therefor the expression “accordance with the Public Finance Management Act, 2012”.

Committee Recommendation

Agreed to

Section 53

(1) Delete the expressions “Community-based organization” and “non-governmental organizations”.

(4) Delete and substitute therefor the following subsection-

(4) The Fund shall be managed in accordance with the Public Finance Management Act, 2012.

Committee Recommendation

Agreed to

MIN. NO.070/DC-N/2018

ADOPTION OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO. 2) BILL,
2018

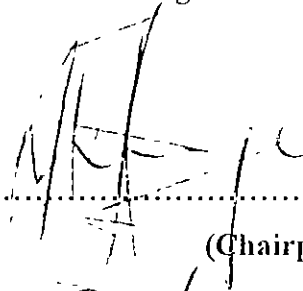
The Committee adopted the report with the proposed amendments

MIN. NO.071/DC-N/2018

ADJOURNMENT

The Chairperson adjourned the meeting at 12 30 p m The date for the next meeting will be held on notice.

SIGNED.....



(Chairperson)

DATE.....

20/06/2018



NOTICE OF ANNUAL GENERAL MEETING

WHEREAS the Forty Ninth Annual General Meeting of the Shareholders of National Bank of Kenya Limited ("the Company") at the Kenyatta International Conference Centre, Amphitheatre Room, Harambee Avenue, Nairobi, on Monday, 28th May 2018 is to transact the following business:-

1. Notice convening the Meeting.

2. Consider and adopt the Company's audited financial statements for the year ended 31st December 2017 together with the Auditors' reports thereon.

3. Consider and adopt the Directors' report for the year ended 31st December 2017.

4. Consider and adopt the Directors' remuneration report for the year ended 31st December 2017.

5. Consider and adopt the Company's Articles of Association, Mr. Mohamed A. Hassan, retires by rotation as a Director and being offers himself for re-election.

6. Consider and adopt the Company's Articles of Association, Mr. Joseph K. Kering retires by rotation as Director and being offers himself for re-election.

7. Consider and adopt the provisions of Section 769 of the Companies Act 2015, the following Directors being members of the Company's Audit Committee, to be elected to continue to serve as members of the said Committee:-

8. Consider and adopt the Directors' Remuneration Report for the year ended 31st December 2017 and authorise the Board to fix their remuneration for 2018.

9. Consider and adopt the Company's Auditors, M/s. PricewaterhouseCoopers, in accordance with Section 721 of the Companies Act (Act No.17 of 2015) s. 24(1) of the Banking Act (Cap.488), M/s. PricewaterhouseCoopers have indicated their willingness to continue in office.

10. Consider and adopt the Auditors' remuneration for the year 2017 and authorise the Directors to fix the Auditors' remuneration for the year 2018.

11. Consider any other business of the Annual General Meeting in respect of which notice has been given.

12. To do all such other acts and things as may be necessary or expedient for the purposes of the above business.

13. To attend and vote at the above meeting may appoint a proxy to attend and vote instead of him/her. A proxy need not be a member of the Company.

14. If a member being a limited liability company or corporate body, the form must be completed under its Common Seal or under the hand of an officer duly authorised in writing.

15. The proxy form will be available at the Bank's website www.nationalbank.co.ke, or the offices of the Company's Share Registrars - Image Registrars at, Barclays Plaza, Loto Street, P.O. Box 9287-00100, Nairobi.

16. The proxy form will not be able to attend the Annual General Meeting or be used to complete the proxy form and return:-

- 16.1. If the proxy form is received at the Image Registrars Limited, 5th Floor, Barclays Plaza, Loto Street, P.O. Box 9287-00100, Nairobi, email: info@image.co.ke, or the Registered Office of the Company,
- 16.2. If the proxy form is received less than 48 hours before the meeting i.e. not later than 5.00 p.m. on Friday 25th May 2018.

17. The Audited Financial Statements of the Company for the year ended 31st December 2016 have been published in two daily newspapers with circulation of at least 125 of the Company's Articles of Association a copy of the Audited Financial Statements may be viewed on and obtained from the website www.nationalbank.co.ke or from the Registered Office of the Company. An abridged set of the audited Balance Sheet, Income Statement and Changes in Equity and Cashflow Statements for the year ended 31st December 2016 have been published in two daily newspapers with circulation of at least 125.

18. If Members and proxies attending the Annual General Meeting will commence at 7.00 a.m. and will close at 10.00 a.m. Production of a valid National ID, Passport or other acceptable means of identification and the Member's share certificate or current Central Depository Statement for their shares in the Company will be required.

REPUBLIC OF KENYA



NATIONAL ASSEMBLY TWELFTH PARLIAMENT – SECOND SESSION

In the matter of consideration by the National Assembly of the Statute Law (Miscellaneous Amendments) (No.2) Bill, 2018 (National Assembly Bill No. 13 of 2018)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House".

The Statute Law (Miscellaneous Amendments) (No.2), Bill, 2018 (National Assembly Bill No. 13 of 2018) was published on 10th April, 2018 and read a First Time on 18th April, 2018. The Bill is in keeping with the practice of making various amendments which do not merit the publication of separate Bills and consolidating them into one Bill. The Bill therefore proposes amendments to various Acts of Parliament. Pursuant to the provisions of Standing Order 127(1) of the National Assembly Standing Orders which provides that; a Bill having been read a First Time shall stand committed to the relevant Departmental Committee without question being put and Standing Order 216 (5)(b) which mandates Departmental Committees; to study and review all legislation referred to it, the proposed amendments to various Acts of Parliament stand committed to the following Departmental Committees of the National Assembly:-

NO.	ACT TO BE AMENDED	COMMITTEE
1.	The Betting Lotteries and Gaming Act (Cap 131)	Sports, Culture and Tourism
2.	The Dairy Industry Act (Cap 336)	Agriculture and Livestock
3.	The Crops Act No. 16 of 2013	
4.	The Fisheries Management and Development Act No. 35 of 2016	
5.	The Cooperatives Societies Act (Cap 490)	Trade, Industry and Cooperatives
6.	The Sacco Societies Act No. 14 of 2008	
7.	The Micro and Small Enterprises Act No. 55 of 2012	
8.	Public Private Partnership Act No. 15 of 2013	
9.	The National Hospital Insurance Fund Act No. 4 of 1998	Health
10.	The Statistics Act No. 4 of 2006	Finance and National Planning
11.	The Public Procurement & Asset Disposal Act No. 33 of 2015	
12.	The Energy Act No. 12 of 2006	Energy
13.	The Urban Areas and Cities Act No. 13 of 2011	Lands
14.	The Technical and Vocational Education and Training Act No. 29 of 2013	Education and Research
15.	The National Employment Authority No. 3 of 2016	Labour and Social Welfare

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Clerk of the National Assembly invites members of the Public to submit any representations they may have on the Statute Law (Miscellaneous Amendments) (No.2), Bill, 2018. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Monday, 14th May, 2018 at 5:00 pm. The Bill may be found on the Parliament website at <http://www.parliament.go.ke> or <http://www.kenyalaw.org>.

NATIONAL GOVERNMENT CONSTITUENCY DEVELOPMENT FUND BOMACHOGE BORABU CONSTITUENCY

INVITATION TO TENDER

Barabu Constituency Development Fund Committee invites qualified bidders from eligible firms to undertake the following works:

Item No.	Item Description	Category
1	Proposed preparation of the strategic development plan 2018-2022	Open
2	Proposed construction of Maenche police post report office	Open
3	Proposed fencing of 1 acre OCC's office (Kenya) with chain link and construction of sentry box at the gate	Open
4	Proposed construction of 1 police staff house at Kenyena police station	Open
5	Proposed construction of a laboratory at Emsa Secondary School	Open
6	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall and 2 classrooms on the upper floor at Makenani primary School	Open
7	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall and 2 classrooms on the upper floor at Rianwachabera primary School	Open
8	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall and 2 classrooms on the upper floor at Ichuni primary School	Open
9	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall on the upper floor at Magenge Secondary School	Open
10	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall on the upper floor at Metembe Secondary School	Open
11	Proposed construction of one storey building with a hall on the ground and a dormitory on the upper floor at Nyabire Girls Secondary School	Open
12	Proposed construction of one storey building with 4 classrooms on 2 floors, and a hall on the upper floor at Nyabire Secondary School	Open

should note that only those meeting the criteria indicated below have relevant supporting documents at submission will be evaluated. The requirements for bidding include:

- 1. Certificate of registration/incorporation
- 2. Valid tax compliance certificate
- 3. Registration certificate with the NCA B and NCA S and above for category B
- 4. 2% of the tender sum from a reputable financial institution in form of bankers cheque or PPOA approved insurance

Essential qualification, capacity and other resources and, experience in similar works

of evaluations for bids shall within either be negative or positive 10% of the official estimates along others as described in the

ould include all taxes and must be expressed in Kenya Shillings and shall remain valid for a period of 90 days from the date

he obtained from the Bomachoge Borabu CDF Offices on weak days during normal working hours upon payment of non-

at KES 1000 (two thousand shillings only) to be deposited in the following account: Bomachoge Borabu CDF - Equity Bank,

10. 051026167843 for which, an official receipt will be issued upon production of original bank slip. A copy of the receipt must be

der documents on submission.

marked tender documents placed in a sealed envelope should be addressed to

Fund Account manager

REPUBLIC OF KENYA



MINISTRY OF INDUSTRY, TRADE AND COOPERATIVES

Office of the Cabinet Secretary

Telephone: 020-2731531-9
Fax 020-2731511
Email: cs.moied@gmail.com
When replying please quote

Social Security House, Block A
Bishops Road, Capitol Hill
P.O. Box 30547-001100
NAIROBI

Ref: MITC/SDC/3/16

Date 11th May, 2018

Mr. Michael Sialai, EBS
Clerk of the National assembly,
Parliament Building,
P. O Box 41842-00100,
NAIROBI

**IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE
STATUTE OF LAW (MISCELENEOUS AMENDMENTS) (No. 2) BILL, 2018
(NATIONAL ASSEMBLY BILL NO. 13 of 2018)**

Reference is made to an advertisement by Parliament in the Daily Nation of 7th May 2018 inviting the public for submission of memoranda on the above subject.

Being the Ministry responsible for Co-operative growth and development, we hereby make our submissions as regard to the proposed amendment to the Co-operative Societies Act (Cap. 490) and the Sacco Societies Act No. 14 of 2008.

1. THE CO-OPERATIVE SOCIETIES ACT (CAP. 490)

The Act relates to the constitution, registration and regulation of Co-operative societies and for purposes incidentals thereto.

Proposed amendments

The proposed amendments create a class of social impact members of the co-operative societies subject to approval of the Cabinet secretary. These members are exempted from payment to the society in respect of their membership. This class of new members shall only vote on resolutions in relation to special fund, investment committee and special fund trustee. Other members of the society shall not be entitled to vote on matters reserved for the special impact members.

Submission

We object to the creation of the Social impact members due to the following:

1. The creation of a special class of memberships negates the philosophy, principles and values of co-operatives on segregation based on **class**, gender, creed, religion and color;
2. Exempting some members from payment of membership fee is against the co-operative principle number 3 on economic member participation which requires all members to contribute equitably to economic activities of the co-operative;
3. The approval of the resolution establishing Special Impact Members by the Cabinet Secretary denies any aggrieved party right to appeal. The approval by Cabinet Secretary is also inconsistent with Section 3 of the Co-operative Societies Act which states inter alia "The Commissioner shall be responsible for the growth and development of co-operative societies by providing such services as may be required by co-operative societies for their organization, registration, operation, advancement, dissolution and for administration of the provisions of this Act"; and
4. Denying a section of members from participation in decision making of any Co-operative business is contrary to co-operative principles and values. Co-operatives by nature are association of persons and not capital. Co-operative principle number 2 on democratic member control stipulates that co-operatives are democratic organization controlled by their members who actively participate in setting their policies and making decisions. Co-operatives members have equal votes on **all matters** pertaining to co-operative business. This is also in contravention of Co-operative Societies Act 21 on rights of members.

2. SACCO SOCIETIES ACT NO. 14. OF 2008

This Act provides for licensing, regulation, supervision and promotion of Sacco societies and establishes the Sacco Societies Regulatory Authority.

Proposed amendments

The Miscellaneous Amendments Bill proposes to amend the Sacco Societies Act, (No. 14 of 2008) to create an exemption to the restricted investments that a Sacco society is permitted to make. The bill seeks to provide for the establishment of a **Special Fund** by Sacco societies, the establishment of an Investment Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible for receiving and investing the Special Fund.

Submission

We object to the creation of the Special Fund, Investment Committee and Special Fund trustees due to the following:

1. The creation of the fund is not necessary since a similar fund exist under the Co-operative Societies Act section 90 A”-Co-operative Development Fund”;
2. The establishment of an Investment committee will introduce a parallel governance structure outside the existing structure provided in section 28 of Co-operative Societies Act which stipulates that the Committee (Board) shall be the governing body of the society;
3. The appointment of the investment committee by the Social Impact Members is contrary to the provisions of Section 28 (3) which exclusively confers powers to the Management (Board) to enter into contracts;
4. The Investment committee is an amorphous and ambiguous entity since it is neither a committee of the governing body nor management;
5. The prescribed qualification for Investment Committee is un-implementable in its current form since it requires an individual to posses a multiplicity of bachelor degrees;
6. The establishment of the special fund trustee will create another center of operation outside the jurisdiction of the existing governing authority (SACCO board). Further, the relationship between the Special Fund Trustee as a body corporate and the Sacco Society as a legal entity is not clearly spelled out in the amendments. Thus these amendments will cause conflicts and confusion in the administration of Sacco business; and
7. Restricting the sharing of surplus from the Special Fund to Special Impact Members only is discriminatory and therefore against the co-operative spirit.

Conclusion

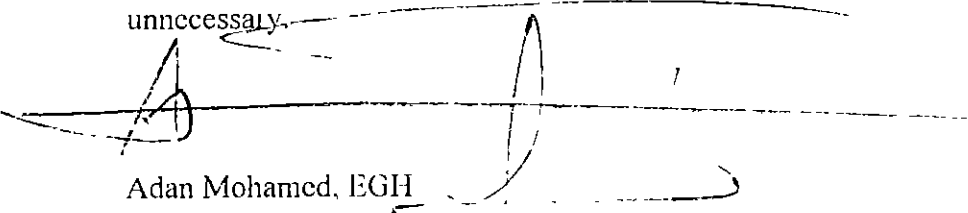
Universally, Co-operatives are autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically- controlled enterprise whose legislation are guided by ILO’s recommendations on the promotion of Co-operatives .

Co-operatives are founded on the values of self help, self responsibility and self sufficiency. Since independence Co-operatives have continued transforming the lives of Kenyans by empowering them socially and economically. The creation of new structures to promote social impact in co-operatives is superfluous and unwarranted. This bill introduces un-mitigated risks to the ordinary members since any malpractice on the fund will be borne by the members. The bill discourages savings mobilization by ordinary members since there will be no motivation for them to save as they can access funds contributed by Social Impact Members

The proposed amendments threaten the existence of co-operatives institutions in the Country and therefore we are opposed to the amendments.

Way forward

The Ministry is in the final stages of reviewing the National Cooperative Development policy which will pave the way for a comprehensive review of all cooperative legislations. It is our considered view that at this stage any piecemeal amendment of the co-operative laws is unnecessary.



Adan Mohamed, EGH
CABINET SECRETARY



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel : (020) 2403314, 2403313
+254 729 777 281
E-mail: info@cog.go.ke

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22/5/18

OUR REF: COG/6/12 Vol. 6

17th May, 2018

Michael Sialai, EBS
The Clerk of the National Assembly
Parliament Buildings
NAIROBI.

Dear *Mr. Sialai,*

LETTER FORWARDING THE LEGISLATIVE MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2018

The above subject matter and our letter dated 11th May, 2018 in which we requested extension of time to submit our memoranda refer.

The Council of Governors appreciates that in realizing the objects of Devolution, the principles of consultation and cooperation under Article 6(2) and Article 189 of the Constitution are inevitable.

Based on these principles, the Council of Governors has reviewed the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bills No. 12 and 13) and would like to forward for the consideration of the National Assembly the legislative memoranda attached herewith.

Yours *Sincerely*
[Signature]

Jacqueline Mogeni
Chief Executive Officer



CAZEMBA
CINDIHA
KAPITI
KIINYA
MACHIRA
ERICK
ESITER
pls lead
FA
22/5/18



COUNCIL OF GOVERNORS

Enrica

plc deal
AA
22/5/18

LEGISLATIVE MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)
(NO. 2) BILL, 2018 - THE SACCO SOCIETIES ACT (NO. 14 OF 2008)

To
THE NATIONAL ASSEMBLY

From
THE COUNCIL OF GOVERNORS

MEMORANDUM ON THE SACCO SOCIETIES ACT (NO. 14 OF 2008)

The object of this Bill is amend the Sacco Societies Act, (No. 14 of 2008) to create an exception to the restricted investments that a Sacco society is permitted to make. The Bill seeks to provide for the establishment of a Special Fund by Sacco societies, the establishment of an Investment Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible receiving and investing the Special Fund. It also provides for a Special Fund Investment Policy which is intended to stipulate the investment criteria to be applied by the Investment Committee.

Considerations in reviewing the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 - The Sacco Societies Act (No. 14 of 2008)

The Council of Governors considered the following:

1. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including Cooperative Societies.
2. Inclusion of County Governments in the registration, licensing and regulations of the SACCO Societies.
3. The Transition Authority Report on the unbundling of devolved functions.

Constitutional threshold

The Constitution of Kenya, 2010 at Article 186 provides for the functions of the two levels of government established under Article 6(2) of the Constitution. These functions are listed under Part I and II of the Fourth Schedule to the Constitution. Part II of the Fourth Schedule provides for the functions of the county level of government. Section 7 of Part II states that it shall be a function

of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licences, fair trading practices, local tourism and cooperative societies.

The Defunct Transition Authority report as highlighted in Legal Notice No. 137 dated 9th August 2013 indicates that County Governments have powers to develop and regulate banking inspections in local Savings and Credit Cooperative Societies; risk assessment in Savings and Credit Cooperative Societies.

The SACCO Societies Act, 2008 does not provide for the functions of the devolved system of Government. This is despite the fact that it is a function of County Government to regulate and develop co-operative societies as provided for under section 7 of Part II of the Fourth Schedule and the Legal Notice No137. This has left critical gaps that can be exploited to the detriment of the growth and development of co-operative enterprises as well as in the undermining the functions of County Governments.

The proposed amendments do not give counties the mandate to regulate the Sacco Societies. It is important to highlight the role played by the county governments in matters relating to the development of cooperative societies in Kenya.

Inclusion of County Governments in the registration, licensing and regulations of the Sacco Societies.

The Council proposes that there is need to review the Principal Act (Saccos Societies Act 2008) since it was enacted pre-devolution when County Governments were not in place. It would be a challenge for the Council to review and give proposals of the proposed amendment that is before the house.

Issues of consideration in the SACCO Societies Act 2008 include but are not limited to;

Section No.	Provision of Section in the Act	Proposed Amendment	Justification for amendment and recommendation
2. Interpretation	Provides for definition and interpretation	Inclusion of: "County Governments" means the County Government established by Article 76(1) of the Constitution.	County Governments have a critical role to play in the promotion and regulation of SACCOs as provided in the Forth Schedule of the Constitution specifically the ones that are limited to an individual County operation.
3. Application	3(2) For the purposes of subsection (1)(b), the Minister may make regulations— (a) specifying the non-deposit taking business to which that subsection applies; and (b) prescribing measures for the conduct of the specified business.	Section 3(2) should read as follows: 3(2) For the purposes of subsection (1)(b), the Cabinet Secretary may make regulations— (a) specifying the non-deposit taking business to which that subsection applies; and (b) prescribing measures for the conduct of the specified business.	Delete the word "Minister" and substitute with "Cabinet Secretary" Add the words "in consultation with County Governments" immediately after regulations. Some of the deposit-taking and non-deposit taking SACCOs are in the jurisdiction and control of County Governments and hence need for their inclusion in development of the regulations.
5. Objects and functions of the Authority	The objects and functions of the Authority shall be to— (a) license Sacco societies to carry out deposit-taking business in accordance with this Act;	The Section 5 should be amended to read: The objects and functions of the Authority shall be to— (a) license Sacco societies to carry out deposit-taking business in accordance with this Act;	Delete Section 5(b) "regulate and supervise Sacco societies" The proviso 5(b) does not take into consideration the fact that non-deposit taking SACCOs

<p>15. The SACCO Societies levy</p>	<p>(b) regulate and supervise Sacco societies; (c) hold, manage and apply the General Fund of the Authority in accordance with the provisions of this Act; (d) levy contributions in accordance with this Act; (e) do all such other things as may be lawfully directed by the Minister; and (f) perform such other functions as are conferred on it by this Act or by any other written law.</p>	<p>(b) hold, manage and apply the General Fund of the Authority in accordance with the provisions of this Act; (c) levy contributions in accordance with this Act; (d) do all such other things as may be lawfully directed by the Minister; and (e) perform such other functions as are conferred on it by this Act or by any other written law.</p>	<p>according to the Constitution are the purview of County Governments.</p>
	<p>15 (1) The Authority may by order published in the Gazette, impose a levy to be known as the Sacco societies levy on the deposits held in deposit-taking Sacco societies, or on such other base as the Authority may determine in the case of Sacco societies carrying out non-deposit taking business specified under section 3(2).</p>	<p>Section 15 should be amended to read: 15 (1) The Authority may by order published in the Gazette, impose a levy to be known as the Sacco societies levy on the deposits held in deposit-taking Sacco societies.</p>	<p>Delete "or on such other base as the Authority may determine in the case of Sacco societies carrying out non-deposit taking business specified under section 3(2)." Immediately after deposit-taking Sacco societies. The Authority should only issue a levy to deposit-taking SACCOs. Further if the Authority is be given the mandate to issue levy on all SACCOs it will be denying Counties an opportunity to collect revenue from SACCOs that fall within their mandate.</p>

<p>23. Carrying out of deposit-taking business</p>	<p>23 (1) No person shall carry out deposit-taking business within the meaning of this Act, unless such person— (a) is a Sacco society registered under the Co-operative Societies Act, (Cap. 490); and (b) holds a valid licence issued under this Act.</p>	<p>Section 23 should be amended to read: 23 (1) No person shall carry out deposit-taking business within the meaning of this Act, unless such person— (a) is a Sacco society registered under the Co-operative Societies Act, (Cap. 490); and (b) holds a valid licence issued under this Act.</p>	<p>Licensing of SACCO Societies under section 23 of the Act requires SACCOs to be registered under the Co-operative Societies Act, it's important to note that the Co-operative Societies Act does not recognize functions of County Governments with regards to regulation and development of Co-operatives.</p>
<p>48. Regulation and supervision of Sacco societies</p>	<p>(1) The Authority shall be responsible for the regulation and supervision of Sacco societies to which this Act applies. (2) Without prejudice to the generality of subsection (1), the Authority shall— (a) prescribe prudential standards to be adhered to by Sacco societies; (b) undertake inspections or require a Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition;</p>	<p>Section 48 should be amended to read: (1) The Authority shall be responsible for the regulation and supervision of deposit-taking Sacco societies to which this Act applies. (2) Without prejudice to the generality of subsection (1), the Authority shall— (a) prescribe prudential standards to be adhered to by deposit-taking Sacco societies; (b) undertake inspections or require a deposit-taking Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition; (c) require or oversee deposit-taking Sacco societies' workout plan to avert or alleviate financial difficulties;</p>	<p>Include the word "deposit-taking" immediately before Sacco in the section. There is need to clarify in the Provision for regulation so as to identify which category of SACCOs the Authority will be regulating.</p>

	<p>(c) require or oversee Sacco societies' workout plan to avert or alleviate financial difficulties;</p> <p>(d) prescribe the maximum number of years an external auditor may serve the same Sacco society;</p> <p>(e) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.</p>	<p>(d) prescribe the maximum number of years an external auditor may serve the same deposit-taking Sacco society;</p> <p>(e) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.</p>	
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Additional Recommendations

1. Formation of an intergovernmental technical committee to review the entire principal Act since it's a legislation that was passed before the coming in of County Governments.
2. Incorporation of the recommendations of the Defunct Transition Authority Report that highlight the role of County Governments in development and regulation of SACCOs
3. Further Amendments to the Cooperative Societies Act. The Cooperative Society Act 1997 does not recognize Counties yet the Sacco Societies Act keeps referring to it
4. The Sacco Society (Amendment) Bill, 2018 only address a small part of the principal Act.



COUNCIL OF GOVERNORS

*Quick
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22/5/18*

LEGISLATIVE MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)
(NO. 2) BILL, 2018 - THE SACCO SOCIETIES ACT (NO. 14 OF 2008)

To
THE NATIONAL ASSEMBLY

From
THE COUNCIL OF GOVERNORS

MEMORANDUM ON THE SACCO SOCIETIES ACT (NO. 14 OF 2008)

The object of this Bill is amend the Sacco Societies Act, (No. 14 of 2008) to create an exception to the restricted investments that a Sacco society is permitted to make. The Bill seeks to provide for the establishment of a Special Fund by Sacco societies, the establishment of an Investment Committee to monitor and supervise the Special Fund and the appointment of a Special Fund Trustee who shall be responsible receiving and investing the Special Fund. It also provides for a Special Fund Investment Policy which is intended to stipulate the investment criteria to be applied by the Investment Committee.

Considerations in reviewing the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018 - The Sacco Societies Act (No. 14 of 2008)

The Council of Governors considered the following:

1. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including Cooperative Societies.
2. Inclusion of County Governments in the registration, licensing and regulations of the SACCO Societies.
3. The Transition Authority Report on the unbundling of devolved functions.

Constitutional threshold

The Constitution of Kenya, 2010 at Article 186 provides for the functions of the two levels of government established under Article 6(2) of the Constitution. These functions are listed under Part 1 and II of the Fourth Schedule to the Constitution. Part II of the Fourth Schedule provides for the functions of the county level of government. Section 7 of Part II states that it shall be a function

of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licences, fair trading practices, local tourism and cooperative societies.

The Defunct Transition Authority report as highlighted in Legal Notice No. 137 dated 9th August 2013 indicates that County Governments have powers to develop and regulate banking inspections in local Savings and Credit Cooperative Societies; risk assessment in Savings and Credit Cooperative Societies.

The SACCO Societies Act, 2008 does not provide for the functions of the devolved system of Government. This is despite the fact that it is a function of County Government to regulate and develop co-operative societies as provided for under section 7 of Part II of the Fourth Schedule and the Legal Notice No137. This has left critical gaps that can be exploited to the detriment of the growth and development of co-operative enterprises as well as in the undermining the functions of County Governments.

The proposed amendments do not give counties the mandate to regulate the Sacco Societies. It is important to highlight the role played by the county governments in matters relating to the development of cooperative societies in Kenya.

Inclusion of County Governments in the registration, licensing and regulations of the Sacco Societies.

The Council proposes that there is need to review the Principal Act (Saccos Societies Act 2008) since it was enacted pre-devolution when County Governments were not in place. It would be a challenge for the Council to review and give proposals of the proposed amendment that is before the house.

Issues of consideration in the SACCO Societies Act 2008 include but are not limited to;

Section No.	Provision of Section in the Act	Proposed Amendment	Justification for amendment and recommendation
2 Interpretation	Provides for definition and interpretation	Inclusion of: "County Governments" means the County Government established by Article 76(1) of the Constitution.	County Governments have a critical role to play in the promotion and regulation of SACCOs as provided in the Forth Schedule of the Constitution specifically the ones that are limited to an individual County operation.
3. Application	3(2) For the purposes of subsection (1)(b), the Minister may make regulations— (a) specifying the non-deposit taking business to which that subsection applies; and (b) prescribing measures for the conduct of the specified business.	Section 3(2) should read as follows: 3(2) For the purposes of subsection (1)(b), the Cabinet Secretary may make regulations in consultation with County Governments— (a) specifying the non-deposit taking business to which that subsection applies ; and (b) prescribing measures for the conduct of the specified business.	Delete the word "Minister" and substitute with "Cabinet Secretary" Add the words "in consultation with County Governments" immediately after regulations. Some of the deposit-taking and non-deposit taking SACCOs are in the jurisdiction and control of County Governments and hence need for their inclusion in development of the regulations.
5. Objects and functions of the Authority	The objects and functions of the Authority shall be to— (a) license Sacco societies to carry out deposit-taking business in accordance with this Act;	The Section 5 should be amended to read: The objects and functions of the Authority shall be to— (a) license Sacco societies to carry out deposit-taking business in accordance with this Act;	Delete Section 5(b) "regulate and supervise Sacco societies" The proviso 5(b) does not take into consideration the fact that non-deposit taking SACCOs

<p>15. The SACCO Societies levy</p>	<p>(b) regulate and supervise Sacco societies; (c) hold, manage and apply the General Fund of the Authority in accordance with the provisions of this Act; (d) levy contributions in accordance with this Act; (e) do all such other things as may be lawfully directed by the Minister; and (f) perform such other functions as are conferred on it by this Act or by any other written law.</p>	<p>(b) hold, manage and apply the General Fund of the Authority in accordance with the provisions of this Act; (c) levy contributions in accordance with this Act; (d) do all such other things as may be lawfully directed by the Minister; and (e) perform such other functions as are conferred on it by this Act or by any other written law.</p>	<p>according to the Constitution are the purview of County Governments.</p>
	<p>15 (1) The Authority may by order published in the Gazette, impose a levy to be known as the Sacco societies levy on the deposits held in deposit-taking Sacco societies, or on such other base as the Authority may determine in the case of Sacco societies carrying out non-deposit taking business specified under section 3(2).</p>	<p>Section 15 should be amended to read: 15 (1) The Authority may by order published in the Gazette, impose a levy to be known as the Sacco societies levy on the deposits held in deposit-taking Sacco societies.</p>	<p>Delete "or on such other base as the Authority may determine in the case of Sacco societies carrying out non-deposit taking business specified under section 3(2)." Immediately after deposit-taking Sacco societies. The Authority should only issue a levy to deposit-taking SACCOs. Further if the Authority is given the mandate to issue levy on all SACCOs it will be denying Counties an opportunity to collect revenue from SACCOs that fall within their mandate.</p>

<p>23. Carrying out of deposit-taking business</p>	<p>23 (1) No person shall carry out deposit-taking business within the meaning of this Act, unless such person— (a) is a Sacco society registered under the Co-operative Societies Act, (Cap. 490); and (b) holds a valid licence issued under this Act.</p>	<p>Section 23 should be amended to read: 23 (1) No person shall carry out deposit-taking business within the meaning of this Act, unless such person— (a) is a Sacco society registered under the Co-operative Societies Act, (Cap. 490); and (b) holds a valid licence issued under this Act.</p>	<p>Licensing of SACCO Societies under section 23 of the Act requires SACCOs to be registered under the Co-operative Societies Act, it's important to note that the Co-operative Societies Act does not recognize functions of County Governments with regards to regulation and development of Co-operatives.</p>
<p>48. Regulation and supervision of Sacco societies</p>	<p>(1) The Authority shall be responsible for the regulation and supervision of Sacco societies to which this Act applies. (2) Without prejudice to the generality of subsection (1), the Authority shall— (a) prescribe prudential standards to be adhered to by Sacco societies; (b) undertake inspections or require a Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition;</p>	<p>Section 48 should be amended to read: (1) The Authority shall be responsible for the regulation and supervision of deposit-taking Sacco societies to which this Act applies. (2) Without prejudice to the generality of subsection (1), the Authority shall— (a) prescribe prudential standards to be adhered to by deposit-taking Sacco societies; (b) undertake inspections or require a deposit-taking Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition; (c) require or oversee deposit-taking Sacco societies' workout plan to avert or alleviate financial difficulties;</p>	<p>Include the word "deposit-taking" immediately before Sacco in the section. There is need to clarify in the Provision for regulation so as to identify which category of SACCOs the Authority will be regulating.</p>

	<p>(c) require or oversee Sacco societies' workout plan to avert or alleviate financial difficulties;</p> <p>(d) prescribe the maximum number of years an external auditor may serve the same Sacco society;</p> <p>(e) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.</p>	<p>(d) prescribe the maximum number of years an external auditor may serve the same deposit-taking Sacco society;</p> <p>(e) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.</p>	
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Additional Recommendations

1. Formation of an intergovernmental technical committee to review the entire principal Act since it's a legislation that was passed before the coming in of County Governments.
2. Incorporation of the recommendations of the Defunct Transition Authority Report that highlight the role of County Governments in development and regulation of SACCOS.
3. Further Amendments to the Cooperative Societies Act. The Cooperative Society Act 1997 does not recognize Counties yet the Sacco Societies Act keeps referring to it
4. The Sacco Society (Amendment) Bill, 2018 only address a small part of the principal Act.



COUNCIL OF GOVERNORS

~~W. ERICK~~
ERICK
Pls deal
FA
22/5/18

LEGISLATIVE MEMORANDUM ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)
(NO. 2) BILL, 2018 - THE MICRO AND SMALL ENTERPRISES ACT 2012 (NO. 55 OF 2012)

To
THE NATIONAL ASSEMBLY

From
THE COUNCIL OF GOVERNORS

MEMORANDUM ON THE MICRO AND SMALL ENTERPRISES ACT 2012 (NO. 55 OF 2012)

The Council of Governors,

In recognition of Article 1(4) of the Constitution of Kenya, that sovereign power of the people is exercised at the national level and the county level;

In further recognition of Article 6 (2) that governments at the national and county levels are distinct; and

Aware of the need for coordination and consultation between the National Government and County Governments to ensure that legislation responds to the key issues facing devolution, and further reflects the spirit and objects of devolution.

The Council hereby notes as follows on the The Micro and Small Enterprises Act 2012 (No. 55 of 2012) (the Bill):

A. General Comments :

The object of this Bill is amend the Micro and Small Enterprises Act 2012 (No. 55 of 2012) in a view to amend the MSE Act to create a conducive environment for investors.

Considerations in reviewing the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018-The Micro and Small Enterprises Act 2012 (No. 55 of 2012)

The Council of Governors considered the following:

1. Constitutional threshold (Envisaged under the Fourth schedule of the constitution on Trade development and regulation including fair trading practices.

2. The Transition Authority Report on the unbundling of devolved functions.
3. Inclusion of County Governments in Provision of Business Development Services to Micro, Small and Medium Businesses engaged in trade; Development of wholesale and retail trade; Management of credit scheme for micro and small businesses; Collection of business information and management of county Business Information Centers/Business Solution centers; Conducting trade fairs/exhibitions and Promotion of Investments.

Constitutional threshold

The Constitution of Kenya, 2010 at Article 186 provides for the functions of the two levels of government established under Article 6(2) of the Constitution. These functions are listed under Part I and II of the Fourth Schedule to the Constitution. Part II of the Fourth Schedule provides for the functions of the county level of government. Section 7 of Part II states that it shall be a function of the county government as far as trade development and regulation is concerned. The regulated trade activities include: markets, trade licences, fair trading practices, local tourism and cooperative societies.

The Defunct Transition Authority report as highlighted in Legal Notice No. 137 dated 9th August 2013 indicates that County Governments have powers in Provision of Business Development Services to Micro, Small and Medium Businesses engaged in trade; Development of wholesale and retail trade; Management of credit scheme for micro and small businesses; Collection of business information and management of county Business Information Centers/Business Solution centers; Conducting trade fairs/exhibitions and Promotion of Investments.

The Micro and Small Enterprises Act 2012 (No. 55 of 2012) does not provide for the functions of County Governments. This is despite the fact that trade development and regulation including fair trading practices a function of County Governments as provided for under section 7 of Part II of the Fourth Schedule of the Constitution and the Legal Notice No137 which unbundled the function of Fair Trading Practices to include Micro, Small and Medium Enterprises.

The proposed amendments have attempted to recognize the role that County Governments play. It is important however to highlight in totality the role played by the county governments in matters relating to the development and regulation of Micro, Small and Medium Enterprises in Kenya.

Inclusion of County Governments in Development and Regulation of Micro, Small and Medium Enterprises

The Council proposes that there is need to review the Principal Act (The Micro and Small Enterprises Act 2012 (No. 55 of 2012) to include and expand the functions of County Governments in the development and regulation of the sector aside from the ones included in the proposed amendments.

The Council is in agreement with the proposed amendments in the Statute Law (Miscellaneous Amendments) (No. 2) Bill, 2018- The Micro and Small Enterprises Act 2012 (No. 55 of 2012).

The Council proposes further amendments to the Micro and Small Enterprises Act 2012 (No. 55 of 2012) as follows;

Section No.	Provision of Section in the Act	Proposed Amendment	Justification for amendment and recommendation
31. Functions of the Authority	The Functions of the Authority shall be to -	The Functions of the Authority in consultation with County Governments shall be to...	The Principal Act is amended by inserting "in consultation with County Governments" immediately after the word Authority. County Governments are key not only in the implementation but also in the achievement of the stipulated functions of the Authority.
46. Authority to advise on zoning, etc, of land.	46. The Authority shall advise and liaise with the relevant authorities for the earmarking and zoning out of land for the development of micro and small enterprises.	The Authority shall advise and liaise with the relevant National Government Ministries, Agencies, County Governments and authorities for the earmarking and zoning out of land for the development of micro and small enterprises.	The Principal Act is amended by inserting "National Government Ministries, Agencies, County Governments and" immediately after the word relevant. Article 63(3) of the Constitutions mandates County Governments to hold community land on behalf of Communities. This therefore means that in the event of earmarking and zoning

<p>47. Development of infrastructure.</p>	<p>47. The Authority shall advise and facilitate the relevant Government Ministries and other agencies in developing worksite management policy, provide suitable infrastructure, including worksites, social amenities, business information centres, model centres of excellence, common usage facilities and other facilities necessary for development of micro and small enterprises.</p>	<p>The Authority shall advise and facilitate the relevant Government Ministries, County Governments and other agencies in developing worksite management policy, provide suitable infrastructure, including worksites, social amenities, business information centres, model centres of excellence, common usage facilities and other facilities necessary for development of micro and small enterprises.</p>	<p>out of land within County Government's jurisdiction it will be important to include them on the onset to avoid emergence of conflicts. The Principal act is amended in the section by including "County Governments" immediately after Ministries. County Governments are responsible in development of infrastructure, social amenities, business information centers and other services relevant for the development of Micro and Small enterprises.</p>
<p>74. Regulations</p>	<p>74(2)Without prejudice to the generality of subsection (1), Regulations made under this section may provide for all or any of the following matters— (a) forms and fees or any levies to be used under this Act; (b) regulation and .licensing pf business development service providers;</p>	<p>74(2)Without prejudice to the generality of subsection (1), Regulations made under this section may provide for all or any of the following matters— (a) regulation and .licensing pf business development service providers;</p>	<p>The proviso in the Principal Act is amended by deleting "(a) forms and fees or any levies to be used under this Act;" The function of charging fees and levies to domestic traders is a preserve of County Governments. It is important to note that by giving the authority powers to levy fees and levies it may lead to increasing the cost of</p>

	<p>(c) access of loans granted under section 53 (2) by micro and small enterprises;</p> <p>(d) prescribing the form of accounts to be used by associations or umbrella organization;</p> <p>(e) securing the submission to the Registrar of periodical returns relating to the constitution, rules, membership and management of associations or umbrella organization;</p> <p>(f) Prescribing penalties for the breach of any such regulations.</p>	<p>(b) access of loans granted under section 53 (2) by micro and small enterprises;</p> <p>(c) prescribing the form of accounts to be used by associations or umbrella organization;</p> <p>(d) securing the submission to the Registrar of periodical returns relating to the constitution, rules, membership and management of associations or umbrella organization;</p> <p>(e) Prescribing penalties for the breach of any such regulations.</p>	<p>doing business hence affecting the Ease of Doing Business in the Country due to multiplicity of taxes and levies.</p>
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KUSCCO LTD.

Kenya Union of Savings & Credit Co-operatives Ltd.

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-The SACCO Family Union-

Our Ref:

KUSCCO/ADV/VOL 1/027

14TH MAY, 2018

Your Ref:

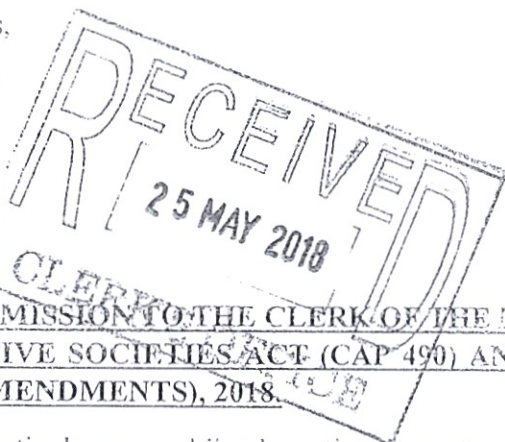
The Clerk of the National Assembly,

Parliament Buildings,

P. Box 41482-00100

NAIROBI.

Dear *Sir,*



*ERICK
Pls deal
AA
25/5/18*

RE: KUSCCO SUBMISSION TO THE CLERK OF THE NATIONAL ASSEMBLY ON THE CO-OPERATIVE SOCIETIES ACT (CAP 490) AND SACCO SOCIETIES ACT, NO.12 OF 2008 (AMENDMENTS), 2018.

KUSCCO has been actively engaged in advocating for matters that may have implications on the performance and growth of as a Co-operative organization.

The Co-operative Societies Act now proposed for amendments has implication on the SACCOs as Co-operative organizations, the SACCO Societies Act notwithstanding.

We confirm to have learnt of the amendments through a social media platform drawing our attention to the daily Nation on 7th May, 2018 hence no formal communication prior to or after the publishing and fast time reading in the National Assembly on 10th and 18th April, 2018 respectively.

We wish to register our concern that the Ministry of Industrialization, Trade and Co-operatives is not keen to have the proposed and reviewed National Co-operative Development Policy approved by Parliament to pave way for implementation, and thereafter engage stakeholders for a comprehensive review process of the Co-operative Societies Act and the Sacco Societies Act. Instead, there is deliberate efforts to push through partial amendments of the relevant Acts and regulations which in our view should not be the case.

Ideally, the National Co-operative Development Policy should precede the process of the review of the Acts and regulations and are at a loss why the State Department of Co-operatives is not keen to have the said policy in place for proper guidance and flow of a comprehensive review process.

It is worth noting that Co-operatives as a devolved function of Co-operatives should be well guided from a National Co-operative Development Policy point of view, the absence of which has subjected the sector to a lot of confusion at the county level.



As the actors in this sector, challenges being experienced on the ground can only be solved through policy direction and not piecemeal amendments that do not take into considerations the emerging issues and innovations.

The International Co-operative Alliance (ICA) defines a Co-operative as “An autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise”.

The co-operative identity includes the principles and values. As part of the international co-operative movement, all co-operatives in Kenya conduct their business in accordance with internationally shared co-operative principles and values.

Membership to a co-operative is open to all persons who wish to benefit from co-operative membership and are willing to accept the corresponding responsibilities without gender, racial, social, religious or political discrimination. Members have an equal voice commonly referred to as “One member one vote”.

The supreme authority of a co-operative society is vested in general members who elect their Board members, the proposed amendments seeks to usurp the powers of the Board dully elected by the board.

Proposed changes the Co-operative Societies Act, CAP 490.

s.2 Insert the following new definition on proper alphabetical sequence-"social impact member" means a member belonging to a class established under section 17(2);

The definition of the social impact does not fit in the context of Co-operative Societies as defined by the International Co-operative Alliance, the Principles, and Values as well as the ILO recommendation 193, of which we subscribe to as a country.

s.17 Renumber the existing provision as subsection

(1). Insert the following new subsections immediately after subsection (1)-

(2) The annual general meeting of a co-operative society may resolve by ordinary resolution to create a class of social impact members of the c-operative society.

This is against then International Co-operative Principles of Voluntary and open membership and democratic member control.

(3) The social impact members under Subsection (2) shall be exempted from payment to the society in respect of membership of the society.

The International Co-operative principle number thrée state, there has to be economic member Participation, the qualification of membership is well stated in s17 the Co-operative Societies Act, CAP 490.

(4) A resolution of the annual general meeting of a co-operative society under subsection (2) shall be subject to the approval of the Cabinet Secretary.

A resolution of the annual general meeting is final and any approval can only be by the Commissioner of Co-operatives. The cabinet Secretary can only handle appeals on any matters that the Commissioner cannot resolve.

s.19 Renumber the existing provision as subsection

(1). Insert The following new subsections immediately after subsection (1)-

(2) Notwithstanding Subsection (1), Social impact members shall only vote on resolutions relating to the special fund, the investment committee, the special fund trustee and the matters incidental thereto.

This is an illegal board in Co-operative, why have a board within a Board and for what Use? The Co-operatives Societies are competent enough to handle Financial business of any nature.

This is not covered anywhere within the substantive co-operative structure.

(3) The members of the society, other than social impact members shall not be entitled to vote on matters reserved for the social impact members

Whose society is this? This does not fit anywhere within the Co-operative structure. The Co-operative principles are very clear, there should be no class or any form of discrimination on any member of a co-operative society.

s.21(a) Insert the expression "subject to section 19(2) and 19(3) of this Act," at the beginning of the paragraph.

It does not suffice

2. The Sacco Societies Act, (No. 14 of 2008)

The Statute Law (Miscellaneous Amendments) (No.2) Bill, 2018

s.2 Insert the following new definitions in proper alphabetical sequence-

"Advisory Board" the Advisory Board constituted under section 47B(4)(c);

Not necessary, the advisory Board members can only be duly elected as per the spelt out qualifications within the Act

"eligible person" means a member of the Sacco

Society in which the relevant Special Fund has been established who satisfies the criteria set out in this Act, the regulations and the by-laws of the Sacco Society;

"Investment Committee" means a committee established under section 47B;

"social impact member" has the meaning assigned to it in the Co-operative Societies Act;

Social impact members not defined, The Co-operatives are social in nature and carry the role purported here, what new role is expected to suffice this definition.

"Special Fund" means a fund established under section 47A;

"Special Fund Investment Policy" means the policy formulated by the Investment Committee to govern investments from the Special Fund; and

"Special Fund Trustee" means the trustee of the Special Fund constituted under section 47C.

s.38(I) Insert the following expression at the beginning of the subsection-

"Subject to Part IV A of the Act,"

New. Insert the following parts immediately after section 47-

PART IV A-THE SPECIAL FUND

47A. (1) A Sacco society may establish a fund to be known as the Special Fund .

(2) There shall be paid into the Special Fund monies received from the social impact members.

What's the source of funds, are we exposing the SACCOS to money Laundering? S15 CAP 490 has limitation of shareholding by members, how will this apply?

(3) The Investment Committee shall determine the amount of contribution into the Special Fund by social impact members.

(4)The Special Fund shall be applied towards-

(a) providing start-up and early stage financing to an eligible person with respect to viable innovations as assessed by the Investment Committee;

The Board makes policies that govern operations of the Co-operative societies

(b) the remuneration of the Special Fund Trustee and the members of the Investment Committee; and

(c) taxes, costs and other charges which may accrue as a result of operation of the Special Fund.

Why expose Co-operatives who are already heavily taxed?

(5)Any investments from the Special Fund shall be in accordance with the Special Fund Investment Policy.

(6)A document involving a function under subsection (4) shall be validly executed if signed by the Special Fund Trustee, and a member of the Investment Committee who is authorized by the Investment Committee, and any further requirement stipulated in the by-laws of the Sacco society.

This is Usurping the powers of the Board of the Co-operative Society

(7) All income from the Special Fund shall be distributed by the Special Fund trustee as approved by the Investment Committee among the social impact members pro rata their contribution to the Special Fund.

Whose platform will they be using to make income from business?

This is against the Co-operative Principles, is discriminative. Economic benefits are shared by all who participate in a co-operative setup.

What are we exposing Co-operatives to?

(8) The Sacco society shall have a first charge over things or articles produced with the aid of money lent to an eligible person from the Special Fund.

(9) The Sacco society shall have a first charge over the share or interest in the capital and on the deposits of an eligible person, and upon any dividend, bonus or accumulated funds payable to an eligible person in respect of any debt due from such person to the Sacco society, and the Sacco society may set off any sum credited or payable to such eligible person towards the payment of any such debt.

(10) A Sacco society that establishes a Special Fund shall make such provisions under its by-laws for the better carrying out of this section.

Why impose foreign ideologies to the SACCO where members have not considered it fit to do so.

PART IVB -THE INVESTMENT COMMITTEE

47B. (1) A Sacco society with a Special Fund shall establish an Investment Committee.

Non members cannot govern a SACCO, the structure is very clear, there is enough prudential guidelines to manage such funds without entertaining foreigners.

(2) The Investment Committee shall comprise of four members appointed by the social impact members.

(3) A person is qualified for appointment to the Investment Committee if that person-

(a) Holds a degree in economics from a university recognized in Kenya;

(b) Holds a degree in finance from a university recognized in Kenya;

(c) Holds a degree in law from a university recognized in Kenya; or

(d) Holds a degree in the field of operation in which the Sacco society predominantly operates from a university recognized in Kenya.

(4) The members of the Investment Committee shall have at least six years professional experience in their above respective fields.

(5) The members of the Investment Committee shall not be members of the relevant Sacco society.

Membership of the SACCOs is very clear. S17 of CAP 490 gives the qualification of members.

(6) The functions of the Investment Committee shall include-

(a) considering and approving applications by eligible persons for financing from the Special Fund;

(b) formulating the Special Fund Investment Policy;

(c) appointing such number of members to the Advisory Board

as it deems necessary to provide relevant technical input, including: project management, legal and general advisory services to the eligible person in relation to a project financed with funds from the Special Fund;

(d) to determine the terms of reimbursement of all reasonable costs incurred by the Advisory Board; and

(e) to determine the provisions to be made for capital and recurrent expenditure for the operation of the Special Fund.

47C. The Special Fund Investment

Policy shall stipulate investment criteria to be applied by the investment committee including-

(a) the minimum and maximum investment amounts in any single eligible person;

(b) the investment rules and the investment process including minimum commitment and investment periods and procedures for draw down;

(c) exposure limits to individual eligible person;

(d) the preferred mode of divestiture from the eligible person;

(e) disclose a clear strategy for the diversification of investments in the eligible person; and

(f) criteria for determining whether an investment shall be by way of debt or equity

PART IVC-THE SPECIAL FUND TRUSTEE.

47D. (1) A Sacco society with a Special Fund shall have a Special Fund Trustee.

(2) A Special Fund Trustee shall be appointed by the social impact members on such terms the social impact members shall deem necessary.

(3) A Special Fund Trustee shall-

Corporate membership does not exist in a Co-operative society unless in a case of UNION.

(a) be a body corporate having a paid-up capital of not less than five million Kenya Shillings;

(b) be empowered by its memorandum and articles of association to undertake trusts;

(c) not be a member of the relevant Sacco society; and

(d) have a demonstrable track record of at least three years as a trustee or in the alternative, one or more of its directors or partners shall have a demonstrable track record in the management of a trust for a period of at least three years.

(4) The functions of the Special Fund Trustee shall include-

a) taking into custody the special fund, any income accruing to it and any security furnished pursuant to any investment made from the Special Fund and holding such funds, income or security for the benefit of social impact members;

(b) managing, controlling and administering the Special Fund in such manner and for such purpose as best promotes the objects for which the Special Fund is established;

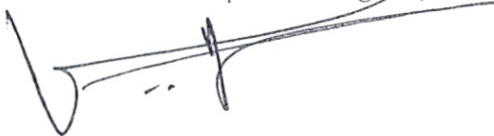
- (c) investing any monies of the Special Fund not immediately required for the purposes for which the Special Fund is established;
- (d) keeping proper books and records of account with respect to income, expenditure, liabilities and assets of the Special Fund;
- (e) collecting and maintaining the income of social impact members including maintenance of individual membership records;
- (f) providing members with their individual financial records; and
- (g) such other functions as may be allocated to it by the by-laws of the Sacco society

KUSCCO POSITION

1. *There's no mischief that is being addressed by the said amendments.*
2. *There were no stakeholder engagements and such grave amendments should not be allowed.*
3. *The amendments are not in the best interest of the SACCOs and should not be allowed to proceed.*
4. *The Co-operatives Societies structure is substantive in nature and cannot be amended through miscellaneous amendments,*
5. *The proposed National Co-operative development policy does not provide for the social Impact members.*
6. *The definition of the Social Impact Members is not in tandem with the co-operative Identity and is in conflict with the International Co-operative Principles.*
7. *The state Department of Co-operatives did not engage the stakeholders on the intention to review the Act and the benefits derived from introduction of the new concept of membership all together.*
8. *There's a danger of exposing the co-operative Movement to other players who do not originally share in the ICA principles, vision, mission and values of the Co-operatives.*
9. *The Amendments should be recalled in entirety and let the State Department of Co-operatives engage the Stakeholders proactively on any changes in the Co-operative Societies Act.*

Thanks for finding time to read our lengthy memorandum.

With warm Co-operative Regards,



George Ototo, MBS, ICUDE

Managing Director

CC:

1. The Attorney General,
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4. Commissioner for Co-operatives Development,
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5. Executive Director,
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6. Managing Director,
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14th May 2018

**MEMORANDUM ON THE PROPOSED STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2018 (NATIONAL
ASSEMBLY BILL NO. 12 OF 2018) THE CO-OPERATIVE SOCIETIES
ACT, CAP 490 & THE SACCO SOCIETIES ACT**

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About the Co-operative Alliance of Kenya

Co-operative Alliance of Kenya (CAK) is an umbrella Apex Co-operative Organisation formed by the Co-operative Movement in Kenya. Its sole purpose is to represent the interests of co-operative societies both locally and internationally. This mandate inter alia extends to providing general consultancy and advocacy services to the co-operative movement. In executing its duties and roles, CAK draws its mandate from the Co-operative Societies Act CAP 490 under which it (CAK) is formed and registered. CAK, which also is an affiliate

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of the International Co-operative Alliance (ICA) operates within International Co-operative Principles as are constituted and periodically revised from time to time by the ICA.

The Co-operative movement has grown over time since the turn of the century. There are over 22,000 registered Co-operatives societies, with an estimated membership of 15 million people, The Co-operative sector is active in many sectors of the economic including but not limited to Financial, agricultural production, manufacturing, insurance and transport The Co-operative financial sector has mobilized over KES 640 billion as at the close of the year 2016 with an asset base of KES 780 billion An estimated 500,000 persons are directly employed in the sector with some other 1,500,000 persons deriving their livelihood from Co-operative related activities.

Participation in the process of developing legal frameworks regulating the Co-operative Sector is one of our core advocacy roles that we play In this respect, we are concerned with amendments to the Co-operative Societies Act and the Sacco Societies Act proposed by the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No. 12 of 2018) (the SLMA bill) We therefore present our views by way of written memoranda as follows

The CAK has today the 14th day of May 2018, held a national co-operative leaders forum with countrywide representation of the co-operative movement and made the following resolutions in regard to the proposed amendments.

A. PROPOSED AMENDMENTS TO THE CO-OPERATIVE SOCIETIES ACT

1. Section 2. Insertion of a New Definition In Section 2 In Its Proper Sequence “Social Impact Member”

The SLMA bill seeks to amend Section 2 of the Co-operative Societies Act (the CSA) by introducing a new definition by virtue of seeking to amend Section 17 of the CSA As we will demonstrate below concerning proposed amendment to Section 17, there is absolutely no reason to entertain this proposed amendment

2. Section 17. Creation of a New Class of Members

Section 17 is proposed to be amended by making the existing provision to be subsection (1) and introduce other 3 subsections, which have the following effect.

By way of an ordinary resolution approved by the cabinet Secretary, members can resolve to create a class of members referred to as "Social Impact Members". These members shall not be subject to the primary and normal requirement demanding that each member has to subscribe and purchase a given minimum number of shares in a Co-operative society the member wishes to be admitted into membership.

3. Section 19. Voting Rights

The consequence right for each member to have one vote irrespective of number of shares held in the society expressed in Section 19 has, by virtue of the proposed amendment to Section 17, been qualified by a proposed amendment to Section 19.

Proposed amendment to Section 19 seeks to make the existing provision to be a sub-section and thereafter insert other 2 more sub-sections, which will have the following effect;

The so called "Social Impact Members" shall, to the exclusion of other members of the society, only vote on resolutions relating to the Special Fund, the Investment Committee, the Special Fund Trustee and matters incidental thereto. This simply means that this special class of members only vote in matters concerning them and to the exclusion of the rest of the members.

4. Section 21. Other Rights of Members

Section 21 is proposed to be amended by inserting the expression "subject to 19(2) and 19(3)" at the beginning of the paragraph. The right to attend and participate in decisions taken in a general meeting of the society and to vote; to be elected into organs of the society; use and enjoyment of the facilities and services of the society; to legitimate information relating to the society, are sought to be subject to the rights sought to be granted to the so called "Social Impact Members"

5. Our Views on the Above Proposed Amendments

In accordance with General Conference of the ILO Recommendation 193,

1. Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3, and revise such legislation and regulations when appropriate.

2. Governments should consult cooperative organizations, as well as the employers' and workers' organizations concerned, in the formulation and revision of legislation, policies and regulations applicable to cooperatives.¹

In this regard we do express our views on the above amendments as follows;

- (i) **Equality of Membership**-once a person is admitted into membership of a co-operative society, he ranks equal with other members in respect to fundamental issues such as: the minimum number of shares he subscribes to and pays for; one vote irrespective of shares held and interest in the society; attending and participation in general meetings where he votes on resolutions taken; to be elected into leadership position; enjoy the use of all facilities and services of the society; and access to all legitimate information relating to the society. All these rights that are enjoyed by the member may further be regulated by the by-laws of the society.

This proposed amendment, in our view, completely distorts this arrangement which has since time immemorial been based on the co-operative principles. If this amendment were to be allowed, the co-operative spirit, which does not thrive in a discriminative environment, will eventually die. We urge you to reject these amendments.

- (ii) **The co-operative policy and the co-operative principles**-The position and rights of a member of a co-operative society are not only defined in the CSA, but do spring from the existing co-operative policy which in turn is heavily hinged on the internationally recognised co-operative principles of:

- a) Voluntary and open membership;
- b) Democratic member control;
- c) Economic participation by members;
- d) Autonomy and independence;
- e) Education, training and information;
- f) Co-operation among co-operatives; and
- g) Concern for community in general

as are provided in Section 4 of the CSA.

¹ ILO R 193 – Promotion of Co-operatives Recommendation, 2002 (No. 193) 90th ILC Session, Geneva

The International Co-operative Alliance (ICA) defines a co-operative society as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. The co-operative business model therefore is not a local innovation so much so that one can legislate on one of its fundamental issue such as this without taking into account the foundation upon which the co-operative sector is built. The co-operative principles are the foundation which stands the big risk of erosion if the proposed amendments were to pass in their current form. The issue of membership is core and runs across the board to touch every sphere of a co-operative society.

If this amendment were to pass in its current form, it will mean that members of the same co-operative society will be discriminated against each other based on their contribution to the society. Their exercise of democracy as a tool of control of the co-operative society will be affected because their right to vote is curtailed in matters to do with Special Fund, the Investment Committee, the Special Fund Trustee and matters incidental thereto.

- (iii) **Economic participation by a member**-Members form and join co-operatives to primarily meet their social and economic need. The proposed amendment does not explain how the society and its members are likely to benefit from this new class of members. The co-operative principle of economic participation by members presupposes that members contribute economically to the wellbeing of the co-operative society on the expectation that they in turn benefit from the proceeds or surplus accruing. It is apparent that though the intent of this amendment is to affect the co-operative principles of economic participation by a member, democratic member control, and that of autonomy and independence, justification for such step has not been provided.
- (iv) **The Special Fund, the Investment Committee, the Special Fund Trustee**

The SLMA bill makes mention of the above terminologies as those which can be voted by the social impact members to the exclusion of other members. However these terminologies have not been defined nor have they been explained in the proposed amendment of this CSA is concerned. The use of terms conveying a supposed meaning of this

proportion cannot just be thrown in there without sitting them well in the statute sought to be amended. The usage of these terms should therefore be rejected for lacking a place in the CSA.

B. PROPOSED AMENDMENTS TO THE SACCO SOCIETIES ACT

1. Section 2. Insertion of New Definitions in Section 2 in Proper alphabetical Sequence

The SLMA bill introduces new terms to the Sacco Societies Act (SSA) such as the “Advisory Board”, “eligible person”, “investment committee”, “social impact member”, “special fund”, “special fund investment policy” and, “special fund trustee”. Having dealt with the “social impact member” under CSA, the rest of the definitions introduced in the SSA are by virtue of seeking to amend section 47 of the SSA. As it will emerge below, the proposed amendments make a mockery of the SSA and the creation of the Sacco Societies Regulatory Authority as a regulator of deposit-taking Saccos.

2. Section 47A. Special Fund

The SLMA bill proposes to amend the SSA by introducing a new section immediately after section 47. The gist of this section is the establishment of the special fund whose sole source are monies received from social impact members. The investment committee determines the amounts to be contributed by social impact members. The purpose of this fund is to extend credit to eligible persons to invest in start-ups and early stage financing of their ventures, and for remunerating the special fund trustee. Investments around this fund shall be guided by a special fund investment policy.

Income accruing from the investment of the special fund shall be shared by the special fund trustee among the social impact members pro rata each member’s contribution to the fund.

The Sacco society shall have a first charge on products produced by the eligible person who has been advanced credit from the special fund.

The Sacco society shall equally have a first charge over the shares and deposits held by an eligible person, interest, dividend, bonus or accumulated funds payable to an eligible person in respect of any debt due from the eligible person to the Sacco society.

Provisions shall be made in the bylaws for better bringing into effect the special fund.

3. Section 47B. The Investment Committee

Section 47B provides that a Sacco Society with a special fund shall establish an investments committee comprising four members appointed by the social impact members. Such members shall not be members of the relevant Sacco Society.

The functions of the investment committee shall be to inter alia consider and approve applications by the eligible persons for financing, formulate the special fund investment policy, appoint members to the advisory board.

4. Section 47C. The Special Fund Investment Policy.

This proposed amendment shall create the special fund investment policy to inter alia guide in matters such as the minimum and maximum investments amounts an eligible person may be eligible; minimum commitment and investment periods and procedures for draw down; exposure limits to individual eligible person; criteria to determine whether an investment shall be by way of debt or equity.

5. Section 47D. The Special Fund Trustee.

This proposed amendment decrees that every Sacco society with a special fund shall create a special fund trustee to be appointed by the social impact members.

The special fund trustee shall be a body corporate having paid up capital of not less than five million Kenya shillings and be empowered by its articles and memorandum of association to carry out trusts.

The special fund trustee shall not be a member of a relevant Sacco.

Apart from controlling, management and administering the special fund, the special fund trustee shall execute the function of inter alia having custody of the special fund, any income accruing to it, any security furnished to it, and to hold such for the benefit of social impact members.

6. Our Views on the Proposed Amendments

The proposal to create the special fund and the attendant organs and entity in the form of special fund trustee within the existing structure and framework of Sacco

societies do not in any way seek to further the interest of both individual members and Sacco Societies. These proposed amendments, to say the least, have the purport and intent to sneak strangers into the room, who not only come to scavenge on the goodwill and institutional set-up of Sacco Societies, but also to attack and wreck the foundation upon which Saccos are built. The following are some of the reasons for holding this view.

- (i) **Membership-** as sworn above under the CSA, it is not logical to create a class of members whose interest is to come under the roof of a Sacco society only for the purpose of furthering their own selfish interest. As they come in, they create their own fund, manage it themselves to the extent of forming a corporate entity in the form of a special fund trustee, use the institutional framework of Saccos to guarantee and secure credit advanced to eligible persons as well as make recoveries and collections in respect to monies advanced. At the end of it all, proceeds accruing are only shared within the ranks of social impact members without anything going to the Sacco and eventually to members, as is the normal case when members patronise the products of their Sacco.

This arrangement of membership is discriminatory, makes no regard for members who have toiled to build the Sacco institution and is against the spirit of co-operation and social uplifting and the same should be discarded.

- (ii) **Creation of Organs and Special Fund Trustee-** the proposal to create the special investment committee, advisory board and the special fund trustee is akin to creating a parallel management framework in a Sacco and allow them to operate independent of each other without giving regard to interplay with the existing institutional regulatory framework.

To allow the creation of a special fund trustee as a corporate body within a Sacco to manage the special fund means that they will be independent from the normal operations of the Sacco to the extent of opening and running separate bank accounts; keep separate books and records of account and eventually prepare separate annual statements of account; have their separate meetings or exclusively vote on resolutions; share the profits within themselves without any benefit accruing to the Sacco or members; and to add salt to insult, employ the goodwill and institutional network of the Sacco to make collections and do recovery

on their behalf. To cap it, the members' saving portfolio and shares will serve as collateral to the social impact members lending business.

As you can see, this arrangement only advances the interests of the social impact members to the total exclusion of the members and the Sacco society. We urge you to disallow these proposed amendments.

- (iii) **Interplay Between Regulatory Bodies and the Social Impact Members, Special Fund Trustee**-the SSA has created SASRA as a regulatory body to license and oversee the operations of deposit-taking saccos for the purpose of guarding against likely occurrence of a systemic risk in the financial co-operatives and to the economy at large. Some of the tools prescribed in the Sacco Societies (Deposit-Taking Sacco Business) Regulations, 2010 (the SASRA regulations) are the prudential guidelines in the form of minimum capital requirements which should be adhered to at all times by the market players (see Part III on capital Adequacy) of the SASRA Regulations.

If the arrangement proposed by amendments is to be sustained, how are these 'independent creatures' going to relate with the regulator and how do they fit into the capital adequacy requirements.

- (iv) **Autonomy and Independence vis –avis Economic Participation**-co-operative entities are autonomous and independent. This means that members own and control their institutions independent of interference by government save on regulatory issues. Equally, members fund the operations and growth of co-operatives through their economic participation by way of shares and deposits and savings or delivery of products to the co-operative. This process of economic participation however gradual it may seem, ensures control and ownership of the co-operative society.

However, considering the nature and composition of the proposed amendments, we are not convinced that members will be autonomous and independent nor will they maintain a firm grip on the institutions they have gradually built.

- (v) **Source of Funding**-one may argue that the proposed amendments are timely since they come to breach the gap of funding to the Sacco societies. That they come in to act as a source of alternative access to

credit on the part of members referred to in the proposed amendments as 'an eligible person'. This cannot be anywhere near the truth.

Apart from traditional sources of funding of Saccos (shares, deposits, savings, capital reserves, earnings from investments, operational income from interest and other sources) Saccos have access to external sources of funds like banks and capital venture companies. The traditional sources of funding are cheap and sustainable to the growth of Saccos. However where the Sacco may need to supplement the traditional source, it may approach the external source depending on allowable limit of borrowing and ability to service the debt. As Sacco's do this, their only obligation to the external lender is to service the loan within periods and at the rate of interests agreed. In doing so, at no time are control, autonomy and independence ceded to the external lender. On the contrary, the Sacco applies this money by lending it to members in turn earning interest to the Sacco. The interest earned is income to the Sacco, which eventually is shared between the members by way of surplus at the end of the year. A portion of the income will go to capital reserves thus capitalising the Sacco further for the good of the Sacco and the members at large.

The model proposed by the proposed amendments is the complete opposite of the above symbiotic relationship. We urge you to reject these amendments.

- (vi) **Debt or Equity**-among the notable feature the SLMA bill seeks to introduce is the power given to the investment committee to come up with special fund investment policy, which can provide whether the investment can be in the form of debt or equity. This proposal for amendment can greatly be abused so as to bind Sacco with debts or equity, which in the end may lead to failure. Moreover, since such investment is not geared to benefit the society, the same seems immoral to us. The proposed amendment should be rejected on account of this reason
- (vii) **Increased Exposure to Risk**-the proposed amendments seeks to bind Sacco societies to collect and recover on behalf of social impact members and shares, deposits and savings held by a member or legible person will act as security for loan or monies advanced to the legible person. This is a big compromise on the security of capital of a Sacco.

This is because though the capital stands as security to cover the social impact members, there is no corresponding compensation by way of earnings to the sacco.

Likewise, demanding that the sacco should have a first charge over products produced by the legible person on account of monies advanced from the special fund will be putting an unnecessary burden on saccos without demonstrating the consequent benefit that will accrue. Doing recoveries is an operational cost to the saccos and is not clear on how saccos will be reimbursed for work done and costs incurred.

C. GENERAL COMMENTS

1. Practice of statute law miscellaneous amendments.

- a. It is an established practice within the commonwealth that the legislative process through the statute law miscellaneous amendment or commonly known as omnibus bills is a process applied by the government to make minor and non-controversial and general house-keeping amendments. **Who is/are this that wants to sneak major amendments that would have far reaching ramifications on the gains of over a century crumbling our heritage?**
- b. It is our considered view that these amendments are not minor or house-keeping by nature. On the contrary, they have a potential fundamental negative effect on the co-operative sector. **Who wants to bring down Africa's strongest 15 Million member-owned movement and why?**
- c. **The Movements' National leadership in its Consultative forum on this 14th day of May 2018 has rejected in its totality the proposed amendments and accordingly advised that the so-called Social Impact members do form their own Society and run it as they wish.**

2. Regulators of the Sector and the Sector Not Consulted.

- a. Once we became aware of these proposed amendments, we sought clarification from both the Ministry and SASRA as to whether they were privy to these amendments in their capacity as the regulators of the sector. **Why was the Co-operative movement left out in the**

consultation process (if there were) of coming up with the proposed amendments?

- b. It shockingly occurred to us that neither of the regulators seemed aware of the proposed amendments. If the SLMA bill is not the handwork of any of the co-operative sector regulator, Who then is the proponent of this bill?
- c. Who wants to make a backdoor and illegal entry into the co-operative sector by riding on the SLMA bill?
- d. Who wants to profit and make capital out of the hard earned savings built in the co-operative sector over a long period?

On behalf of the co-operative movement, we urge you to reject these proposed amendments on their entirety.

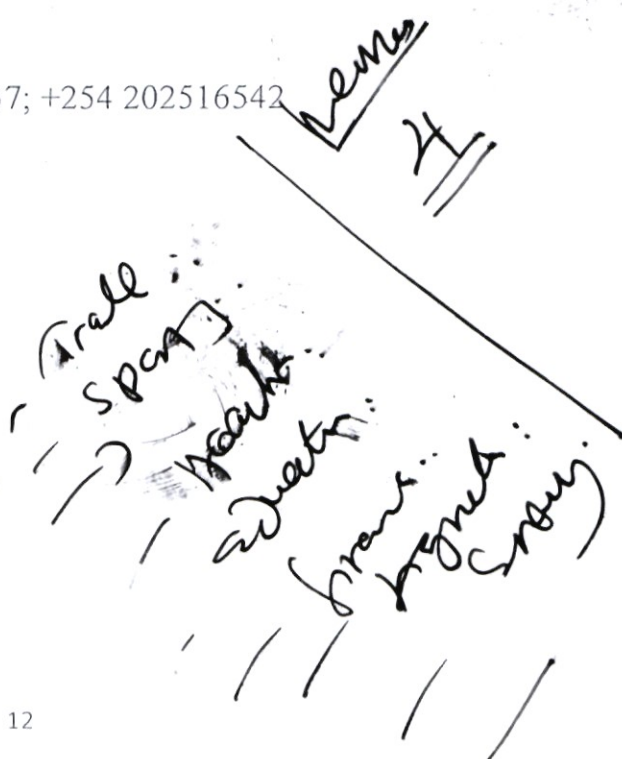
Yours



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