

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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***KENYA GAZETTE SUPPLEMENT***

**ACTS, 2015**

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**NAIROBI, 15th September, 2015**

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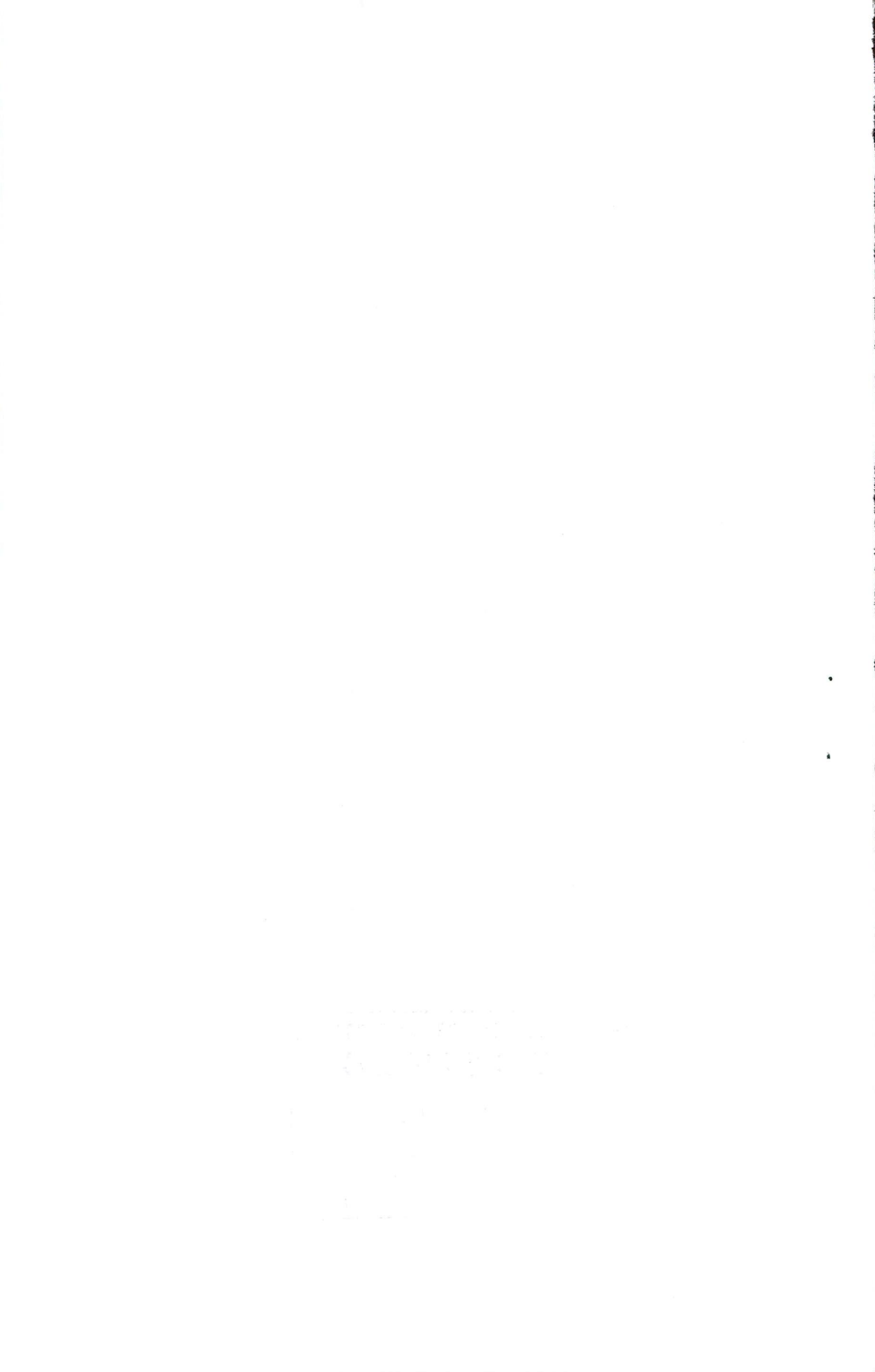
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**THE COMPANIES AND INSOLVENCY LEGISLATION  
(CONSEQUENTIAL AMENDMENTS) ACT,**

**No. 19 of 2015**

*Date of Assent: 11th September, 2015*

*Date of Commencement: By Notice*

**AN ACT of Parliament to make amendments to various Acts consequential on the enactment of the Companies Act, 2015 and the Insolvency Act, 2015**

**ENACTED** by the Parliament of Kenya, as follows—

**1.** (1) This Act may be cited as the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015.

Short title and commencement.

(2) The provisions of this Act shall come into operation on such date or such different dates as the Cabinet Secretary may by notice in the *Gazette*, appoint.

**2.** The Records Disposal Act is amended in the Schedule by deleting the words “Companies Act (Cap. 486)- section 382” appearing in relation to the Registrar of Companies and substituting therefor the words “Companies Act, 2015—section 844”.

Amendment to Schedule to Cap 14.

**3.** Section 46 of the Advocates Act is amended by deleting paragraph (e) and substituting therefor the following new paragraph—

Amendment of section 46 of Cap 16.

(e) any disposition, contract, settlement, conveyance, delivery, dealing or transfer that is, under the Insolvency Act, 2015, void or ineffective against the Official Receiver or a bankruptcy trustee or an interim trustee in proceedings under that Act.

**4.** The Chattels Transfer Act is amended by repealing section 13 and replacing it with the following new section—

Repeal of section 13 of Cap 28.

Unregistered instruments to be void in certain cases.

**13. (1)** In this section—

“the relevant chattels”, in relation to an instrument, are the chattels referred to in subsection (2); and

“the relevant event”, in relation to a person who owns or has an interest in the relevant chattels’, means—

- (a) if the person is adjudged bankrupt the commencement of the bankruptcy;
  - (b) if the person has entered into a voluntary arrangement—the date on which the arrangement takes effect;
  - (c) if the person has assigned the relevant chattels to creditors or entered into a composition with creditors—the date on which the assignment or composition takes effect;
  - (d) if a summary instalment order has been made in respect of the person—the date on which order takes effect; or
  - (e) if the person is subject to an execution process—the date on which the process takes effect.
- (2) An instrument relating to chattels that is not registered before the deadline is void as against the persons specified in subsection (3) in so far as the property in, or the right to the possession of, those chattels is after the relevant event in the possession or apparent possession of—
- (a) the person making or giving the instrument; or
  - (b) any person against whom the process was issued under or in the execution of which the instrument was made or given.
- (3) The persons referred to in subsection (2) are as follows:
- (a) the Official Receiver or the bankruptcy trustee in respect of the

estate of the person to whom the relevant chattels belong;

(b) the supervisor of any voluntary arrangement entered into by that person, or the trustee acting under any composition or other arrangement entered into for the benefit of the creditors of that person;

(c) any person who seizes the relevant chattels in the course of executing the process of a court authorizing their seizure;

(d) every person on whose behalf that process was issued.

(4) For the purposes of subsection (2), the deadline for the registration of an instrument to which this section applies is—

(a) the period within which the instrument may be registered in accordance with section 6; or

(b) if the High Court extends the period for registration, the expiry of that extended period.

(5) So long as an instrument continues to be registered under this Act, the chattels comprised in that instrument are, for the purposes of the Insolvency Act, 2015, to be treated as being not owned by, or in the possession or at the disposal of, the person who made or gave the instrument.

**5.** The Arbitration Act is amended by repealing section 38 and replacing it with the following new section—

Repeal of section 38  
of Cap 49.

Effect of bankruptcy on  
agreement to settle  
differences by  
arbitration.

**38.** (1) If—

(a) it is provided by a term in a contract to which a bankrupt is a party that any differences arising out of or in connection with the

contract are to be referred to arbitration; and

- (b) the bankruptcy trustee adopts the contract,

the term is enforceable by or against that trustee so far as relates to those differences.

- (2) Subsection (3) applies if—

- (a) a person who has been adjudged bankrupt had, before the commencement of the bankruptcy, become a party to an arbitration agreement;
- (b) any matter to which the agreement applies requires to be determined in connection with or for the purposes of the bankruptcy proceedings; and
- (c) the case is one to which subsection (1) does not apply.

- (3) When this subsection applies, any other party to the agreement or—

- (a) if there is no creditors' committee, the bankruptcy trustee; or
- (b) if there is a creditors' committee, the bankruptcy trustee with the consent of the creditors' committee,

may apply to the High Court for an order directing the relevant matter to be referred to arbitration in accordance with the agreement.

- (4) On the hearing of an application made under subsection (3), the High Court may, if of the opinion that that matter ought to be determined by arbitration, make an order to that effect.

- (5) This section applies if—

- (a) the arbitration is a domestic one;
- (b) the bankrupt is a citizen of , or ordinarily resides in, Kenya; or

- (c) the law of Kenya is applicable according to the rules relating to the conflict of laws.

6. The Prevention of Fraud (Investments) Act is amended by repealing section 11 and replacing it with the following new section—

Repeal of section 11 of Cap.65B.

Guarantee in connection with principal's licence.

11. (1) Subject to this section, a principal's licence may be granted to a person only if a guarantee, in the prescribed form, is provided by such guarantor as the Cabinet Secretary approves to the effect that, if an insolvency event involving the applicant occurs during the currency of the licence, the guarantor will pay to the bankruptcy trustee or the liquidator the sum of one million shillings or such other sum as the Cabinet Secretary determines from time to time.

(2) The bankruptcy trustee or liquidator may recover from the guarantor a sum that becomes payable to a bankruptcy trustee under a guarantee given in accordance with subsection (1).

(3) If any such sum exceeds the amount required to satisfy the debts and liabilities (including the costs and expenses of the bankruptcy administration, the amount of the excess or the amount of the sum (whichever is the less) is repayable by the bankruptcy trustee or liquidator to or in relation to the guarantor.

(4) In this section—

“company includes a body corporate that is not a company registered under the Companies Act, 2015;

“insolvency event” means—

(a) in relation to a natural person—

- (i) the making of a bankruptcy order in respect of the person;

- (ii) the entering into by the person of a deed of composition or a voluntary arrangement with the person's creditors;
- (iii) the making of a summary instalment order in respect of the person; or
- (iv) the entry of the person into the no assets procedure; or
- (b) in relation to a company—
  - (i) the making of a liquidation order or an administration order in respect of the company;
  - (ii) the passing of a resolution for the voluntary liquidation of the company; or
  - (iii) the entering into a voluntary arrangement with the creditors of the company.

**7. Section 17 of the Prevention of Fraud (Investments) Act is amended—**

Amendment of section 17 of Cap. 65B.

- (a) in subsection (3) by deleting paragraph (c) and substituting therefor the following new paragraph—

(c) made or given by or on behalf of a corporation to holders of securities of, or to persons employed by, or to creditors of, the corporation or any other corporation that, in relation to the first-mentioned corporation, is a subsidiary company with respect to securities of either such corporation; or;

- (b) by inserting the following new subsection immediately after subsection (7)—

(8) In this section, “subsidiary company” has the meaning assigned to it in section 4 of the Companies Act, 2015.”

**8. The Societies Act is amended in section 2—**

Amendment of section 2 of Cap. 108.

- (a) by inserting the following new definitions in proper alphabetical sequence—



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“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to societies;

“liquidator” means a liquidator appointed under section 33;

(b) by deleting paragraph (a) of the definition of “society” and substituting therefor the following new paragraph—

“(a) a company or foreign company registered under the Companies Act, 2015”.

**9.** Section 4 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 4 of Cap.108.

**10.** Section 7 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 7 of Cap.108.

**11.** Section 8 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 8 of Cap.108.

**12.** Section 10 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 10 of Cap.108.

**13.** Section 11 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 11 of Cap.108.

**14.** Section 13 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 13 of Cap.108.

**15.** Section 15 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 15 of Cap.108.

**16.** The Societies Act is amended by repealing section 33 and replacing it with the following new section—

Repeal of section of 33Cap.108.

Liquidation of certain societies.

**33.** (1)The Cabinet Secretary may, by order published in the Gazette—

(a) appoint a person to be the liquidator of a society that is an unlawful society, or that has had its registration cancelled or its exemption rescinded under Part III or has otherwise ceased to exist; and

(b) vest in the liquidator all property (both movable and immovable) of the society.

(2) As soon as practicable after the publication of an order under subsection (1), the liquidator shall proceed to liquidate the affairs of the society.

17. The Societies Act is amended by repealing section 34 and replacing it with the following new section—

Repeal of section 34 of Cap.108.

Procedure when the Society is solvent.

**34.** (1) If, after all the debts and liabilities of the society of which the liquidator has notice and the costs of the liquidation have been satisfied or provided for, there are any surplus assets, the liquidator shall prepare and submit to the Cabinet Secretary a scheme for the disposal of those assets.

(2) If, after making such amendments (if any) as the Cabinet Secretary considers appropriate, the Cabinet Secretary approves a scheme submitted to the Cabinet Secretary under subsection (1), the Cabinet Secretary shall endorse the approval on the amendments.

(3) As soon as practicable after the Cabinet Secretary has endorsed the scheme, the liquidator shall distribute the surplus assets in accordance with the scheme.

18. The Societies Act is amended by repealing section 35 and replacing it with the following new section—

Repeal of section 35 of Cap.108.

Procedure if society is insolvent.

**35.** (1) If the assets of the society are insufficient to enable the debts and liabilities of which the receiver has notice and the costs of the liquidation to be satisfied in full, the liquidator shall—

(a) set aside an amount sufficient to meet the costs of the liquidation; and

(b) after doing so, divide the balance

among the creditors who have proved their debts in proportion to the size of their claims.

(2) Except as provided by this Act, the provisions of the Insolvency Act, 2015, relating to the liquidation of a company apply to the liquidation of a society as they apply to the liquidation of a company.

**19.** The Societies Act is amended by repealing section 36 and replacing it with the following new section—

Repeal of section 36 of Cap.108.

Supplementary provisions relating to the liquidation of society.

**36.** (1) Stamp duty is not be payable on an order made under section 33, and so far as the order affects registered land—

(a) the liquidator shall lodge it with the relevant registrar for registration, who shall register it accordingly without charge; and

(b) on the registration of the document, the land vests in the liquidator.

(2) For the purpose of discovering, taking possession of, recovering and realising the property of the society, the liquidator has all the powers vested in the Official Receiver or a liquidator by the Insolvency Act, 2015.

(3) Before distributing any assets under this Part, the liquidator shall—

(a) fix a date by which the creditors of the society are required to prove their claims or be excluded from any distribution made before they have proved their claims; and

(b) shall publish in the Gazette a notice of that date, and notify that date to those creditors individually so far as it is practicable to do so.

(4) The liquidator may charge fees for liquidating a society at the rate prescribed for the liquidation of companies under the Insolvency Act, 2015, or such other fees as

the Cabinet Secretary may in any particular case or kind of case order.

(5) If an order has been made in respect of a society under section 33, the Cabinet Secretary may, by a further order published in the Gazette, suspend the operation of the order for such period as seems to the Cabinet Secretary to be necessary for the purpose of enabling the society to liquidate its own affairs.

**20.** Section 38 of the Societies Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

Repeal of section 38  
of Cap.108.

(4) If any person does or omits to do an act that constitutes an offence under subsection (2), the requiring officer may, if of the opinion that it would be advisable to be able to identify the person in the future, order that a photograph and impressions of fingerprints of the person be taken, in which case section 55 of the National Police Service Act, 2011, applies as though the person were in lawful custody.

**21.** Section 53 of the Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 53 of  
Cap.108.

**22.** The Societies Act is amended by inserting the following new section immediately after section 54—

Amendment of  
section 55 of  
Cap.108.

Savings and transitional  
provision.

**55.** If—

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

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that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

**23.** Section 49 of the Methylated Spirits Act is amended in subsection (1) by deleting paragraph (d) and substituting therefor the following paragraph—

Amendment of section 49 of Cap.120.

(d) by a bankruptcy trustee in respect of spirits forming part of the bankrupt's estate.

**24.** The Law of Succession Act is amended by repealing section 89.

Repeal of section 89 of Cap. 160

**25.** The Industrial Training Act is amended by repealing section 27 and replacing it with the following new section—

Repeal of section 27 of Cap.237

Effect of bankruptcy on contract of apprenticeship or indentured learnership.

**27.** (1) If a contract of apprenticeship or indentured learnership is discharged by a bankruptcy trustee in accordance with section 69 (2) of the Insolvency Act, 2015, the bankruptcy trustee shall, within one month after discharging the contract, notify the discharge to the Director-General.

(2) A bankruptcy trustee who, without reasonable excuse, fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.

(3) A failure to comply with subsection (1) does not prevent the discharge of the contract from taking effect.

**26.** Section 31 of the Narcotic Drugs and Psychotropic Substances (Control) Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

Amendment of section 31 of Cap.245.

(4) On taking custody and control of a person's property in accordance with a restraint order, the Official Receiver becomes be entitled to receive, in respect of the performance of the Official Receiver's functions in relation to the property, fees equal to the fees that that would be payable if the Official Receiver were carrying out the functions of a bankruptcy trustee under the Insolvency Act, 2015.

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**27.** Section 2 of the Land Control Act is amended by deleting the definition of the term “private company” and substituting therefor the following new definition—

Amendment of  
section 2 of  
Cap.302.

“private company” means a private company within the meaning of section 9 of the Companies Act, 2015.

**28.** Section 42 of the Wildlife (Conservation and Management) Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of  
section 42 of Cap  
346.

(2) This section does not apply to the possession of a trophy by a person who is in possession only because the person is—

- (a) the liquidator or administrator of a company that is in liquidation or under administration; or
- (b) the bankruptcy trustee or interim trustee of a bankrupt person’s estate; or
- (c) the personal representative of a deceased person’s estate.

**29.** Section 3 of the Uplands Bacon Factory Act is amended by deleting subsection (3).

Amendment of  
section 3 of  
Cap.362.

**30.** The Insurance (Motor Vehicle Third Party Risks) Act is amended by repealing section 15 and replacing it with the following new section—

Repeal of section 15  
of Cap.405.

Contracts of insurance  
against liabilities to third  
parties.

15. (1) In this section—  
“company” includes a body corporate that is not a company registered under the Companies Act, 2015;

“insured person” means a person who is insured under a contract of insurance against liabilities to third parties; and

“insolvency event” means—

- (a) in relation to a natural person—
  - (i) the making of a bankruptcy order in respect of the person;
  - (ii) the entering into by the person of a deed of composition or a voluntary arrangement with the person’s creditors;
  - (iii) the making of a summary

- instalment order in respect of the person; or
- (iv) the entry of the person into the no assets procedure; or
- (b) in relation to a company—
  - (i) the making of a liquidation order or an administration order in respect of the company;
  - (ii) the passing of a resolution for the voluntary liquidation of the company; or
  - (iii) the entering into a voluntary arrangement with the creditors of the company.

“liabilities to third parties”, in relation to an insured, does not include any liability of the insured in the capacity of insurer under some other contract of insurance.

(2) If an insured person, either before after the occurrence of an insolvency event, incurs liability to a third party, the person’s rights against the insurer under the contract are transferred to and vest in the third party.

(3) If—

(a) an order is made under Part V of the Insolvency Act, 2015 for the administration of the estate of a deceased debtor in accordance with that Part; and

(b) a debt provable in bankruptcy is owing by the deceased in respect of a liability against which the deceased was insured under a contract of insurance against liabilities to third parties,

the deceased debtor’s rights against the insurer under the contract in respect of that liability are, irrespective of anything in that

Act, transferred to and vest in the person to whom the debt is owing.

(4) In so far as a contract of insurance made in respect of any liability of the insured to third parties purports (either directly or indirectly) to avoid the contract, or to alter the rights of the parties under it—

- (a) on the happening of an insolvency event involving the insured; or
- (b) on the making of an order under Part V of the Insolvency Act, 2015 in respect of the insured's estate,

the contract is void.

(5) On a transfer under subsection (2) or subsection (3), the insurer becomes under the same liability to the third party as the insurer would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this section affects the rights of the insured against the insurer in respect of the excess; and
- (b) if the liability of the insurer to the insured is less than that liability, nothing in this section affects the rights of the third party against the insured in respect of the balance.

(6) This section does not apply to a company that is in voluntary liquidation only for the purposes of reconstruction, or of amalgamation or merger with another company.

**31.** Section 2 of the Insurance Act is amended—

- (a) by deleting the definition of “auditor” and substituting therefor the following new definition—

“auditor” has the meaning assigned to it under

Amendment of  
section 2 of Cap  
487.



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section 3(1) of the Companies Act, 2015;”;

- (b) by inserting the following new definition in the proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for the National Treasury;

- (c) by deleting the definition of “subsidiary” and substituting therefor the following new definition—

“subsidiary” means a subsidiary company as defined by section 4 of the Companies Act, 2015.

**32.** Section 5 of the Insurance Act is amended—

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

- (2) As soon as reasonably practicable after each year ending on 31st December, the Board shall provide the Cabinet Secretary with a report on the operation of this Act during that year, together with summaries of returns and documents deposited with the Cabinet Secretary in accordance with Part VI during that year.

- (b) by inserting the following new subsection immediately after subsection (2)—

(3) Within one month after receiving the report and summaries under subsection (2), the Cabinet Secretary shall arrange for them to be laid before the National Assembly.

**33.** Section 16 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 5 of Cap  
487.

**34.** Section 17 of the Insurance Act is amended—

- (a) by deleting subsection (4) and substituting therefor the following new subsection—

- (4) If a body corporate in respect of whom a direction has been given under subsection (1), (2) or (3) is placed in liquidation, the direction ceases to have effect unless the court directs otherwise.

- (b) by deleting subsection (5) and substituting therefor the following subsection—

Amendment of  
section 16 of  
Cap 487

Amendment of  
section 17 of Cap  
487.

- (5) If the person under investigation is a body corporate and—
- (a) as a result of a report by an investigator, the Commissioner considers that it would be in the interests of policy holders for the body to be placed in liquidation; or
- (b) the body has failed, or is failing, to comply with a direction issued under this section,

the Commissioner may, after giving the body a reasonable opportunity of making representations, apply to the court for an order for the liquidation of the body, in which case the provisions of Part VI of the Insolvency Act, 2015 (as modified by Part XII of this Act) apply to the body.”

**35.** The Insurance Act is amended by repealing section 19 and replacing it with the following new section—

Repeal of section 19  
of Cap. 487

Only authorized persons  
to carry on insurance  
business

**19.** (1) Except as otherwise provided in or under this Act, only a person registered under this Act may carry on insurance business—

- (a) in Kenya (whether in respect of Kenya insurance or reinsurance business or otherwise); or
- (b) outside Kenya in respect of Kenya business, except Kenya business that is solely reinsurance business.

(2) A person resident in Kenya or an association of persons or body corporate established in Kenya who or which carries on insurance business in any part of the world other than Kenya is, for the purposes of this Act, taken to be an insurer carrying on that business within Kenya.

(3) A person who carries on insurance business in contravention of subsection (1) commits an offence and on conviction is liable to a fine not exceeding five million shillings.

(4) If, after being convicted of an offence under subsection (3), a person

continues to carry on insurance business in contravention of subsection (1), the person commits a further offence on each day on which the contravention continues and on conviction is liable to a fine not exceeding five hundred thousand shillings for each such offence.

(5) If a person found guilty of an offence under subsection (3) is a natural person, the person is liable, in addition to, or instead of, a fine, to imprisonment for a term not exceeding two years.

(6) If a body corporate is convicted of an offence under subsection (3), the commission of the offence constitutes grounds on which the Commissioner may apply to the court for the liquidation of the body corporate.”

**36.** The Insurance Act is amended by repealing section 21.

Repeal of section 21  
of Cap 487.

**37.** The Insurance Act is amended by repealing section 22 and replacing it with the following new section—

Repeal of section 22  
of Cap. 487

Prohibition of  
registration of certain  
persons.

**22.** Subject to section 23, a person may be registered as an insurer under this Act only if—

- (a) the person is a body corporate registered under the Companies Act, 2015; and
- (b) at least one third of the controlling interest in the body (whether in terms of shares, paid up share capital or voting rights) is wholly under the control of—
  - (a) citizens of a Partner State of the East African Community;
  - (b) a partnership whose partners are all citizens of a Partner State of the East African Community; or

(c) a body corporate whose shares are wholly owned by citizens of a Partner State of the East African Community or the Government, or a combination of them.”

**38.** Section 23 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 23 of Cap. 487.

**39.** Section 24 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 24 of Cap. 487.

**40.** Section 25 of the Insurance Act is amended in subsection (4) by deleting the words “Companies Act” and substituting therefor the words “Companies Act, 2015”.

Amendment of section 25 Cap. 487.

**41.** Section 28 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 28 of Cap. 487.

**42.** Section 29 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 29 of Cap. 487.

**43.** Section 31 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 31 of Cap. 487.

**44.** Section 34 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 34 of Cap. 487.

**45.** Section 40 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 40 of Cap. 487.

**46.** Section 41 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 41 of Cap. 487.

**47.** Section 41 of the Insurance Act is amended by deleting subsection (5) and substituting therefor the following new subsection —

Amendment of section 41 of Cap. 487.

(5) An insurer that fails to comply with the requirements of subsection (1), (2) or (3) is taken to be

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unable to pay its debts within the meaning of section 384 of the Insolvency Act, 2015.

**48.** Section 47 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 47 of Cap. 487.

**49.** Section 48 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 48 of Cap. 487.

**50.** Section 50 of the Insurance Act is amended—

Amendment of section 50 of Cap. 487.

(a) in subsection (4) by deleting paragraph (i) and substituting therefor the following new paragraph—

(i) promissory notes, bills of exchange or other instruments issued by a company registered under the Companies Act, but only if they are guaranteed by a bank licensed under the Banking Act.”;

(b) in subsection (8) by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

(c) by deleting subsection (11) and substituting therefor the following new subsection—

(11) Subsection (9) does not apply to an investment made by an insurer in the shares of another insurer if that other insurer is a company registered under the Companies Act, 2015, and carries on insurance or reinsurance business in Kenya.”

**51.** Section 56 of the Insurance Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

Amendment of section 56 of Cap. 487.

(4) Every insurer shall, for the purposes of this section, appoint annually an auditor who is approved by the Commissioner.

**52.** Section 67C of the Insurance Act is amended in subsection (1) by deleting paragraph (g) and substitute therefor the following new paragraph—

Amendment of section 67C of Cap. 487.

(g) if an insurer is unable to pay its debts within the meaning of section 384 of the Insolvency Act, 2015.

53. The Insurance Act is amended by repealing section 71 and replacing it with the following new section—

Repeal of section 71 of Cap. 487.

Restrictions on providing financial accommodation by insurers.

**71.** (1) An insurer shall not in Kenya—

- (a) grant financial accommodation on the security of its own shares; or
- (b) grant, or permit to be outstanding without adequate security, other financial accommodation (not being a loan) on and within the surrender value on a policy of life assurance issued by the insurer—
  - (i) to a shareholder, officer or employee of the insurer or to a family member of such a shareholder, officer or employee; or
  - (ii) to a company of which the shareholder, officer or employee or family member is a shareholder, director, officer or employee.

(2) An insurer may, on compassionate grounds, grant to an officer or employee of the insurer an unsecured loan or advance not exceeding one hundred thousand shillings on condition that the officer or employee receive no further loan or advance from the insurer unless the officer or employee has fully repaid any previous loan or advance granted to the officer or employee by the insurer.

(3) Sections 165, 166, 168 and 169 of the Companies Act, 2015 do not apply to a loan granted to a director of an insurer if—

- (a) the loan is one granted on the security of a policy of life assurance on which the insurer bears the risk; and

(b) the policy was issued to the director on the director's own life and the loan is within the surrender value of the policy.

(4) In this section, "financial accommodation" includes a loan, an advance and a financial guarantee.

**54.** Section 79 of the Insurance Act is amended by deleting the expression "Minister" substituting therefor the expression "Cabinet Secretary".

Amendment of  
section 79 of Cap.  
487

**55.** Section 95 of the Insurance Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of  
Section 95 of Cap.  
487

(3) If, during a child's lifetime, a person effecting a policy in respect of the child dies or is adjudged bankrupt before the child has reached the vesting age, the representative of the person holds the policy in trust for the child until the child reaches the vesting age or dies before reaching that age, subject to any dealings other than testamentary ones by the person before death or bankruptcy.

(3A) The representative may assign, mortgage, charge, surrender, vary or otherwise deal with the policy and apply the proceeds (if any) as the representative believes to be appropriate for the maintenance or benefit of the child and the continuation of the policy.

(3B) The insurer issuing the policy is under no obligation to ensure that the proceeds of the policy (if any) are applied for the maintenance or benefit of the child.

(3C) In subsections (3) and (3A), "the representative", in relation to—

- (a) a deceased, means the executor or administrator of the deceased's estate; or
- (b) in relation to a person who has been adjudged bankrupt, means the bankruptcy trustee of the person's estate or the Official Receiver."

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**56.** The Insurance Act is amended by repealing section 120 and replacing it with the following new section—

Repeal of section  
120 of Cap. 487

Voluntary liquidation

**120.** An insurer carrying on long term business cannot be liquidated voluntarily, despite Part VI of the Insolvency Act, 2015.

**57.** The Insurance Act is amended by repealing section 121 and replacing it with the following new section—

Repeal of section  
121 of Cap. 487.

Liquidation by the court.

**121.** (1) If an application for the liquidation of an insurer is presented by a person other than the Commissioner, the applicant shall serve a copy of the application on the Commissioner.

(2) On being served with a copy such an application, the Commissioner becomes a party to the proceedings and is entitled to be heard at the hearing of the application.

**58.** The Insurance Act is amended by repealing section 122 and replacing it with the following new section—

Repeal of section  
122 of Cap. 487

Insolvency of insurer.

**122.** For the purpose of section 384 of the Insolvency Act, 2015, an insurer is taken to be unable to pay its debts if at any time the requirements of section 41 (which relate to margins of solvency) are not observed by the insurer.”

**59.** The Insurance Act is amended by repealing section 123 and replacing it with the following new section—

Repeal of section  
123 of Cap. 487

Application for the liquidation of insurer by the court.

**123.** (1) The Commissioner may, with the prior approval of the Board, make an application to the court for the liquidation of the insurer in accordance with Part VI of the Insolvency Act, 2015 in any of the following circumstances:



- (a) as provided by section 19(5) or 67(3) of this Act;
- (b) on the ground that the insurer is unable to pay the insurer's debts within the meaning of section 384 of the Insolvency Act, 2015;

for a period of six months after notice of the failure or contravention has been given to the insurer by the Commissioner;

- (c) on the ground that the insurer is unable to fulfil the reasonable expectations of policy-holders or potential policy-holders;
- (d) on the ground that it is just and equitable in the interests of the policy holders that the insurer should be wound up;
- (e) on the ground that the insurer has failed to pay tax that is due and outstanding;
- (f) on any other ground prescribed by regulations made for the purposes of this section under section 180 of this Act.

(2) Subsection (1) does not apply to an insurer that is already being liquidated by the court.

(3) The court may, after considering the application made by the Commissioner, order the liquidation of the insurer if it is satisfied that—

- (a) there are sufficient grounds for making the order; and
- (b) it is just and equitable for the insurer to be liquidated.”
- (c) on the ground that the insurer—
  - (i) having failed to comply with a requirement of this Act, has continued that failure; or

- (ii) having contravened a provision of this Act, has continued that contravention.

**60.** The Insurance Act is amended by repealing section 124 and replacing it with the following new section—

Repeal of section  
124 of Cap. 487.

Transfers of insurance  
businesses.

**124.** (1) In this section—

- (a) “transferee insurer” means the insurer to which an insurance business (or part of it) is transferred as referred to in subsection (2); and
- (b) “transferor insurer” means the insurer or insurers that have transferred that business or part.

(2) If an insurer transfers its insurance business, or any part of it, to another insurer under an arrangement in accordance with which the insurer or its creditors have claims against the other insurer, then, if the other insurer is being liquidated by the court, the court shall, subject to the provisions of this section, order the transferor insurer to be liquidated in conjunction with the other insurer.

(3) The court may by the same or a subsequent order appoint the same person to be liquidator for the two insurers and make provision for such other matters as the court considers necessary, with a view to the insurers being liquidated as if they were a single insurer.

(4) The commencement of the liquidation of the transferee insurer is, unless the court otherwise orders, the commencement of the liquidation of the transferor insurer.

(5) In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to—

- (a) the constitution of the insurers; and
- (b) the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the liquidation of a single insurer or as near as possible as the circumstances allow.

(6) If the transferor insurer is not in the process of being liquidated at the same time as the transferee insurer, the court may order the liquidation of the transferor insurer only if satisfied, after hearing any objections that may be made by or on behalf of that insurer to its being liquidated, that it would be just and equitable for it to be liquidated.

(7) An application may be made for the liquidation of the transferor insurer in conjunction with the transferee insurer by any creditor of, or person interested in, either of the insurers.

(8) If—

- (a) an insurer is the transferee insurer in relation to one insurer and as the transferor insurer in relation to another insurer; or
- (b) several insurers are transferor insurers in relation to a single transferee insurer,

the court may deal with any number of those insurers together or in separate groups, as it considers most appropriate in accordance with the principles set out in this section.”

**61.** The Insurance Act is amended by repealing section 125 and replacing it with the following new section—

Insurers that are subsidiaries of non-insurers.

**125.** (1) If an insurer is a subsidiary of a company that is not an insurer and the company is liquidated under the Insolvency

Repeal of section 125 of Cap. 487.

Act, 2015, the subsidiary may be liquidated only on the basis of a separate application for winding up.

(2) If the subsidiary carries on long term insurance business (whether with or without other classes of insurance business) and is ordered to be liquidated, the following assets of the subsidiary are to be reserved exclusively for the benefit of the policy holders of long term insurance business:

- (a) all the admitted assets of the statutory funds;
- (b) any other assets of the subsidiary that have been included in a separate balance sheet relating to the long term insurance business;
- (c) any assets that, though not shown against the statutory funds or in that balance sheet, should in the opinion of the court be equitably apportioned to the long term policy holders.

(3) The assets referred to in subsection (2) may be used for a purpose other than for the benefit of the long term insurance policy holders only if the rights of those policy holders have been fully satisfied or otherwise provided for.”

**62.** The Insurance Act is amended by repealing section 126 and replacing it with the following new section—

Repeal of section  
126 of Cap. 487.

Evidence in proceedings  
for liquidation of insurer.

**126.** (1) If, on the hearing of an application for liquidating an insurer made by the Commissioner under section 123(1), evidence is given that the insurer was insolvent at the close of the period to which the accounts and balance sheet of the insurer last deposited under section 61 relate, or at any date as at which an investigation was last made under section

57 or 58, is, unless the contrary is proved, evidence that the insurer continues to be unable to pay its debts.

(2) Rules made under section 697 of the Insolvency Act, 2015 may regulate the procedure and the practice to be followed in proceedings with respect to the liquidation of insurers under this Act.”

**63.** Section 147 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 147 of Cap. 487.

**64.** Section 153 of the Insurance Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 153 of Cap. 487.

(2) A broker shall be registered under this Act only if registered as a company under the Companies Act, 2015 and if the company has a paid up capital of not less than one million shillings of which not less than sixty percent is owned—

- (a) by Kenya citizens;
- (b) by a partnership whose partners are all citizens of Kenya; or
- (c) by a corporate body whose shares are wholly owned by citizens of Kenya or which is wholly owned by the Government.

This subsection is subject to subsection (3) and has effect despite any other provision of this Act to the contrary.

**65.** Section 168 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 168 of Cap. 487

**66.** Section 169 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 169 of Cap. 487.

**67.** Section 179 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of section 179 of Cap. 487

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**68.** The Insurance Act is amended by repealing section 180 and replacing it with the following new section—

Repeal of section  
180 of Cap. 487

Power of Cabinet  
Secretary to make  
regulations for purposes  
of this Act.

**180.** The Cabinet Secretary may make regulations providing for all matters that are required or permitted to be prescribed by this Act, or that are necessary, desirable or convenient to be prescribed for giving effect to this Act.”

**69.** Section 181 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 181 of Cap.  
487

**70.** Section 187 of the Insurance Act is amended by deleting the expression “Minister” substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 187 Cap. 487

**71.** Section 190 of the Insurance Act is amended by deleting the words “Companies Act” and substituting therefor the words “Companies Act, 2015”.

Amendment of  
section 190 of Cap.  
487

**72.** Section 196 of the Insurance Act is amended—

Amendment of  
section 196 of Cap.  
487.

(a) by deleting the expression “Minister” wherever it occurs and substituting the expression “Cabinet Secretary”;

(b) by deleting subsection (5) and substituting therefor the following new subsections—

(5) After the expiry of six months from the date on which the cancellation of registration of an insurer has taken effect under this section, the Commissioner may, with the prior approval of the Cabinet Secretary, apply to the court for a liquidation order in respect of the insurer.

(5A) Subsection (5) does not apply if—

(a) the registration of the insurer has been revived under subsection (4); or

(b) an application for a liquidation order has already been made to the court in respect of the insurer”.

**73.** The Insurance Act is amended by inserting the

Insertion of section  
205 into Cap. 487

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following new section immediately after section 204—

Transitional and savings  
provision.

205. If—

- (a) any act or thing that was done or omitted to be done by or to the Minister under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary”.

**74.** Section 7 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 7 of  
Cap.488.

**75.** Section 8A of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 8A of  
Cap.488.

**76.** Section 9 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 9 of  
Cap.488.

**77.** Section 12 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 12 of  
Cap.488.

**78.** Section 24 of the Banking Act is amended by deleting subsection (1) and substituting therefor the following new subsections—

Amendment of  
section 24 of  
Cap.488.

(1) Subject to subsection (7), every institution shall appoint annually an auditor (within the meaning of section 3(1) of the Companies Act, 2015) and approved by the Central Bank.

(1A) An auditor appointed under subsection (1) shall audit and report on the annual balance sheet and profit and loss account required to be submitted to the

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Central Bank in accordance with section 23 (1).

**79.** Section 29 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 29 of Cap.488.

**80.** Section 31 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 31 of Cap.488.

**81.** Section 32 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 32 of Cap.488.

**82.** Section 34A of the Banking Act is amended by deleting subsection (5) and substituting therefor the following new subsections—

Amendment of section 34A of Cap.488.

(5) While the institution is in liquidation under this section, the liability of the shareholders of the institution for uncalled subscriptions to the capital stock of the institution continues;

(6) The institution shall discharge its liability to its depositors as soon as practicable after the commencement of the liquidation and shall then rank all other creditors in accordance with the Insolvency Act, 2015.

**83.** The Banking Act is amended by repealing section 35 and replacing it with the following new section—

Repeal of section 35 of Cap.488.

Liquidation of insolvent institutions.

**35.** (1) If satisfied on reasonable grounds that an institution has become insolvent, the Central Bank may appoint the Board to be a liquidator of the institution.

(2) Such an appointment has the same effect as the appointment of a liquidator by the High Court under Part VI of the Insolvency Act, 2015, and for that purpose, references in that Act to “the relevant date” and “commencement of the liquidation” are taken to be references to the date on which the Board is appointed as liquidator.

(3) A person may not be appointed as liquidator of an institution under Part VI of the Insolvency Act, 2015—

(a) if the Board has already been



appointed as its liquidator; or

(b) if the Board has not already been so appointed without the approval of the High Court.

(4) The Court may give approval under subsection (3)(b) only if the Central Bank—

(a) has certified that it does not intend to exercise its powers under this section; or

(b) has failed to exercise its powers within such period, not exceeding three months, as the High Court may specify.

(5) When a liquidator (other than the Board) has been appointed as liquidator of an institution, the Central Bank may, at any time, apply to the High Court for an order that the liquidator be removed and the Board be appointed as liquidator instead.

(6) If the High Court appoints the Board instead of the liquidator, the provisions of the Insolvency Act, 2015, apply to a liquidation by the Board but only to the extent that they are not inconsistent with this Act and any regulations made under it.

(7) When the Board is appointed as liquidator of an institution, it may do all or any of the following—

(a) carry on the business of the institution so far as may be necessary for its beneficial liquidation;

(b) appoint an advocate to assist it in the performance of its functions;

(c) pay any classes of creditors in full;

(d) enter into any compromise or arrangement with creditors or persons claiming to be creditors;

(e) compromise—

- (i) all calls and liabilities to call, debts and liabilities capable of resulting in debts, and all claims (whether present or future, certain or contingent, or ascertained or sounding only in damages) subsisting or alleged to be subsisting between the institution and a contributory or other person who may have a liability to the institution; and
- (ii) all questions affecting the assets or liquidation of the institution,

on such terms as may be agreed;

- (f) take security for the discharge of any such call, debt, liability or claim and give a complete discharge for it.

(8) In addition to the powers conferred by subsection (7), the Board may when acting as a liquidator of an institution—

- (a) set off payment made to a protected depositor out of the fund against any dividend subsequently determined as payable to such depositor;
- (b) recover interest payable to the institution on loans, overdrafts and other credit facilities outstanding as at the date of liquidation;
- (c) offset deposits and any other liabilities to the institution's customers against any loans or debts owed to the institution as at the date of liquidation;
- (d) invest surplus funds in the liquidation account that are not immediately required for the purpose of financing day to day

operations in short-term placements with reputable institutions approved by the Board or in such Government securities as the Board may determine.

(9) In the exercise of its powers as a liquidator, the Board may, by notice in writing, require any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution or any person who has custody of any funds or other assets of the institution being liquidated to—

- (a) give to the liquidator all reasonable assistance in connection with the liquidation;
- (b) appear before the liquidator for examination concerning matters relevant to the liquidation;
- (c) produce any records or documents that relate to the affairs of the institution being liquidated.

(10) In performing its functions under this section, the Board is subject to the supervision of the Central Bank.

(11) When the Board has been appointed as liquidator in respect of an institution, the powers of the Board are exercisable only if and to the extent authorised by the Central Bank.

(12) When the High Court has appointed a liquidator in respect of an institution, the powers of the liquidator are exercisable only if and to the extent authorised by the High Court.

(13) On the application of any interested party, the High Court may, if it considers it appropriate to do so, appoint a liquidation committee having the same

powers as a liquidation committee appointed under Part VI of the Insolvency Act, 2015.

(14) The Cabinet Secretary may make regulations generally for carrying out the liquidation of an institution under this section, and in doing so may—

- (a) apply relevant provisions of the Insolvency Act, 2015, with or without modifications; and
- (b) include provision as to the manner and time in which depositors and other creditors of the institution (preferential or otherwise) are required to submit proofs of their debts to the Board.

(15) For the purpose of this section, an institution becomes insolvent if—

- (a) it is unable to pay its debts within the meaning of section 383 of the Insolvency Act, 2015;
- (b) a liquidation order is made against it, or a resolution for creditors' voluntary liquidation is passed, under Part VI of the Insolvency Act, 2015;
- (c) it is unable to pay amounts due and payable to its depositors; or
- (d) the Central Bank determines on investigation that the value of its assets is less than the amount of its liabilities”.

**84.** The Banking Act is amended by inserting the following new sections immediately after section 35A—

Insertion of section 35B, 35C, 35D in Cap 488.

Power to place institutions in administration in certain circumstances.

**35B.** (1) The Central Bank may appoint the Board as administrator to manage to manage the institution's affairs and property, but only if it is satisfied that—

- (a) the institution is or is likely to become unable to pay its debts; and
- (b) the administration order is reasonably likely to achieve at least one of the objectives of administration.

(2) For the purpose of subsection (1)(b), the objectives of administration are the following:

- (a) to maintain the institution as a going concern;
- (b) to achieve a better outcome for the institution's creditors as a whole than would likely to be the case if the institution were liquidated (without first being under administration);
- (c) to realise the property of the institution in order to make a distribution to one or more secured or preferential creditors.

(3) The appointment of the Board as administrator of an institution has the same effect as the appointment by the High Court of an administrator of a company under Division 3 of Part VIII of the Insolvency Act, 2015.

(4) A person may not be appointed as administrator of an institution under Part VIII of the Insolvency Act 2015.

- (a) if the Board has already been appointed as its administrator; or
- (b) if the Board has not already been so appointed without the approval of the High Court.

(5) The Court may give approval under subsection (4)(b) only if the Central Bank—

(a) has certified that it does not intend to exercise its powers under this section; or

(b) has failed to exercise its powers within such period, not exceeding three months, as the High Court may specify.

(6) When an administrator (other than the Board) has been appointed in respect of an institution, the Central Bank may, at any time, apply to the High Court for an order that the administrator be removed and the Board be appointed as administrator instead.

(7) If the High Court removes the administrator and appoints the Board instead, the provisions of Part VIII of the Insolvency Act, 2015, apply to an administration by the Board but only to the extent that they are not inconsistent with this Act and any regulations made under it.

(8) A receiver or receiver and manager may not be appointed in respect of an institution and any provision purporting to confer power to appoint such a receiver or a receiver and manager is taken to be a power to appoint an administrator under Part VIII of the Insolvency Act, 2015.

(9) If, before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015, a receiver or receiver and manager of an institution has been appointed in respect of an institution, the receiver, or receiver and manager, is taken to be an administrator appointed under Part VIII of the Insolvency Act, 2015.

(10) When the Board is appointed as administrator in respect of an institution are exercisable only if and to the extent

authorised by the Central Bank.

(11) The powers of an administrator (other than the Board) appointed or taken to have been appointed in respect of an institution are exercisable only if and to the extent authorised by the High Court.

(12) In the exercise of its powers as an administrator, the Board may, by notice in writing, require a person to whom subsection (13) applies—

- (a) to give to the liquidator all reasonable assistance in connection with the administration;
- (b) to appear before the Board for examination concerning matters relevant to the administration;
- (c) to produce any records or documents that relate to the affairs of the institution under administration.

(13) This subsection applies to the following persons—

- (a) any person who is or has at any time been a director, managing director, secretary, principal officer, manager, officer or employee, agent, accountant or auditor of the institution;
- (b) any person who has custody of funds or other assets of the institution under administration.

(14) The Cabinet Secretary may make regulations generally for carrying out the administration of an institution under this section, and in doing so may apply relevant provisions of the Insolvency Act, 2015, with or without modifications.

exercise of powers under  
section 35 or 35AA.

dissatisfied with the exercise by the Board of a power conferred on it by section 35 or 35AA may apply to the High Court for an order or orders under subsection (2).

(2) On the hearing of an application made under subsection (1), the High Court may either dismiss the application or, if it considers that that the Board has exercised the power unfairly or unreasonably in relation to the applicant, make either or both of the following orders:

- (a) an order quashing any decision of the Board purporting to be made in the exercise of the power, and any action taken as a result of that decision;
- (b) an order directing the Board to exercise the power in such a way as the Court determines, subject to such terms as the Court considers appropriate.

(3) The Board is entitled to be served with a copy of an application made under subsection (1) and to appear as respondent at the hearing of the application.

Offences under sections  
35 and 35B.

**35D.** (1) A person who—

- (a) refuses or fails to comply with a requirement of a liquidator appointed under section 35, or of an administrator appointed under section 35B, that is applicable to the person, to the extent to which the person is able to comply with it;
- (b) obstructs or hinders such a liquidator or administrator in the exercise of the powers conferred under this Act;
- (c) provides information, or makes a



false statement, to such a liquidator or administrator knowing it to be false or misleading in any material respect; or

- (d) when appearing before such a liquidator for examination in accordance with such a requirement—makes a statement knowing it to be false or misleading in a material respect,

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

(2) If, after being convicted of an offence under subsection (1)(a), a person continues to refuse or fail to comply with the relevant requirement, the person commits a further offence on each day or part of a day on which the refusal or failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

**85.** Section 37 of the Banking Act is amended in subsection (1) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary.”

Amendment of section 37 of Cap 488.

**86.** Section 38 of the Banking Act is amended in subsection (2) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 38 of Cap 488.

**87.** Section 39 of the Banking Act is amended by deleting subsection (6) and substituting therefor the following new subsection—

Amendment of section 39 of Cap.488.

(6) An institution becomes insolvent for the purposes of this Part if—

- (a) a liquidator or provisional liquidator is appointed in respect of the institution under Part VI of the Insolvency Act, 2015;
- (b) a liquidator or interim liquidator is appointed in respect of the institution under this Act; or
- (c) a liquidation order or administration order is made

in respect of it, or a resolution for creditors' voluntary liquidation is passed, under the Insolvency Act, 2015.

**88.** Section 40A of the Banking Act is amended by deleting subsection (1) and substituting therefor the following new subsection—

Amendment of section 40A of Cap.488.

(1) The liquidator may assign the assets or liabilities of an institution or of a customer under this Act, the Insolvency Act, 2015, or under any other written law to third parties for the benefit of the creditors and depositors of the institution under liquidation.

**89.** Section 41A of the Banking Act is amended—

Amendment of section 41A of Cap.488.

(a) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

(b) by deleting subsection (1) and substituting therefor the following new subsection—

(1) The Board shall hold, manage and dispose of all the assets of an institution remaining unsold at the time of the institution's liquidation.”

**90.** Section 42 of the Banking Act is amended in subsection (1) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 42 of Cap.488.

**91.** Section 45 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 45 of Cap.488.

**92.** Section 46 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 46 of Cap.488.

**93.** Section 53 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 53 of Cap.488.

**94.** Section 55 of the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 55 of Cap.488.

**95.** Section 56 of the Banking Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 56 of Cap.488.

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(3) If—

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

**96.** The Third Schedule to the Banking Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
Third Schedule to  
Cap.488.

**97.** Section 2 of the Co-operative Societies Act is amended by—

Amendment of  
section 2 of Cap  
490.

- (a) inserting the following new definitions in proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for co-operative development;”;

“liquidator” means a liquidator appointed under section 65;”;

- (b) deleting the definition of the expression “Minister”.

**98.** Section 9 of the Co-operative Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 9 of  
Cap.490.

**99.** Section 16 of the Co-operative Societies Act is amended by deleting the words “Companies Act” and substituting therefor the words “Companies Act, 2015”.

Amendment of  
section 16 of  
Cap.490.

**100.** Section 22 of the Co-operative Societies Act is amended by deleting the expression “bankruptcy” appearing in paragraph (c) and substituting therefor the expression “insolvency”.

Amendment of  
section 22 of  
Cap.490

**101.** Section 29 of the Co-operative Societies Act is amended in subsection (10) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 29 of  
Cap.490

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**102.** Section 30 of the Co-operative Societies Act is amended—

Amendment of section 30 of Cap 490.

- (a) in subsection (8) by deleting the expression “Registrar” and substituting therefor the expression “Commissioner”;
- (b) in subsection (10) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”;

**103.** Section 36 of the Co-operative Societies Act is amended by repealing section 36 and replacing it with the following new section—

Repeal of section 36 of Cap 490.

Member's share not subject to attachment.

**36.** (1) Subject to section 34, the share or interest of a member in the capital of a co-operative society is not liable to attachment or sale under a judgment or order of a court in respect of a debt or liability incurred by the member.

(2) If such a member is adjudged bankrupt under the Insolvency Act, 2015, the bankruptcy trustee appointed in respect of the member's estate does not have a claim on the member's share or interest, but if such a member is adjudged bankrupt under that Act and the society is dissolved, the share or interest of the member vests in the bankruptcy trustee appointed in respect of the member's estate.

**104.** Section 51 of the Co-operative Act is amended by deleting subsection (2) and substituting therefor the following new subsections—

Amendment of section 51 of Cap 490.

(2) If, within thirty days after creating a charge in accordance with section 49, a co-operative society fails to register the charge with the Commissioner, each officer of the society who is in default commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings.”

(3) Subsection (2) does not apply if registration of the charge was effected by a person other than the society.”

(4) If, after an officer of a co-operative society is convicted of an offence under subsection (2), the failure to

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register the charge continues, each officer of the society who is in default commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty thousand shillings for each such offence.”

**105.** Section 57 of the Co-operative Societies Act is amended by deleting subsection (2) and substituting therefor the following new subsections—

Amendment of section 57 of Cap 490.

(2) An officer of a co-operative society who prevents or obstructs a person from inspecting the society’s register of charges, or copies of the documents by the society has created charges as provided by subsection (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings”.

(3) On convicting an officer of a co-operative society of an offence under subsection (2), the court may order the officer to facilitate the inspection of the society’s register of charges and the copies of the relevant documents.”

**106.** The Co-operative Societies Act is amended by inserting the following new Part immediately after section 60A.

Insertion of Part XIII into Cap 490.

### **PART XIII SPECIAL POWERS OF THE COURT TO SET ASIDE CERTAIN TRANSACTIONS**

**107.** The Co-operative Societies Act is amended by inserting the following new sections immediately after Part XIII—

Insertion of section 60B, 60C, 60D, 60E, 60F, 60G in Cap 490.

Power of the Court to set aside transaction that is under value.

**60B.** (1) This section applies to a co-operative society in respect of which a liquidator is appointed.

(2) In this section, “relevant time” has the meaning given by section 60D.

(3) If the liquidator reasonably believes that the society has at a relevant time entered into a transaction with a person at an undervalue, the liquidator may apply to the Court for an order under subsection (4).

(4) If, on the hearing of an application made under subsection (3), the Court finds that the transaction was undervalue, it shall

make an order setting aside the transaction and restoring the position to that which would have existed if the society had not entered into the transaction.

(5) For the purposes of this section and section 60E, a co-operative society enters into a transaction with a person at undervalue if—

(a) the society makes a gift to the person or otherwise enters into a transaction with the person on terms that provide for the society to receive no consideration; or

(b) the society enters into a transaction with the person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the society.

(6) The Court may not make an order under subsection (4) in respect of a transaction at an undervalue if it is satisfied—

(a) that the society that entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) that at the time when the society did so there were reasonable grounds for believing that it would benefit from the transaction.

Power of the Court to void preference.

**60C.** (1) In this section, “relevant time” has the meaning given by section 60D.

(2) If of the view that a co-operative society has at a relevant time given a preference to a person, the Commissioner may apply to the Court for an order under subsection (3).

(3) If, on the hearing of an application made under subsection (2), the Court is

satisfied that the society has at a relevant time given a preference to a person, it shall make an order voiding the act constituted by giving the preference and restoring the position that which would have existed if the preference had not been given.

(4) For the purposes of this section and section 60E, a co-operative society gives a preference to a person if—

- (a) the person is one of the society's creditors or a surety or guarantor for any of the society's debts or other liabilities; and
- (b) the society does any act or allows an act to be done that (in either case) has the effect of placing the person in a position that, if the society were in insolvent liquidation, is better than the position the person would have been in had that act not been done.

(5) The Court may not make an order under subsection (3) in respect of a preference given to a person unless it is satisfied that the society that gave the preference was influenced in deciding to give it by a wish to produce in relation to that person the effect referred to in subsection(4)(b).

(6) A co-operative society that has given a preference to a person connected with the society (otherwise than by being its employee) at the time when the preference was given is presumed, in the absence of evidence to the contrary, to have been influenced in deciding to give it by such a wish as is referred to in subsection (5).

(7) The fact that action has been taken in accordance with the order of a Court does not, without more, prevent the doing or suffering of that action thing from

constituting the giving of a preference.

What "relevant time" means in sections 60B and 60C.

**60D.** (1) Subject to subsection (2), the time at which a co-operative society enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference is given—

- (a) in the case of a transaction at an undervalue or of a preference that is given to a person who is connected with the society (otherwise than through being its employee)—at a time during the two years immediately preceding the appointment of the liquidator; or
- (b) in the case of a preference that is not such a transaction and is not so given—at a time during the six months immediately preceding that appointment.

(2) If a co-operative society enters into a transaction at an undervalue, or gives a preference at a time referred to in subsection (1)(a) or (b), that time is a relevant time for the purposes of section 60B or 60C only if the society—

- (a) is at that time unable to pay its debts; or
- (b) becomes unable to pay its debts in consequence of the transaction or preference.

(3) However, the conditions in subsection (2) are, in the absence of evidence to the contrary, presumed to exist in relation to a transaction at undervalue that is entered into by the society with a person who is connected with it.

Orders under sections 60B and 60C ancillary provisions.

**60E.** (1) An order under section 60B or section 60C with respect to a transaction or preference entered into or given by a co-



operative society may, subject to subsection (2)—

- (a) require property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the society;
- (b) require the property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) any security given by the society;
- (d) require any person to pay, in respect of benefits received from the society, such amounts to the liquidator as the Court may specify;
- (e) provide for any surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the preference, to be subject to such new or revived obligations to the person as the Court considers appropriate;
- (f) provide—
  - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order;
  - (ii) for such an obligation to be charged on specified property; and
  - (iii) for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which a person whose property is vested by the order in the society, or on whom obligations are imposed by the order, is to be able to prove in the liquidation of the society for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 60B or 60C may affect the property of, or impose an obligation on, a person whether or not the person is the one with whom the relevant co-operative society entered into the transaction, or the person to whom the preference was given.

(3) However, such an order—

(a) may not detrimentally affect an interest in property that—

(i) was acquired from a person other than the society; and

(ii) was acquired in good faith and for value, or detrimentally affect any interest that is derived from such an interest; and

(b) may not require a person who received a benefit from the transaction or preference in good faith and for value to pay an amount to the liquidator, unless—

(i) the person was a party to the transaction; or

(ii) the payment is to be in respect of a preference given to that person at a time when the person was a creditor of the society.

(4) If a person has acquired an interest

in property from a person other than the relevant co-operative society, or has received a benefit from the transaction or preference and, at the time of the acquisition or receipt, the person—

- (a) had notice of the relevant surrounding circumstances and of the relevant proceedings; or
- (b) was connected with, or was an associate of, either the relevant co-operative society or the person with whom that co-operative society entered into the transaction or to whom that co-operative society gave the preference,

then, for the purposes of paragraph (a) or paragraph (b) of subsection (3), the interest is presumed to have been acquired, or the benefit to have been received, otherwise than in good faith.

(5) For the purposes of subsection (4)(a), the relevant surrounding circumstances, in relation to a co-operative society, are—

- (a) the fact that the society entered into the transaction at an undervalue; or
- (b) the circumstances that amounted to the giving of the preference by that co-operative society,

and subsection (6) has effect to determine whether, for those purposes, a person has notice of the relevant proceedings.

(6) For the purposes of subsection (5), a person has notice of the relevant proceedings if the person has notice of the fact that a liquidator has been appointed in respect of the society.

(7) Nothing in this section or sections 60B to 60D affects the availability of any other remedy, even in relation to a transaction or preference that the society had

no power to enter into or give.

(8) Nothing in subsection (1) limits the Court's powers under sections 60B (4) and 60C (3).

Power of the Court to set aside certain extortionate credit transactions.

**60F.**(1) This section applies to a transaction to which a co-operative society is, or has been, a party to a transaction for, or involving, the provision of credit to the society.

(2) The Commissioner may apply to the Court for an order under subsection (3) if the Commissioner believes that such a transaction—

- (a) is or was extortionate; and
- (b) was entered into during the three years immediately preceding the date on which the society entered administration or on which a liquidator was appointed in respect of the society.

(3) If, on the hearing of an application made by the Commissioner under subsection (2), the Court is satisfied that the transaction is or was extortionate and was entered into within the period referred to in section (b) of that subsection, it shall make one or more of the following orders:

- (a) an order setting aside the whole or part of an obligation created by the transaction;
- (b) an order otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;
- (c) an order requiring a person who is or was a party to the transaction to pay to the Commissioner any amounts paid to that person by the

society in accordance with the transaction;

- (d) an order requiring a person to surrender to the Commissioner property held by the person as security for the purposes of the transaction;
- (e) an order directing accounts to be taken between the specified persons.

(4) For the purposes of this section, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

- (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
- (b) it otherwise grossly contravened ordinary principles of fair dealing.

(5) A transaction with respect to which an application is made under subsection (2) is, in the absence of evidence to the contrary, presumed to be or to have been extortionate.

(6) The powers conferred by this section are exercisable in relation to a transaction concurrently with any powers exercisable in relation to the transaction as one at an undervalue.

Circumstances in which floating charge on co-operative society's undertaking or property to be invalid.

**60G.** (1) Except as otherwise provided by this section, a floating charge on a co-operative society's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

- (a) an amount equal to the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services

supplied, to the society at the same time as, or after, the creation of the charge;

- (b) an amount equal to the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the society; and
- (c) the amount of such interest (if any) as is payable on the amount referred to in clause (a) or (b) in accordance with an agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(2) Subject to subsection (3), the time at which a floating charge is created by a co-operative society is a relevant time for the purposes of this section if the charge is created—

- (a) in the case of a charge which is created in favour of a person who is connected with the society—within the two years immediately preceding the appointment of a liquidator in respect of the society;
- (b) in the case of a charge that is created in favour of any other person—at a time within the period of twelve months ending with the date of that appointment.

(3) If a co-operative society creates a floating charge at a time referred to in subsection (2)(b) and the person in favour of whom the charge is created is not connected with the society, that time is not a relevant time for the purposes of this section unless the society—

- (a) is at that time unable to pay its

debts; or

(b) becomes unable to pay its debts in consequence of the transaction under which the charge is created.

(4) For the purposes of subsection (1)(a), the value of any goods or services supplied as consideration for a floating charge is the amount in money that, at the time they were supplied, could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the society”.

**108.** The Co-operation Societies Act is amended by repealing section 64 and replacing it with the following new section—

Repeal of section 64 of Cap 490.

Liquidation of co-operative society whose registration is cancelled under section 61 or 62

**64.** The First Schedule has effect with respect to the liquidation of a co-operative society whose registration has been cancelled under section 61 or 62.

**109.** The Co-operative Societies Act is amended by repealing section 65 and replacing it with the following new section—

Repeal of section 65 of Cap 490.

Appointment of liquidators.

**65.** (1) If the registration of a co-operative society is cancelled under section 61 or 62, the Commissioner may appoint one or more authorised insolvency practitioners to be the liquidator or liquidators of the society.

(2) The property of the society vests in the liquidator or liquidators from and including the date on which the cancellation of registration took effect.

(3) In this section, ‘authorised insolvency practitioner’ means an insolvency practitioner authorised under Part II of the Insolvency Act, 2015”.

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**110.** The Co-operative Societies Act is amended by repealing section 71 and replacing it with therefor the following new section—

Repeal of section 71  
of Cap.490.

Offences relating to the  
liquidation of co-  
operative society.

**71.** (1) The Third Schedule prescribes offences relating to conduct before and during liquidation and provides for criminal proceedings relating to those offences.

(2) If the liquidator of a co-operative society whose registration has been cancelled reasonably suspects that an offence specified in the Third Schedule has or may be committed during or before the liquidation of the society, the liquidator shall report the matter to the Commissioner.

(3) As soon as practicable after a suspected offence is reported in accordance with subsection (2), the Commissioner shall take such action (including prosecution of the offence) as the Commissioner considers appropriate.”

**111.** Section 72 of the Co-operative Societies Act is amended by deleting the word “Companies Act”, wherever it appears and substituting therefor the word “Companies Act, 2015”.

Amendment of  
section 72 of Cap  
490.

**112.** Section 77 of the Co-operative Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 77 of Cap  
490.

**113.** Section 84 of the Co-operative Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 84 of Cap  
490.

**114.** Section 85 of the Co-operative Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 85 of  
Cap.490.

**115.** Section 90A of the Co-operative Societies Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 90A of  
Cap.490.

**116.** Section 91 of the Co-operative Societies Act is

Amendment of  
section 91 of



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amended—

Cap.490.

(a) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

(b) in subsection (2) by inserting the following new paragraph immediately after paragraph (r)—

“(ra) provide for societies that become insolvent to be placed under administration instead of liquidation if it appears that it may be possible for them to recover from their insolvency;”

(c) by inserting the following new subsection immediately after section (2)—

(2A) In making rules for the purpose of subsection (2)(ra), the Cabinet Secretary may apply such provisions of the Insolvency Act, 2015, relating to the administration of insolvent companies as the Cabinet Secretary considers appropriate and, in applying those provisions for that purpose, may make such modifications to them as appear to the Cabinet Secretary to be necessary.

**117.** Section 94 of the Co-operative Societies Act is amended by deleting subsection (2) and substituting therefor the following new section—

Amendment of section 94 of Cap 490.

(2) A co-operative society, an officer or member of such a society, or other person who is convicted of an offence under subsection (1) is liable to a fine not exceeding five hundred thousand shillings.

**118.** The Co-operative Societies Act is amended by repealing section 95 and replacing it with the following new section—

Repealing of section 95 of Cap 490.

Certain laws not to apply

**95.** Except as expressly provided by rules made under section 91, the Companies Act, 2015, the Insolvency Act, 2015 and the Registration of Business Names Act do not apply to a co-operative society.

**119.** Section 96 of the Co-operative Societies Act is amended by inserting the following new subsection

Amendment of section 96 of Cap 490.

immediately after subsection (2)—

(3) If—

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

120. The Co-operative Societies Act is amended by repealing the Schedule and replacing it the following new Schedule—

Repealing of First  
Schedule to  
Cap.490.

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**FIRST SCHEDULE (S. 64)**

**LIQUIDATION OF CO-OPERATIVE SOCIETIES**

Interpretation: this  
Schedule.

1. (1) In this Schedule—

“contributory”, in relation to a co-operative society in respect of which a liquidator is appointed, means a member or past member of the society in respect of whom the liquidator has made a determination that the member or past member is liable to make a contribution to the funds of the society;

“deliver”, in relation to documents or other property, includes surrender and transfer;

“inability to pay its debts”, in relation to a co-operative society, has the meaning given by paragraph 2;

“past member” includes a deceased member.

The circumstances in  
which co-operative  
society is unable to pay  
its debts.

2. (1) For the purposes of this Schedule, a co-operative society is unable to pay its debts—

- (a) if a creditor (by assignment or otherwise) to whom the society is indebted for hundred thousand shillings or more has served on the society, by leaving it at the society's registered office, a written demand requiring the society to pay the debt and the society has for twenty-one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the society is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the High Court that the society is unable to pay its debts as they fall due.

(2) A co-operative society is also unable to pay its debts for the purposes of this Schedule if it is proved to the satisfaction of the High Court that the value of the society's assets is less than the amount of its liabilities (including its contingent and prospective liabilities).

(3) The regulations may increase or reduce the amount specified in subparagraph (1)(a).

Dispositions of property by co-operative society after commencement of liquidation to be void unless the High Court otherwise orders.

**3.** After the Commissioner has cancelled the registration of a co-operative society under section 61 or 62—

- (a) any disposition of the society's property; and
- (b) any transfer of shares, or alteration in the status of the society's members,

made after the cancellation is void, unless

the High Court otherwise orders.

Attachments and other forms of execution against co-operative society in liquidation to be void.

4. After the registration of a co-operative society is cancelled under section 61 or 62, any attachment, sequestration, distress or execution instigated against the assets of the society is void.

Liquidator may require co-operative society to submit statement of affairs.

5. (1) When a liquidator is appointed in respect of a co-operative society, the liquidator may require some or all of the persons to whom this paragraph applies to make out and submit to the liquidator a statement concerning the affairs of the society.

(2) The persons required to submit such a statement shall verify it by statutory declaration and shall include in it—

- (a) such particulars of the society's assets, debts and liabilities as are prescribed by the regulations for the purposes of this paragraph;
- (b) the names and addresses of the society's creditors;
- (c) the securities (if any) held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as the liquidator may reasonably require.

(3) This paragraph applies to the following persons:

- (a) those who are or have been officers of the society;
- (b) those who have taken part in the formation of the society at any time during the twelve months before the cancellation of the society's registration;
- (c) those who—

- (i) are in the society's employment, or have been in its employment during that period; and
- (ii) are in the liquidator's opinion capable of giving the information required.

(4) A prescribed person who is required under this paragraph to submit a statement of affairs to the liquidator shall, subject to subparagraph (5), do so within twenty-one days from and including the date on which notice of the requirement was given to the person by the liquidator.

(5) The liquidator may—

- (a) at any time release a person from an obligation imposed on the person under subparagraph (1) or by subparagraph (2); or
- (b) either when giving the notice referred to in subparagraph (4) or subsequently—extend the period referred to in that subparagraph.

(6) If the liquidator has declined to exercise a power conferred by subparagraph (5), the High Court may, on the application of the Attorney General or a person who is dissatisfied with the liquidator's decision, exercise the power if it considers it appropriate to do so.

(7) A person who, without reasonable excuse, fails to comply with an obligation imposed by or under this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(8) If, after being convicted of an offence under subparagraph (8), a person, without reasonable excuse, continues to fail to comply with the relevant obligation, the

person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

(9) In this paragraph, “employment” includes employment under a contract for services.

Duty of Commissioner to conduct investigation into failure of co-operative society.

6. As soon as practicable after cancelling the registration of a co-operative society, the Commissioner shall conduct an investigation

- (a) if the society has failed—to discover why the society failed; and
- (b) generally, to investigate the promotion, formation, business, dealings and affairs of the society.

Public examination of officers and past officers of co-operative society.

7. (1) When a liquidator is appointed in respect of a co-operative society, the liquidator may apply to the High Court for the public examination of any person who—

- (a) is or has been an officer of the society;
- (b) has acted as provisional liquidator, liquidator or administrator of the society; or
- (c) not being a person referred to in paragraph (a) or (b)—is or has been concerned, or has taken part, in the promotion, formation or management of the society.

(2) Unless the High Court otherwise orders, the liquidator shall make an application under subparagraph (1) on receiving a written request to do so from—

- (a) creditors of the society holding not less than one-half in value of the

total amount of the society's debts;  
or

- (b) contributories of the society holding not less than three-quarters of the voting rights at general meetings of the society.

(3) If, on the hearing of an application made under subparagraph (1), the High Court is satisfied that a public examination of the person to whom the application relates is warranted, it shall make an order directing such an examination to be held on a date and at a time and place specified in the order.

(4) On being served with a copy of an order made under subparagraph (3), the person concerned shall attend on the date and at the time and place specified in the order and be publicly examined—

- (a) about the promotion, formation or management of the society; or
- (b) about the conduct of its affairs, or conduct or dealings in relation to the society.

(5) The persons specified in subparagraph (6) may—

- (a) participate in the public examination of a person under this paragraph; and
- (b) may question the person concerning the matters referred to in subparagraph (4).

(6) The following persons are specified for the purpose of subparagraph (5):

- (a) the Commissioner;
- (b) the liquidator of the society;
- (c) any person who has been appointed

as special manager of the society's property or business;

(d) any creditor of the society who has submitted a proof;

(e) any contributory of the society.

Consequences of failing to attend public examination.

**8.** (1) A person who, without reasonable excuse, fails at any time to attend the person's public examination under paragraph 7 is guilty of a contempt of Court and is liable to be punished accordingly (in addition to any other punishment to which the person may be subject).

(2) If a person fails without reasonable excuse to attend the person's examination under paragraph 7, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying the examination, the High Court may issue a warrant to be issued to a police officer or a prescribed officer of that Court—

(a) for the arrest of that person; and

(b) for the seizure of any documents or property in that person's possession.

(3) In such a case, the High Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under it to be kept, in accordance with the directions of that Court, until such time as that Court orders.

Power of the High Court to halt liquidation.

**9.** (1) When a liquidator is appointed in respect of a co-operative society, the liquidator, the Commissioner or any creditor or contributory of the society, and on proof to the satisfaction of the High Court that all proceedings in the liquidation ought to be halted, that Court may make an order halting the liquidation proceedings, either permanently or for a specified period,



on such terms as that Court considers appropriate.

(2) Before making an order under subparagraph (1), the High Court may require the liquidator to provide it with a report on any facts or matters that appear to the liquidator to be relevant to the application.

(3) The liquidator shall comply with such a requirement within such period as the High Court specifies.

Payment of expenses of liquidation.

**10.** (1) If, in the case of a co-operative society in respect of which a liquidator is appointed, the assets of the society are insufficient to satisfy its liabilities, the liquidator—

- (a) may direct the expenses incurred in the liquidation to be paid out of the society's assets; and
- (b) may direct that that payment be given such of priority as the liquidator considers appropriate.

(2) A direction under subparagraph (1) has effect irrespective of the provisions of this Act relating to preferential debts.

Power to arrest absconding contributory.

**11.** (1) This paragraph applies when the Commissioner has cancelled the registration of a co-operative society.

(2) On the application of the Commissioner made either before or after the registration of the society is cancelled, the High Court may, if satisfied on reasonable grounds that a contributory is—

- (a) about to quit Kenya or otherwise to abscond; or
- (b) has concealed or removed, or is about to conceal or remove, any of the contributory's property for the purpose of evading payment of

calls,

issue a warrant authorising the contributory to be arrested and the contributory's documents and moveable personal property to be seized.

(2) In such a case, the High Court may authorise the person arrested under the warrant to be detained in custody, and anything seized under the warrant to be kept, in accordance with the directions of the High Court, until such time as that Court orders.

Preferential debts  
(general provision).

**12.** (1) The liquidator of a co-operative society shall distribute the assets of the society available for the payment of creditors in accordance with the Second Schedule.

(2) Subparagraph (1) is subject to the provisions of this Schedule.

Preferential charge on  
property of co-operative  
society distrained within  
three months before  
appointment of  
liquidator.

**13.** (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a person (whether or not a landlord or person entitled to rent) has distrained on the property of the society during the three months immediately preceding the date on which a liquidator was appointed, that property, or the proceeds of its sale, is charged for the benefit of the society with the preferential debts of the society to the extent that the society's assets are for the time being insufficient to satisfy them.

(3) If, because of a charge under subparagraph (2), a person surrenders property to the society or pays money to the society, the person ranks, in respect of the amount of the proceeds of sale of the property by the liquidator, or the amount money paid, as a preferential creditor of the

society, except as against so much of the society's property as is available for the payment of preferential creditors because of the surrender or payment.

(4) This paragraph does not limit the effect of paragraph 4 (avoidance of attachments, etc.).

Expenses of liquidation to have priority over claims under floating.

**14.** (1) The expenses of liquidating a co-operative society, so far as the assets of the society available for payment of general creditors are insufficient to meet those expenses, have priority over any claims to property comprised in or subject to any floating charge created by the society and are to be paid out of any such property accordingly.

(2) In subparagraph (1), the reference to claims to property comprised in or subject to a floating charge is to the claims of—

(a) the holders of debentures secured by, or holders of, the floating charge; and

(b) any preferential creditors entitled to be paid out of that property in priority to them.

(3) Provision may be made restricting the application of subparagraph (1), in such circumstances as may be prescribed by the regulations, to expenses authorised or approved—

(a) by the holders of debentures secured by, or holders of, the floating charge and by any preferential creditors entitled to be paid in priority to them; or

(b) by the High Court.

(4) References in this paragraph to the expenses of the liquidation are to all expenses properly incurred in the liquidation, including the remuneration of

the liquidator.

Power of liquidator to disclaim onerous property.

15. (1) The liquidator of a co-operative society may, by the giving such notice as may be prescribed by the regulations, disclaim any onerous property and may do so even if the liquidator has taken control of it, tries to sell it, or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this paragraph:

- (a) an unprofitable contract;
- (b) other property of the society that is unsalable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this paragraph—

- (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the society in or in respect of the property disclaimed; but
- (b) does not, except so far as is necessary for the purpose of releasing the society from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer may not be given under this paragraph in respect of any property if—

- (a) a person interested in the property has applied in writing to the liquidator, or a predecessor of the liquidator, requiring the liquidator or liquidator's predecessor to decide whether the property will be disclaimed or not; and

- (b) twenty-eight days from and including the date on which that application was made (or such extended period as the High Court may allow) has expired without a notice of disclaimer having been given under this paragraph in respect of the property.

(5) A person who has sustained loss or damage in consequence of the operation of a disclaimer under this paragraph is a creditor of the society to the extent of the loss or damage and accordingly may prove for the loss or damage in the liquidation.

Special provisions relating to disclaimer of leaseholds.

**16.** (1) The disclaimer under paragraph 15 of any property comprising a leasehold interest does not take effect unless a copy of the disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the society as under-lessee or mortgagee and either—

- (a) an application under paragraph 18 (general powers of the High Court in respect of disclaimed property) has not been made with respect to that property within fourteen days from and including the date on which the last notice served under this subparagraph was served; or
- (b) if such an application is made—that Court makes an order directing the disclaimer to take effect.

(2) If the High Court makes an order under subparagraph (1)(b) it may also, instead of or in addition to any order it makes under paragraph 18, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers appropriate.

Effect of disclaimer in relation to land subject to

**17.** (1) If, as a result of the

rentcharge.

disclaimer under paragraph 15 of land subject to a rentcharge, the land vests by operation of law in a person, the person is not subject to any liability in respect of amounts becoming due under the rentcharge except amounts that become due after the proprietor (or some person claiming under or through the proprietor) has taken possession or control of the land or has occupied it.

(2) The reference in subparagraph (1) to a person includes the State and to any a successor in title to the person.

General powers of the High Court in respect of disclaimed property.

**18.** (1) This paragraph and paragraph 19 apply to property that the liquidator of a co-operative society has disclaimed in accordance with paragraph 15.

(2) An application to the High Court for an order under subparagraph (3) may be made by—

- (a) any person who claims an interest in the disclaimed property; or
- (b) any person who is under a liability in respect of the disclaimed property, other than a liability discharged by the disclaimer.

(3) On the hearing of an application made under subparagraph (2), the High Court may make an order, on such terms as it considers appropriate, for the vesting of the disclaimed property in, or for its delivery to—

- (a) a person entitled to it or a trustee for such a person; or
- (b) a person subject to such a liability as is referred to in subparagraph (2)(b) or a trustee for such a person.

(4) The High Court may make an order under subparagraph (3)(b) only if it appears to that Court that it would be just to do so for the purpose of compensating the

person subject to the liability in respect of the disclaimer.

(5) The effect of an order made under this paragraph is to be taken into account in assessing for the purpose of paragraph 15(6) the extent of any loss or damage sustained by a person in consequence of the disclaimer.

(6) It is not necessary for an order under this paragraph vesting property in a person to be completed by transfer.

Powers of the High Court in respect of leaseholds held by co-operative society in liquidation.

**19.** (1) The High Court may not make an order under paragraph 18 vesting a leasehold interest in a person claiming under the society as underlessee or mortgagee except on terms making the person—

- (a) subject to the same liabilities and obligations as the society was subject to under the lease at the time of the liquidator's appointment; or
- (b) if that Court considers appropriate—subject to the same liabilities and obligations as the person would be subject to if the lease had been assigned to the person at that time.

(2) For the purposes of an order under paragraph 18 relating only to the part of the property comprising a lease, the requirements of subparagraph (1) apply as if the lease was the only property to which the order relates.

(3) If subparagraph (1) applies and no person claiming under the society as underlessee or mortgagee is willing to accept an order under paragraph 18 on the terms required under that subparagraph, the High Court may make an order vesting the society's interest in the lease in any person who is liable (whether personally or in a

representative capacity, and whether alone or jointly with the society) to perform the lessee's covenants under the lease.

(4) The High Court may vest that estate and interest in such a person freed and discharged from all estates, encumbrances and interests created by the society.

(5) If subparagraph (1) applies and a person claiming under the society as underlessee or mortgagee declines to accept an order under paragraph 18, that person is excluded from all interest in the property.

Creditor not entitled to retain benefit of execution or attachment against liquidator unless creditor completes execution or attachment before commencement of liquidation.

**20.** (1) If—

(a) a creditor—

(i) has issued execution against the property of a co-operative society; or

(ii) has attached any debt due to it; and

(b) a liquidator is subsequently appointed in respect of the society,

the creditor is not entitled to retain the benefit of the execution or attachment against the liquidator unless the creditor has completed the execution or attachment before the commencement of the liquidation.

(2) However—

(a) a person who, under a sale conducted by the enforcement officer or other officer charged with the execution of the writ goods of a co-operative society on which execution has been levied, purchases the goods in good faith acquires a good title to them as against the liquidator; and

(b) the High Court may set aside the rights conferred on the liquidator by subparagraph (1) in favour of



the creditor to such extent and subject to such terms as it considers just.

- (3) For purposes of this Act—
- (a) an execution against goods is completed by seizure and sale;
  - (b) an attachment of a debt is completed by receipt of the debt; and
  - (c) an execution against land is completed by its seizure or by any other event prescribed by the regulations for the purposes of this paragraph.

Duties of judicial enforcement officers charged with execution of writs and other processes involving co-operative societies in liquidation.

**21.** (1) This paragraph applies if—

- (a) a co-operative society's goods are taken in execution; and
- (b) before their sale or the completion of the execution (whether by the receipt or recovery of the full amount of the levy)—notice is served on the judicial enforcement officer charged with execution of the writ or other process that a liquidator has been appointed in respect of the society.

(2) If so required, the judicial enforcement officer concerned shall deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator.

(3) However, the costs of execution are a first charge on the goods or money so delivered, and the liquidator may sell the goods, or a sufficient part of them for the purpose of satisfying the charge.

(4) If, under an execution in respect of a judgement for an amount exceeding fifty thousand shillings, a co-operative society's

goods are sold or money is paid in order to avoid sale, the judicial enforcement shall—

- (a) deduct the costs of the execution from the proceeds of sale or the money paid; and
- (b) retain the balance for not less than fourteen days.

(5) If, within that fourteen-day period—

- (a) notice is served on the judicial enforcement officer to the effect that—
  - (i) an application for the liquidation of the society has been made; or
  - (ii) a meeting has been convened at which there is to be proposed a resolution for voluntary liquidation; and
- (b) an order is made or a resolution passed,

that officer shall pay the balance to the liquidator, who is entitled to retain it as against the execution creditor.

(6) The rights conferred by this paragraph on the liquidator may be set aside by the High Court in favour of the creditor to such extent and subject to such terms as that Court considers appropriate.

(7) The regulations may provide for the amount specified in subparagraph (4) to be increased or reduced.

Power of the High Court to rescind contracts entered into by co-operative society in respect of which liquidator is appointed.

**22.** (1) A person who is, as against the liquidator of a co-operative society, entitled to the benefit or subject to the burden of a contract made with the society, may make an application for an order under subparagraph (2).

(2) On the hearing of an application made under subparagraph (1), the High Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as that Court considers appropriate.

(3) Damages payable to a person under the order are provable by the person as a debt in the liquidation.

Co-operative society in liquidation required to state that it is in liquidation in all invoices, letters and other communications.

**23.** (1) A co-operative society in respect of which a liquidator is appointed shall ensure that—

(a) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the society, or a liquidator of the society or a receiver or manager of the society's property; and

(b) each of the society's websites,  
states that the society is in liquidation.

(2) If the society fails to comply with a requirement under subparagraph (1), the society, and each officer of the society who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

(3) If, after a co-operative society or any of its officers is convicted of an offence under subparagraph (2), the society continues to fail to comply with the relevant requirement, the society, and each officer of the society who is in default, commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

Interest on debts to be paid if surplus permits.

**24.** (1) When a liquidator is appointed in respect of a co-operative society, interest is payable in accordance with this paragraph on any debt proved in the liquidation of the society's assets, including so much of any such debt as represents interest on the remainder.

(2) The liquidator shall, before applying any surplus remaining after the payment of the debts proved in the liquidation for any other purpose, apply the surplus in paying interest on those debts in respect of the periods during which they have been outstanding since the liquidator was appointed.

(3) All interest under this paragraph ranks equally (whether or not the debts on which it is payable rank equally).

(4) The rate of interest payable under this paragraph in respect of a debt is the rate for the time being prescribed by the regulations for the purposes of this paragraph.

Certain documents relating to co-operative society in liquidation to be exempt from stamp duty.

**25.** When a liquidator is appointed in respect of a co-operative society, the following documents are exempt from stamp duty:

- (a) every transfer relating solely to freehold or leasehold property, or to any interest in, any real or personal property, that forms part of the society's assets and that, after the execution of the transfer, either at law or in equity, is or remains part of those assets; and
- (b) every writ, order or other document relating solely to the property of the society, or to any proceeding relating to its liquidation.

Records of co-operative society in liquidation to be evidence.

**26.** When a co-operative society is in liquidation, all records of the society and of

the liquidator are evidence of the truth of all matters purporting to be recorded in them, until the contrary is proved.

Liquidator to lodge periodic statements with Commissioner of Co-operative societies with respect to current position of liquidation.

**27.** (1) If the liquidation of a co-operative society is not completed within twelve months after its commencement, the liquidator shall, at such intervals as may be prescribed by the regulations and until the liquidation is completed, lodge with the Commissioner a statement containing the particulars so prescribed with respect to the proceedings in, and position of, the liquidation.

(2) A liquidator who fails to lodge a statement as required by subparagraph (1) commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(3) If, after being convicted of an offence under subparagraph (2), a liquidator continues to fail to lodge a statement as required by subparagraph (1), the liquidator commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

Court may order meetings to be held to ascertain wishes of creditors or contributories.

**28.** (1) The High Court may—

- (a) as to all matters relating to the liquidation of a co-operative society, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence); and
- (b) if it considers appropriate, for the purpose of ascertaining those wishes—
  - (i) direct meetings of the creditors or contributories to be convened, held and conducted in such manner as that Court directs; and

- (ii) appoint a person to act as chairperson of any such meeting and report the result of it to that Court.

(2) In the case of creditors, the High Court shall take into account the value of each creditor's debt.

(3) In the case of contributories, the High Court shall take into account the number of votes conferred on each contributory.

Judicial notice to be taken of documents of the High Court.

**29.** In all proceedings under this Schedule, all courts and tribunals, all judges and persons acting judicially, and all officers of a court or tribunal, or employed in enforcing the process of a court or tribunal, are required to take judicial notice of—

- (a) the signature of an officer of the High Court; and
- (b) the official seal or stamp of that Court affixed to or impressed on any document made, issued or signed under a provision of this Act, or any official copy of such a document.

Affidavits required to be sworn for purposes of this Schedule.

**30.** (1) An affidavit required to be sworn under or for the purposes of this Schedule may be sworn in Kenya—

- (a) before any court, tribunal, judge or person lawfully authorised to take and receive affidavits; or
- (b) before any of any diplomat representing the Government of Kenya in any place outside Kenya.

(2) All courts, tribunals, judges and other persons acting judicially are required to take judicial notice of the seal or stamp or signature of any such court, tribunal, judge, person or diplomat affixed to, impressed on,

or subscribed to any such affidavit, or to any other document to be used for the purposes of this Schedule.

Realising property of co-operative society in respect of which a liquidator is appointed.

**31.** (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a person has control over money, documents or other property to which the society appears to be entitled, the High Court may require that person immediately, or within such period as that Court may direct, to pay the money or deliver the documents or other property documents to the liquidator.

(3) Subparagraph (4) applies if the liquidator—

- (a) seizes or disposes of property that is not property of the society; and
- (b) at the time of seizure or disposal believes on reasonable grounds that the liquidator is entitled (whether under an order of that Court or otherwise) to seize or dispose of that property.

(4) When this subparagraph applies, the liquidator—

- (a) is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the liquidator's own negligence; and
- (b) has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

Duty of certain persons to co-operate with liquidator.

**32.** (1) When a liquidator is appointed in respect of a co-operative

society, this paragraph applies to the following persons—

- (a) those who are or have at any time been officers of the society;
- (b) those who have taken part in the formation of the society at any time within the twelve months immediately preceding the effective date;
- (c) those who are in the employment of the society, or have been in its employment (including employment under a contract for services) within that period, and are in the liquidator's opinion capable of giving the required information;
- (d) those who are, or have within that period been, officers of, or in the employment of, another co-operative society that is, or within period was, an officer of the relevant co-operative society.

(2) A person to whom this paragraph applies shall—

- (a) give to the liquidator such information concerning the society and its promotion, formation, affairs or property as the liquidator may reasonably require; and
- (b) appear before the liquidator at such times as the liquidator may reasonably require.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by this paragraph commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings.

(4) If, after being convicted of an offence under subparagraph (3), the person



continues to fail to comply with the relevant requirement, the person commits a further offence on each day on which the failure continues and on conviction is to fine not exceeding fifty thousand shilling for each such offence.

(5) In this paragraph, "employment" includes employment under a contract for services.

Lien in respect of co-operative society's documents unenforceable if it would deny their possession to Commissioner.

**33.** (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) A lien or other right to retain possession of any of the documents of the society is unenforceable to the extent that its enforcement would deny possession of any of the documents to the liquidator.

(3) Subparagraph (2) does not apply to a lien on documents that confer a title to property and are held as such.

Supply of utility services to companies in liquidation or under administration, etc.

**34.** (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) If a request is made by or with the consent of the liquidator for the giving, after the date on which liquidator is appointed, of any of the supplies specified in subparagraph (3), the supplier—

(a) may make it a condition of the giving of the supply that the liquidator personally guarantees the payment of any charges in respect of the supply; but

(b) may not make it a condition for providing the supply, or take any action that has the effect of making it a condition for providing the supply, that any outstanding

charges are to be paid in respect of a supply provided to the society before the effective date.

(3) The supplies referred to in subparagraph (2) are—

- (a) a supply of gas by a gas supplier;
- (b) a supply of electricity by an electricity supplier ;
- (c) a supply of water by a water supplier; and
- (d) a supply of communications services by a provider of a public telecommunication or electronic communications service”.

**121.** The Co-operative Societies Act is amended by inserting the following new Schedules immediately after the First Schedule—

Insertion of Second Schedule and Third Schedule in Cap.490.

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**SECOND SCHEDULE (FIRST SCH.)**  
**PREFERENTIAL DEBTS**

Priority of payments to preferential creditors.

**1.** The debts of a co-operative society in respect of which a liquidator is appointed are payable in the order of priority in which they are listed in paragraphs 2, 3 and 4.

First priority claims.

**2.** (1) The expenses of the liquidation have first priority and are payable in the order in which they are listed in subparagraph (2)(a) to (c).

(2) For the purposes of subparagraph (1), those expenses are as follows:

(a) the remuneration of the liquidator, and the fees and expenses properly incurred by the liquidator in performing out the duties imposed, and exercising the powers conferred, by or under this Act;

(b) to any creditor who protects or preserves assets of the society for

the benefit of the creditors of the society by the payment of money or the giving of an indemnity—

- (i) the amount received by the liquidator by the realisation of those assets, up to the value of that creditor's unsecured debt; and
- (ii) the amount of the costs incurred by that creditor in protecting or preserving those assets.

Second priority claims.

**3.** (1) After the claims referred to in paragraph 2 have been paid, claims in respect of the following debts have second priority to the extent that they remain unpaid:

- (a) all wages or salaries payable to employees in respect of services provided to the society during the four months before the date of appointment of the liquidator;
- (b) any holiday pay payable to employees on the termination of their employment before that appointment or during the liquidation;
- (c) any compensation for redundancy owed to employees that accrues before that appointment or during the liquidation ;
- (d) amounts deducted by the society from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act);
- (e) any reimbursement or payment provided for, or ordered by the Industrial Court under the Labour

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Institutions Act, 2007 to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, 2007 in respect of wages or other money or remuneration lost during the four months before that appointment or during the liquidation;

- (f) all amounts that are by any other written law required to be paid in accordance with the priority established by this subclause paid by the buyer to a seller on account of the purchase price of goods.

(2) The total amount to which priority is to be given under any, or all, of subparagraphs (1)(a) to (e) may not, in the case of any one employee, exceed two hundred thousand shillings as at the commencement of the liquidation.

(3) The amount specified in subparagraph (2) is subject to adjustment as follows:

- (a) subject to subclause (d)—the Cabinet Secretary shall, by order published in the Gazette, make an adjustment that has effect for the three-year period from and including 1 July 2015 and for each subsequent three-year period;
- (b) subject to subclause (d)—the Cabinet Secretary shall make such an order within three months after the end of an adjustment period;
- (c) each adjustment is required to reflect any overall percentage increase, over the relevant adjustment period, in average weekly earnings (total, private sector), calculated by reference to

- the last Employment Survey or similar employment index published by Kenya Bureau of Statistics (or, if that survey ceases to be published, a survey certified by the Government Statistician as an equivalent to that survey) within the relevant adjustment period;
- (d) if, in an adjustment period, there is no change, or an overall decrease, in the percentage movement in average weekly earnings (total, private sector), as so calculated, the Cabinet Secretary may not make an adjustment for that adjustment period;
  - (e) if, in accordance with subclause (d), no adjustment is made, the Cabinet Secretary shall ensure that the next adjustment made for any later adjustment period reflects any overall percentage increase in average weekly earnings (total, private sector) between the date of the last adjustment and the end of the adjustment period for which the subsequent adjustment is to be made;
  - (f) all adjustments are cumulative and are to be rounded to the nearest shilling (with fifty cents being rounded to one shilling); and
  - (g) any correction to the Quarterly Employment Survey on which an adjustment is based is to be disregarded until the adjustment that takes effect in the subsequent adjustment period, which must reflect the corrected information in the calculation of that adjustment and must otherwise be made in accordance with this subparagraph.

(4) The amount specified in subparagraph (2), or that amount as adjusted under subparagraph (3), on the date of commencement of the liquidation, continues to apply to that liquidation regardless of any change to that amount that is prescribed after the date of commencement of the liquidation.

(5) In this paragraph—

“adjustment period” means the three-year period beginning on 1 July 2012 and each subsequent three-year period.

“employee” means a person employed by an employer for wages or a salary under a contract of service; and includes a home worker specified in of the Employment Act, 2007, but does not include a person who is, or was at any time during the twelve months before the appointment of the liquidator of the society, a member of the committee of the society, or a nominee or relative of, or a trustee for, such a member;

“wages or salaries”, in relation to an employee, includes—

- (a) remuneration in the form of commission or payable for time or for piece work; and
- (b) remuneration payable to an employee as holiday or sickness pay or in respect of absence from work for any other good reason.

Third priority claims.

4. After the claims referred to in paragraphs 2 and 3 have been paid, the claims in respect of the following debts have third priority to the extent that they remain unpaid:

- (a) tax deductions made by the society under the pay as you earn rules of the Income Tax Act;

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(b) non-resident withholding tax deducted by the society under the Income Tax Act;

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(c) resident withholding tax deducted by the society under the Income Tax Act;

(d) duty payable within the meaning of section 2(1) of the Customs and Excise Act.

Unsatisfied claims of the same priority to abate equally.

5. Claims having the same priority rank equally among themselves and, subject to any maximum payment level prescribed by or under any written law, are payable in full, unless the property of the society is insufficient to meet them, in which case they abate in equal proportions.

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**THIRD SCHEDULE (s. 71)**

**OFFENCES RELATING TO CONDUCT BEFORE AND DURING LIQUIDATION AND CRIMINAL PROCEEDINGS RELATING TO THOSE OFFENCES**

Offence involving commission of fraudulent acts in anticipation of liquidation.

1. (1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if, within the twelve months immediately preceding the appointment of the liquidator, the officer or past officer—

- (a) concealed any part of the society's property to the value of fifty thousand shillings or more; or concealed any debt due to or from the society;
- (b) fraudulently removed any part of the society's property to the value of fifty thousand shillings or more;
- (c) concealed, destroyed, mutilated or falsified any document affecting or relating to the society's affairs or property;

- (d) made any false entry in any document affecting or relating to the society's affairs or property;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the society's affairs or property; or
- (f) pawned, pledged or disposed of any property of the society that has been obtained on credit and has not been paid for.

(3) Subparagraph (3)(f) does not apply if the pawning, pledging or disposal was done in the ordinary course of the society's business.

(4) An officer or past officer of the society also commits offence—

- (a) if, within the twelve months period referred to in subparagraph (2), the officer or past officer has been privy to the doing by others of any of the acts referred to in clauses (c), (d) and (e) of that subparagraph; or
- (b) if, at any time after the commencement of the liquidation, the officer or past officer—
  - (i) does any of the acts referred to in clauses (a) to (f) of that subparagraph; or
  - (ii) is privy to the doing by others of any of the acts referred to in clauses (c) to (e) of that subparagraph.

(4) In a prosecution for an offence under—

- (a) clause (a) or (f) of subparagraph (2); or
- (b) subparagraph (4) in respect of an act referred to in either of those two clauses,



it is a defence to prove that the officer or past officer had no intention to defraud.

(5) In a prosecution for an offence under—

- (a) clause (c) or (d) of subparagraph (2); or
- (b) subparagraph (4) in respect of an act referred to in either of those two clauses,

it is a defence to prove that the officer or past officer had no intention to conceal the state of affairs of the society or to defeat the law.

(6) If property is pawned, pledged or disposed of in circumstances that constitute an offence under subparagraph (2)(f), a person who takes in pawn or pledge, or otherwise receives, the property knowing it to have been pawned, pledged or disposed of in such circumstances, commits an offence.

(7) A person found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

(8) The regulations may increase or reduce the amounts specified in subparagraph (2)(a) and (b).

2. (1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

Offences involving transactions to defraud creditors of co-operative society in respect of which liquidator is appointed.

(2) An officer or past officer of the society commits an offence if the officer or past officer—

- (a) has made or caused to be made a gift or transfer of, or charge on, or has caused or connived at the levying of execution against, the society's property; or

(b) has concealed or removed any part of the society's property since, or within the two months preceding, the date of any unsatisfied judgment or order for the payment of money obtained against the society.

(3) A person is not liable to be charged with an offence under subparagraph (2) if the conduct alleged to constitute the offence occurred more than five years before the commencement of the liquidation.

(4) In a prosecution for an offence under subparagraph (2)(a), it is a defence to prove that the officer or past officer did not, at the time of the alleged offence, have any intent to defraud the society's creditors.

(5) An officer or past officer of co-operative society who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment or a fine not exceeding two years, or to both.

Offence involving misconduct committed in course of liquidation of co-operative society.

3. (1) This paragraph applies in relation to a co-operative society for which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if the officer or past officer—

(a) does not to the best of the officer's or past officer's knowledge and belief fully and truly disclose to the liquidator all of the society's property, and how and to whom and for what consideration and when the society disposed of any part of that property (except such part as has been disposed of in the ordinary course of the society's business);

(b) does not deliver up to the liquidator, or in accordance with the directions of the liquidator, all such part of the

society's property as is under the control of the officer or past officer, and that the liquidator is required by law to deliver up;

- (c) fails to deliver up to the liquidator (or as the liquidator directs) all documents under the control of the officer or past officer that belong to the society and that the officer or past officer is required by law to deliver up;
- (d) knowing or believing that a false debt has been proved by any person in the liquidation, fails to inform the liquidator of that knowledge or belief as soon as practicable; or
- (e) after the appointment of the liquidator—prevents the production of any document affecting or relating to the society's affairs or property.

(3) An officer or past officer also commits an offence if, after the liquidator is appointed, the officer or past officer attempts to account for any part of the society's property by means of fictitious losses or expenses.

(4) An officer or past officer is presumed, in the absence of evidence to the contrary, to have committed an offence under subparagraph (3) if the officer or past officer has made an attempt of the kind referred to in that subparagraph at a meeting of the society's creditors held within the twelve months immediately preceding the appointment of the liquidator.

(5) In a prosecution for an offence under subparagraph (2)(a), (b) or (c), it is a defence to prove that the officer or past officer had no intention to defraud.

(6) In a prosecution for an offence under subparagraph (2)(e), it is a defence to

Offence to falsify documents in relation to co-operative society in respect of which liquidator is appointed.

4. (1) This paragraph applies in relation to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or contributory of the society commits an offence if, during the liquidation, the officer or contributory, with intent to defraud or deceive the society or any other person—

- (a) destroys, damages, alters or falsifies a security or other document of the society; or
- (b) makes or is privy to the making of a false or fraudulent entry in any record or other document of the society.

(3) A person who is found guilty of an offence under subparagraph (1) is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, to both.

Offence to make material omission from statement relating to affairs of co-operative society in respect of which liquidator is appointed

5. (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if, while the liquidator is appointed, the officer or past officer makes a material omission from a statement relating to the society's affairs.

(3) An officer or past officer of the society is also taken to have committed an offence under subparagraph (2) if, before the appointment of the liquidator, the officer or past officer has made any material omission from a statement relating to the society's affairs.

(4) In a prosecution for an offence under this paragraph, it is a defence to prove that the officer or past officer had no intention to defraud.

(5) A person who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding one million shillings or to imprisonment for twelve months, or to both.

Offence to make false representations to creditors of co-operative society in respect of which a liquidator is appointed.

6. (1) This paragraph applies to a co-operative society in respect of which a liquidator is appointed.

(2) An officer or past officer of the society commits an offence if—

(a) the officer or past officer makes a false representation; or

(b) does any other fraudulent act,

for the purpose of obtaining the consent of the society's creditors or any of them to an agreement relating to the society's affairs or to its liquidation.

(3) An officer or past officer of the society is also to be taken to have committed an offence under subparagraph (2) if, before the commencement of the liquidation, the officer or past officer—

(a) made any false representation; or

(b) did any other fraudulent act,

for the purpose of obtaining that consent.

(4) An officer or past officer person who is found guilty of an offence under this paragraph is liable on conviction to a fine not exceeding two million shillings and to imprisonment for a term not exceeding five years, or to both.

Power of the High Court to make orders against delinquent committee members, liquidators, etc.

7. (1) This paragraph applies to the following persons:

(a) an officer or past officer of a co-operative society that is in liquidation (whether by the High Court or voluntarily);

(b) a person who is or has acted as the liquidator of such a co-operative society;

(c) not being a person referred to in paragraph (a) or (b)—a person who has been concerned in the promotion, formation or management of such a co-operative society.

(2) If, during the course of the liquidation of a co-operative society, it appears that a person to whom this paragraph applies has or may have—

(a) misapplied or retained, or become accountable for, money or property of the society; or

(b) committed misfeasance or a breach of any fiduciary or other duty in relation to the society,

the Commissioner, the liquidator of the society or a creditor or contributory of the society may make an application to that Court to conduct an examination under subparagraph (6).

(3) The reference in subparagraph (2) to misfeasance or a breach of any fiduciary or other duty in relation to the society includes, in the case of a person who has acted as liquidator of the society, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of the liquidator's functions as liquidator of the society.

(4) An application under subparagraph (2) may be made in relation to a person who has acted as liquidator of the society only with the leave of the High Court given after the person has been released from the responsibilities of liquidator.

(5) A contributory may make an application under subparagraph (2) only with the leave of the High Court.

(6) On the hearing of an application made under subparagraph (2), the High

Court may undertake an examination into the conduct of the person in relation to whom the application was made.

(7) If, at the conclusion of the examination, the High Court finds that the person examined has engaged in conduct of a kind referred to in subparagraph (2), it may make an order compelling the person—

- (a) to repay, restore or account for the money or property or any part of it, with interest at such rate as that Court considers appropriate; or
- (b) to contribute such amount to the society's assets as compensation for the misfeasance, breach of fiduciary or other duty as the High Court considers fair and reasonable.

Power of the High Court to make orders against officers of co-operative society and others found to have participated in fraudulent trading by co-operative society

**8.** (1) A liquidator of a co-operative society may make an application to the High Court for an order under subparagraph (2) if—

- (a) in the course of the liquidation of the society, the liquidator forms the view that a business of the society has been carried on with intent to defraud creditors of the society or creditors of any other person, or for any fraudulent purpose; and
- (b) the liquidator believes that specified persons participated (directly or indirectly) in the business with the knowledge that the business was being carried on in that manner.

(2) If, on hearing an application made under subparagraph (1), the High Court finds that the persons specified in the application did in fact participate (directly or indirectly) in a business of the society with the knowledge that it was being carried on in the manner referred to in subparagraph (1)(a), it may order those persons (or any of them) to

make such contributions to the society's assets as the High Court considers fair and reasonable.

(3) The persons specified in an application made under subparagraph (2) are entitled to be served with a copy of the application and to appear and be heard as respondents at the hearing of the application,

(4) If the High Court makes an order against a person under subparagraph (2), it may also make an order disqualifying the person from—

- (a) being or acting as a member of the committee of a co-operative society;
- (b) being or acting as a liquidator, provisional liquidator or administrator of a co-operative society;
- (c) being or acting as a supervisor of a voluntary arrangement approved by the society; or
- (d) in any way (whether directly or indirectly) being concerned in the promotion, formation or management of a co-operative society,

for such period, not exceeding fifteen years, as may be specified in the order.

Power of the High Court to make orders against officers of co-operative society engaging in wrongful trading.

9. (1) This paragraph applies—

- (a) to a co-operative society in respect of which a liquidator is appointed; and
- (b) to a person who, at a time before the liquidator was appointed, was an officer of the society.

(2) For the purposes of this paragraph—

- (a) a co-operative society is in insolvent liquidation if, at the time the



liquidation commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation; and

(b) the person in respect of whom an application is made under subparagraph (3) is the respondent to the application.

(3) If, in the course of the liquidation of a co-operative society, it appears to the liquidator that a person to whom this paragraph applies knew or ought to have known that there was no reasonable prospect that the society would avoid being placed in insolvent liquidation, the liquidator may make an application to the High Court for an order under subparagraph (5).

(4) The High Court may hear an application made under subparagraph (2) only if the person in respect of whom the application was made has been served with a copy of the application.

(5) If, on the hearing of an application made under subparagraph (3), the High Court may, if satisfied that, at the relevant time, the respondent knew or ought to have known that there was no reasonable prospect that the society would avoid being placed in insolvent liquidation, make an order declaring the respondent to be liable to make such contribution (if any) to the society's assets as that Court considers appropriate.

(6) However, the High Court may not make such an order if satisfied that the respondent took such steps to avoid potential loss to the society's creditors as (assuming the respondent to have known that there was no reasonable prospect that the society would avoid going into solvent liquidation) the respondent ought reasonably to have taken.

(7) Nothing in this paragraph affects the operation of paragraph 8 (fraudulent trading by co-operative society in liquidation).

(8) If the High Court makes an order against a person under subparagraph (5), it may also make an order disqualifying the person from—

- (a) being or acting as a member of the committee of a co-operative society or a director of a company;
- (b) being or acting as a liquidator, provisional liquidator or administrator of a co-operative society;
- (c) being or acting as a supervisor of a voluntary arrangement approved by the society; or
- (d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a co-operative society or a company,

for such period, not exceeding fifteen years, as may be specified in the order.

Supplementary provisions relating to proceedings under paragraphs 8 and 9.

**10.** (1) On the hearing of an application under paragraph 8 (fraudulent trading by co-operative society in liquidation) or paragraph 9 (wrongful trading), the liquidator may personally give evidence or call witnesses.

(2) If the High Court makes an order under paragraph 8 or 9, it may make such further orders as it considers appropriate for giving effect to the order.

(3) In particular, the High Court may—

- (a) provide for the liability of any person under the order to be a charge—

- (i) on any debt or obligation due from the society to the person; or
  - (ii) on any mortgage or charge or any interest in a mortgage or charge on assets of the society held by or vested in the person, or any other person on the person's behalf, or any other person who claims as an assignee from or through the person liable or any person acting on that person's behalf; and
- (b) from time to time make such further order as may be necessary for enforcing a charge imposed under paragraph (a).
- (4) For the purposes of subparagraph (3)(a)(ii), "assignee"—
- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the order is made.
- (5) If the High Court makes an order under paragraph 8 or 9 in relation to a person who is a creditor of the society, it may direct that the whole or any part of any debt owed by the society to that person, and any interest on the debt, ranks in priority after all other debts owed by the society and after any interest on those debts.

(6) The High Court can make an order under paragraph 8 or 9 even if the person concerned may be criminally liable in respect of matters giving rise to the making of the order.

Member of the committee of co-operative society in insolvent liquidation prohibited from being member of the committee of, or being involved with, any other co-operative society that is known by a prohibited name.

**11.** (1) This paragraph applies to a person if—

- (a) a co-operative society is in insolvent liquidation on or after the commencement of this paragraph; and
- (b) the person was a member of the committee of the society at any time during the twelve months immediately preceding the date on which the liquidation of the society commenced.

(2) For the purposes of this paragraph, a name is a prohibited name in relation to such a person if—

- (a) it is a name by which the society was known at any time during that period of twelve months; or
- (b) it is a name that is so similar to a name of the kind referred to in paragraph (a) as to suggest an association with the society.

(3) Except with leave of the High Court, or in such circumstances as may be prescribed by the regulations, a person to whom this paragraph applies shall not at any time during the five years from and including the date on which the liquidation of the society commenced—

- (a) be a member of the committee of any other co-operative society that is known by a prohibited name;
- (b) in any way (directly or indirectly) be concerned or take part in the promotion, formation or management of any such society; or

(c) in any way (directly or indirectly) be concerned or take part in the carrying on of a business carried on (otherwise than by a co-operative society) under a prohibited name.

(4) A person who contravenes this paragraph commits an offence and on conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding twelve months, or to both.

(5) A reference in this paragraph, in relation to a time, to a name by which a co-operative society is known is a reference to the name of the society at that time or to any name under which the society carried on business at that time.

(6) For the purposes of this paragraph, a co-operative society is in insolvent liquidation if, at the time the liquidation commences, the society's assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation.

Circumstances in which persons are personally liable for debts of co-operative society.

**12.** (1) A person is personally responsible for all the relevant debts of a co-operative society if at any time the person—

- (a) is involved in the management of the society in contravention of paragraph 11; or
- (b) while is involved in the management of the society—acts or is willing to act on instructions given (without the leave of the High Court) by a person whom the person knows to be subject to a person to whom subparagraph (2) applies.

(2) This subparagraph (1) applies to the following persons:

- (a) a person who is involved in the management of the company in contravention of paragraph 11;
- (b) a person who is subject to a disqualification order or disqualification undertaking, or to foreign restrictions, under Part X of the Companies Act, 2015, or
- (c) a person who is subject to any other restriction or disability of a kind prescribed by regulations made for the purpose of this section.

(3) If, because of subparagraph (1), a person is personally responsible for the relevant debts of a co-operative society, the person is jointly and severally liable for those debts with the society and any other person who, whether under this paragraph or otherwise, is so liable.

(4) For the purposes of this paragraph, the relevant debts of a co-operative society are—

- (a) in relation to a person who is personally responsible under clause (a) of subparagraph (1)—such debts and other liabilities of the society as are incurred at a time when the person was involved in the management of the society; and
- (b) in relation to a person who is personally responsible under clause (b) of that subparagraph—such debts and other liabilities of the society as are incurred at a time when the person was acting or was willing to act on instructions given as referred to in that paragraph.

(5) For the purposes of this paragraph, a person is involved in the management of a co-operative society if the person—

- (a) is a member of the committee of the society; or
- (b) is concerned, whether directly or indirectly, or takes part, in the management of the society.

(6) For the purposes of this paragraph, a person who, as a person involved in the management of a co-operative society, has at any time acted on instructions given (without the leave of the High Court) by another person whom the person knew at that time to be a person to whom subparagraph (2) applies is presumed, unless the contrary is shown, to have been willing at any later time to act on any instructions given by that person.

Prosecution of delinquent officers and members of co-operative society in liquidation by the High Court.

**13.** (1) This paragraph applies to a co-operative society that is being liquidated by the High Court.

(2) If the High Court concludes that a person who was at the relevant time an officer or past officer, or member, of the society may have committed an offence in relation to the society for which the person is criminally liable, the High Court may (either on the application of a person interested in the liquidation or on its own initiative) direct the liquidator to report the matter to the Commissioner.

(3) If, while the society is being liquidated by the High Court, it appears to the liquidator that a person who, at the relevant time was an officer or past officer, or a member, of the society, may have committed an offence in relation to the society for which the person is criminally liable, the liquidator shall report the matter to the Commissioner.

(4) In making a report under subparagraph (2) or (3), the liquidator shall provide the Commissioner with—

- (a) such information; and
- (b) such access to and facilities for inspecting and taking copies of documents,

as the Commissioner reasonably requires and the liquidator is able to reasonably give or provide.

(5) As soon as practicable after receiving a report under subparagraph (2) or (3), the Commissioner shall forward the report to the Attorney General for further investigation, together with—

- (a) the information and documents (if any) given or provided in accordance with subparagraph (4); and
- (b) such observations on the report, information and documents as the Official Receiver considers relevant.

(6) On receiving a report under subparagraph (5), the Attorney General shall investigate the matter concerned and such other matters relating to the affairs of the society as appear to the Attorney General to require investigation.

(7) For the purpose of an investigation under subparagraph (6), the Attorney General may exercise any of the powers conferred on inspectors by Part XXX of the Companies Act, 2015 as if the society were a company.

Obligations arising under paragraph 13.

**14.** (1) For the purpose of an investigation by the Attorney General under paragraph 13(6), a person has the same obligation to produce documents or give information, or otherwise assist the Attorney General, as the person would have in relation to an inspector appointed under Part XXX of the Companies Act, 2015.



(2) An answer given by a person to a question put to the person in exercise of the powers conferred by paragraph 13(7) may be used in evidence against the person.

(3) However, in criminal proceedings in which that person is charged with an offence to which this paragraph applies—

(a) evidence relating to the answer may not be adduced; and

(b) questions relating to it may not be asked, by or on behalf of the prosecution,

unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(4) This paragraph applies to all offences other than an offence under sections 107 and 114 of the Penal Code (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).

(5) If criminal proceedings are begun by the Director of Public Prosecutions following a an investigation under paragraph 13(6), the liquidator and every officer and agent, and past officer and agent, of the society (other than the defendant) shall provide the Director of Public Prosecutions and the Attorney General with such assistance in connection with the prosecution as the liquidator, officer or agent or past officer or agent is reasonably able to give.

(6) In subparagraph (5), “agent” includes any bank or advocate of the society and any person employed by the society as auditor, whether that person is or is not an officer of the society.

(7) If a person fails to provide assistance as required by subparagraph (5), the High Court may, on the application of

the Director of Public Prosecutions or the Attorney General, make an order directing the person to comply with that subparagraph.

(8) If the application is made with respect to a liquidator, the High Court may also make an order directing the costs to be borne by the liquidator personally.

(9) However, the High Court may not make such an order if it is established that the failure to comply was due to the liquidator having insufficient assets of the society to enable the liquidator to provide the required assistance.”

**122.** The Registration of Business Names Act is amended in section 4 by deleting paragraph (d) and substituting therefor the following new paragraph—

Amendment of  
section 4 of  
Cap.499.

- (d) every corporation having a place of business in Kenya and carrying on business under a business name that is not its corporate name without any addition is required to be registered as provided by this Act, except that—
- (i) if two or more individual partners have the same surname, the addition of an “s” at the end of that surname does not of itself render registration necessary;
  - (ii) if the business is carried on by a bankruptcy trustee or an administrator appointed by the court, registration is not necessary; and
  - (iii) a purchase or acquisition of property by two or more persons as joint tenants or tenants in common does not of itself constitute the carrying on of a business, even if the owner shares any profits from the sale of the property.

**123.** The Transfer of Business Act is amended by repealing section 7 and replacing it with the following new section—

Repeal of Section 7  
of Cap 500.

Act not to apply to transfers of certain businesses.

15 of 2008.

**7. (1)** This Act does not apply to the transfer of a business or part of a business of a company if the transfer—

- (a) involves or is a result of the reconstruction, amalgamation, merger or division of the company in accordance with the Companies Act, 2015 or the administration or liquidation of the company in accordance with the Insolvency Act, 2015;
- (b) relates to the creation of a genuine security; or
- (c) relates to a genuine realisation of a security.

(2) A transfer relating the realisation of a security (other than one resulting from a sale by public auction) is not effective unless an accountant registered under the Accountants Act has certified in writing to the Registrar-General—

- (a) the amount to be realised from the transfer; and
- (b) the accountant's opinion that the amount is the best price obtainable for the realised security.

**124.** The Hire Purchase Act is amended by repealing section 30 and replacing it with the following new section—

Repeal of section 30 of Cap 507.

Agreement binding on trustee or liquidator of owner.

**30. (1)** If—

- (a) in the case of a natural person, the owner is adjudged bankrupt; or
- (b) in the case of a company, the owner is placed in liquidation, a hire-purchase agreement entered into by the person or company as owner

continues in effect after the commencement of the bankruptcy or liquidation and is binding on the bankruptcy trustee or liquidator, but without affecting the right of the bankruptcy trustee or liquidator to disclaim.

(2) Subsection (1) does not affect the powers of the court to set aside any disposition of property that is an undue preference.

**125.** Section 2 of the Central Depositories Act is amended—

Amendment of section 2 of No.4 of 2000.

(a) by deleting the words “Companies Act” wherever they appear and substituting therefor the words “Companies Act, 2015”;

(b) by deleting the definition of the term “Minister” and substituting therefor the following new definition—

“Cabinet Secretary means the Cabinet Secretary for the time being responsible for Finance.”

**126.** Section 14 of the Central Depositories Act is amended—

Amendment of section 14 of No.4 of 2000.

(a) by deleting subsection (5) and substituting therefor the following new subsection—

(5) Section 508 of the Companies Act, 2015 does not apply to a transfer that is required to be registered by an issuer under this section and section 15(4), but if an issuer refuses registration of such a transfer, it shall serve on the transferor and the central depository (being the transferee) a notice giving the reasons for the refusal.

(b) by deleting subsection (6) and substituting therefor the following new subsection—

(6) An instrument of transfer lodged with an issuer under subsection (1) can be registered in

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the name of a central depository or its nominee company if it has been certified by a central depository agent instead of being executed by the central depository or its nominee company. This subsection applies despite section 512 of the Companies Act, 2015.”

**127.** Section 21 of the Central Depositories Act is amended by deleting the words “Companies Act”, and substituting therefor the words “Companies Act, 2015”.

Amendment of section 21 of No.4 of 2000.

**128.** Section 25 of the Central Depositories Act is amended by deleting subsection (3) and substituting therefor the following new subsection—

Amendment of section 25 of No.4 of 2000.

(3) Despite section 93 of the Companies Act, 2015, a central depository shall ensure that a record of depositors maintained in accordance with subsection (2)—

- (a) contains information in computerised record form;
- (b) is not distinguished by means of a share number; and
- (c) contains such other information as may be required under the CDS rules.”

**129.** The Central Depositories Act is amended by repealing section 27 and replacing it with the following new section—

Repeal of section 27 of No.4 of 2000.

References to the Companies Act, 2015.

**27. (1)** With effect from the dematerialisation date and irrespective of anything in the Companies Act, 2015, or any provision of the issuer’s constitution, a reference in relation to a dematerialised security, to—

- (a) a register of members, or of debenture holders, (including branch registers) kept by a company under the Companies Act, 2015, is taken to be a reference to the record of depositors maintained by the central depository;
- (b) a transfer of shares or debentures from a transferee under the Companies Act is taken to be a

reference to a book-entry transfer performed by the central depository; and

- (c) any certificate, instrument of transfer or any movable property representing any security that is used as evidence of ownership of the security is taken to be a reference to a statement of account issued by the central depository.

(2) Section 505 of the Companies Act, 2015 does not apply to a dematerialised security.

**130.** Section 29 of the Central Depositories Act is amended by deleting the words “Companies Act”, wherever it appears and substituting therefore the words “Companies Act, 2015”.

Amendment of section 29 of No.4 of 2000.

**131.** Section 37 of the Central Depositories Act is amended by deleting the word “Companies Act”, and substituting therefor the words “Companies Act, 2015”.

Amendment to section 37 of No.4 of 2000.

**132.** Section 66 of the Central Depositories Act is amended by deleting the word “Companies Act”, and substituting therefor the words “Companies Act, 2015”.

Amendment to section 66 of No.4 of 2000.

**133.** Section 2 of the Copyright Act is amended—

Amendment of section 2 of No.12 of 2001.

- (a) by inserting the following new definition in proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to copyright and related rights;

- (b) by deleting the definition of “Minister”.

**134.** Section 9 of Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 9 of No.12 of 2001.

**135.** Section 16 of the Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 16 of No.12 of 2001.

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**136.** Section 18 of the Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amedment of section 18 of No.12 of 2001.

**137.** Section 39 of the Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amedment of section 39 of No.12 of 2001.

**138.** Section 46 of the Copyright Act is amended by deleting the words “Companies Act” and substituting therefor the words “Companies Act, 2015”.

Amedment of section 46 of No.12 of 2001.

**139.** Section 47 of the Copyright Act is amended deleting subsection (2) by substituting therefor the following new subsection—

Amedment of section 47 of No.12 of 2001.

(2) The obligations imposed by subsection (1) are in addition to those imposed by the Companies Act, 2015, in the case of a collecting society that is a company.

**140.** Section 48 of the Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amedment of section 48 of No.12 of 2001.

**141.** Section 49 of the Copyright Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amedment of section 49 of No.12 of 2001.

**142.** Section 52 of the Copyright Act is amended by inserting the following new subsection immediately after subsection (2)—

Amedment of section 52 of No.12 of 2001.

(3) If—

- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies Act, 2015, had effect immediately before that commencement; and
- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the “Cabinet Secretary”.

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**143.** Section 2 of the Employment Act is amended—

Amendment of  
section 2 of No.17  
2007.

(a) by inserting the following new definition in the proper alphabetical sequence—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to labour matters;

(b) by deleting the expression “Minister” appearing in the definition of “industrial undertaking”, and substituting therefor the expression “Cabinet Secretary”;

(c) by deleting the definition of “Minister”.

**144.** Section 3 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”

Amendment of  
section 3 of No.17  
2007.

**145.** Section 19 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 19 of No.17  
2007.

**146.** Section 22 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 22 of No.17  
2007.

**147.** Section 31 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 31 of No.17  
2007.

**148.** Section 40 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 40 of No.17  
2007.

**149.** Section 53 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 53 of No.17  
2007.

**150.** Section 56 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 56 of No.17  
2007.

**151.** Section 59 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 59 of No.17  
2007.

**152.** Section 60 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of  
section 60 of No.17  
2007.



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**153.** Section 66 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 66 of No.17 2007.

**154.** Section 69 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 69 of No.17 2007.

**155.** Section 70 of the Employment Act is amended—

Amendment of section 70 of No.17 2007.

(a) by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”;

(b) by deleting subsection (4) and substituting therefor the following new subsection—

(4) The following are relevant officers for the purposes of this section—

(a) a bankruptcy trustee or interim trustee holding office under Part III of the Insolvency Act, 2015—

(b) a liquidator appointed under Part VI of that Act;

(c) an administrator appointed under Part VIII of that Act;

(d) the Official Receiver or other person responsible for supervising the debtor under a deed of composition approved by the Court under Division 24 of Part III of that Act;

(e) a supervisor or provisional supervisor under a voluntary arrangement entered into under Part IX or Division 1 of Part IV of that Act;

(f) a trustee under a trust deed for his creditors executed by the employer.

**156.** Section 71 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 71 of No.17 2007.

**157.** Section 72 of the Employment Act is amended—

Amendment of section 72. of No.17 2007.

(a) by deleting the expression “Minister” wherever it appears and substitute therefor the expression “Cabinet Secretary”;

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) If the Cabinet Secretary has, in accordance with subsection (1), made a payment in respect of a debt, or a part of the debt, the right that become right of the Cabinet Secretary because of subsection (1) include a right arising because of the status of the debt, or that part of it as a preferential debt.

**158.** Section 73 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 73 of No.17 2007.

**159.** Section 74 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 74 of No.17 2007.

**160.** Section 80 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 80 of No.17 2007.

**161.** Section 85 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 85 of No.17 2007.

**162.** Section 91 of the Employment Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 91 of No.17 2007.

**163.** Section 92 of the Employment Act is amended by inserting the following new subsection immediately after subsection (3)—

Amendment of section 92 of No.17 2007.

(4) If—

(a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act before the commencement of the Companies and Insolvency Legislation (Consequential Amendment) act, 2015, had effect immediately before that commencement; and

(b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

**164.** Section 106 of the Merchant Shipping Act is amended by deleting the expression “the law relating to

Amendment of Section 106 of No.4 of 2009.

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bankruptcy” and substituting therefor the expression “the law relating to insolvency”.

**165.** The Proceeds of Crime and Anti-Money Laundering Act is amended by repealing section 79 and replacing it with the following new section—

Repeal of Section 79  
of No.9 of 2009.

Effect of bankruptcy on  
realizable property.

**79.** (1) When a person who holds realizable property is adjudged bankrupt—

- (a) the property for the time being subject to a restraint order made before the date of the bankruptcy order; and
- (b) the proceeds of any realizable property realized because of section 75 and for the time being under the control of a receiver appointed under this Part,

does not vest in the Registrar of the High Court, Official Receiver or the Public Trustee.

(2) If a defendant who has directly or indirectly made an affected gift to any other person is adjudged bankrupt, the following provisions apply:

- (a) a court may not set aside the disposition of that gift under the Insolvency Act, 2015 if—
  - (i) a prosecution for an offence has been commenced against the defendant and the proceedings against the defendant have not been conclude concluded; or
  - (ii) the property of any other person is subject to a restraint order;
- (b) any court that sets aside a disposition in paragraph (a) after the conclusion of the proceedings against the defendant shall take into

account any realization of the property of other persons in accordance with this Part.

(3) If a person has been adjudged bankrupt, the powers conferred on the court by sections 64 to 72 and 73(2), or on a receiver appointed under this Part, may not be exercised in respect of property that—

(a) forms part of the bankrupt's estate; or

(b) the Official Receiver or a bankruptcy trustee is entitled to claim from the bankrupt under the Insolvency Act, 2015.

(4) Nothing in the Insolvency Act, 2015 prohibits a court or a receiver appointed under this Part from exercising a power contemplated in subsection (3) of any property or proceeds referred to in subsection (1).”

**166.** The Proceeds of Crime and Anti-money Laundering Act is amended by repealing section 80 and replacing it with the following new section—

Repeal of section 8  
of No.9 Of 2009.

**80.** (1) When a court has made an order for the liquidation of any company or other legal entity that holds realisable property or a resolution for the voluntary liquidation of the body has been registered in accordance with an applicable law, neither—

(a) property for the time being subject to a restraint order made before the relevant time; nor

(b) the proceeds of any realisable property realised because of section 75 and for the time being under the control of a receiver appointed under this Part,

forms part of the assets of the body.

(2) If an order referred to in subsection (1) has been made in respect of a company or other legal entity or a resolution referred to in that subsection has been registered in respect of the body, the powers conferred on a court by

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sections 68 to 73 and 75(2) or on a receiver appointed under this Part, may not be exercised in respect of any property that forms part of the assets of the body.

(3) Nothing in the Companies Act, 2015, the Insolvency Act, 2015, or any other law relating to legal entities in general or any particular legal entity, prohibits a court or receiver appointed under this Part from exercising a power conferred by subsection (2) in respect of property or proceeds referred to in subsection (1).

(4) For the purpose of subsection (1), “the relevant time” means—

- (a) if an order for the body corporate has been made, the time when the application to relevant the court of the application for the liquidation order; or
- (b) if no such order has been made, the time when the resolution authorising the voluntary liquidation of the body corporate is passed.

(5) Section 79(2), with necessary modifications, applies to a legal entity that has directly or indirectly made an affected gift.”

**167.** Section 2 of the National Payment System Act is amended by deleting the definition of the expression “Minister” and substituting therefor the following new definition in proper alphabetical sequence—

Amendment of section 2 of No.39 of 2011.

Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance.

**168.** The National Payment System Act is amended by repealing section 16 and replacing it with the following new section—

Repeal of section 16 of No.39 of 2011.

Netting agreements and rules. Cap. 489, No. 12 of 1997, No. 19 of 2006.

**16.** (1) To the extent that a provision of the Insolvency Act, 2015, the Banking Act, the Building Societies Act, the Co-operative Societies Act, 1997 or the Microfinance Act, 2006 is inconsistent with this section, this section prevails.

(2) This section applies to the following agreements and rules relating to a settlement system participant—

- (a) a written netting agreement to which the participant is a party;
- (b) the settlement system rules;
- (c) a clearing, netting or settlement agreement to which the participant is a party;
- (d) netting rules applicable to the participant in relation to a settlement agreement.

(3) If a settlement system participant is placed in liquidation by the High Court, enters administration or is placed under statutory management, any provision contained in an agreement or rules to which this section applies is binding on the liquidator, administrator or statutory manager in respect of a payment or settlement obligation—

- (a) that was determined through netting before the liquidation order or administration order, or the appointment of the statutory manager, was made but is to be discharged on or after the date on which the order or appointment was made; or
- (b) the discharge of which was overdue on that date.

(4) An administrator appointed under the Insolvency Act, 2015, in respect of a settlement system participant shall give written notice to the Central Bank to withdraw the participant's participation from the Central Bank settlement system, in which case the participant ceases to be entitled to participate in that system, other than for purposes of—

- (a) discharging a payment or settlement obligation in accordance with the settlement system rules;

- (b) any clearing, netting or settlement agreement to which the participant was a party; or
- (c) any netting rules applicable to the participant in relation to those agreements.

(5) As soon as practicable after an application to the High Court for the liquidation of a settlement system participant is made and, if a liquidation order is made in consequence of the application, as soon as practicable after the order is made, the applicant shall lodge with the Central Bank a copy of the application and a copy of the order.

(6) As soon as practicable after receiving a copy of an application for the liquidation of a settlement system participant, the Central Bank shall, if the participant is a designated payment system participant, notify the operator of the payment system of the application.

(7) When a copy of a liquidation order relating to a settlement system participant has been lodged with the Central Bank in accordance with subsection (5), the participant ceases to be entitled to clear payments or participate in a settlement system, other than for purposes of discharging a payment or settlement obligation in accordance with—

- (a) the rules of the settlement system; or
- (b) a clearing, netting or settlement agreement to which the participant is a party; or
- (c) any netting rules applicable to the participant in relation to such an agreement.

(8) When a settlement system participant is placed in liquidation or enters

administration, or a statutory manager is appointed in respect of the participant, the liquidator, administrator or manager is bound by any payment or settlement that is final and irrevocable as provided by section 9(2) or (3).

(9) A court in Kenya may not recognise or give effect to—

- (a) an order of a court exercising jurisdiction under the law relating to insolvency in a place outside Kenya; or
- (b) an act of a person appointed in a place outside Kenya to perform functions under that law,

to the extent that this Act does not authorise a court in Kenya to make such an order, or a liquidator, administrator or statutory manager, or any other officer having functions under the Insolvency Act, 2015, to do such an act

(10) In this section, a reference to netting rules includes any recognised practices relating to the operation or application of those rules.”

**169.** Section 24 of the National Payment System Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 24 of No.39 of 2011.

**170.** Section 31 of the National Payment System Act is amended by deleting the expression “Minister” and substituting therefor the expression “Cabinet Secretary”.

Amendment of section 31 of No.39 of 2011.

**171.** The National Payment System Act is amended by repealing section 28 and replacing it with the following new section—

Repeal of sections 28 of No.39 of 2011.

Priority of certain instruments on winding up.

**28.** (1) In this section, “priority payment instruction” means a money order, bank draft or similar payment instruction issued, directly or indirectly, by a participant in a designated payment system,



but does not include an instrument issued by one such participant to another for the purpose of effecting a payment between them.

(2) Despite anything to the contrary in the Insolvency Act, 2015, and subject to this section, if a participant in a designated payment system is a company that is liquidated under the Insolvency Act, 2015, unpaid priority payment instructions that were drawn on the participant and cleared through the payment system before the making of the liquidation order—

- (a) are payable from the participant's assets; and
- (b) rank in preference above any other unsecured claim against the assets.

(3) A payment is not payable under subsection (2) in preference to any other claim against assets unless a request for the payment has been made within sixty days after the making of the liquidation order in relation to the participant concerned.

(4) Subsection (2) does not permit a payment instruction to be settled in preference to any other claim against any assets, if the instruction was drawn on or certified or issued by the participant concerned with a view to giving the drawee of the instruction a preference over the participant's other creditors.”

**172.** Section 33 of the National Payment System Act is amended by—

- (a) renumbering the existing provision as subsection (1);
- (b) inserting the following new subsection immediately after the renumbered subsection (1)—
- (2) If—
- (a) any act or thing that was done or omitted to be done by or to the Cabinet Secretary under this Act

Amendment of section 33 of No.39 of 2011.

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before the commencement of the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 had effect immediately before that commencement; and

- (b) that act or thing could be done or be omitted to be done by or to the Cabinet Secretary under this Act after that commencement,

that act or thing is taken to have been done or omitted to be done by or to the Cabinet Secretary.

**173.** The Land Registration Act is amended by repealing section 27 and replacing it with the following new section—

Repeal of section 27 of No.3 of 2012.

Transfer without valuable consideration.

**27.** (1) A proprietor who has acquired land, a lease or a charge by transfer without valuable consideration holds it subject to—

- (a) any unregistered rights or interests subject to which the transferor held it; and
- (b) the provisions of the Insolvency Act, 2015, so far as they are applicable in the circumstances.

(2) When registered, such a transfer has the same effect as a transfer for valuable consideration.”

**174.** The Land Registration Act is amended by repealing section 63 and replacing it with the following new section—

Repeal of section 63 of No.3 of 2012.

Transmission on bankruptcy.

**63.** (1) On production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered in accordance with section 375 of the Insolvency Act, 2015, the Registrar shall register the bankruptcy trustee, or the trustee appointed under that section, as

proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of that bankrupt or proprietor.

(2) In making an entry in the register for the purpose of subsection (1), the Registrar shall describe the bankruptcy trustee, or the trustee appointed under section 375 of the Insolvency Act, 2015, as “trustee of the property of (.....), a bankrupt.

**175.** Section 71 of the Land Registration Act is amended in subsection (1) by deleting paragraph (c) and substitute therefor the following new paragraph—

Amendment of section 71 of No.3 of 2012.

(c) has made an application for a bankruptcy order against the proprietor of any registered land, lease or charge.

**176.** The Land Act is amended by repealing section 52 and replacing it with the following new section—

Repeal of section 52 of No.6 of 2012.

Transmission on bankruptcy.

**52.** (1) On production to the Registrar of a certified copy of the order of court adjudging a proprietor bankrupt, or directing the estate of a deceased proprietor to be administered in accordance with section 375 of the Insolvency Act, 2015, the Registrar shall register the bankruptcy trustee, or the trustee appointed under that section, as proprietor of any land, lease or charge of which the bankrupt or the deceased proprietor is proprietor, in place of that bankrupt or proprietor.

(2) In making an entry in the register for the purpose of subsection (1), the Registrar shall describe the bankruptcy trustee, or the trustee appointed under section 375 of the Insolvency Act, 2015 as “trustee of the property of (.....), a bankrupt.

**177.** Section 53 of the Land Act is amended—

Amendment of  
section 53 of No.6  
of 2012.

(a) by deleting subsection (1) and substituting therefor the following new subsections—

(1) As soon as practicable after being appointed as liquidator of a company, the liquidator shall—

- (a) produce to the Registrar the resolution or order appointing the liquidator; and
- (b) satisfy the Registrar that the person has complied with the requirements of Part VI of the Insolvency Act, 2015.

(1A) When the liquidator has complied with subsection (1), the Registrar shall—

- (a) record the appointment in respect of any land, lease or charge of which the company is registered as proprietor; and
- (b) register the copy of the resolution or order.

(b) by deleting subsection (3) and substituting therefore the following new subsections—

(3) As soon as practicable after a vesting order has been made under section 444 of the Insolvency Act, 2015, the liquidator shall lodge a copy of the order with the Registrar for registration under this Act.

(4) On receiving a copy of a vesting order in accordance with subsection (1), the Registrar shall register the liquidator as proprietor of the land, lease or charge to which the order relates.

**178.** Section 103 of the Land Act is amended in subsection (1) by deleting paragraph (e) and substituting the following new paragraph—

Amendment of section 103 of No.6 of 2012.

- (e) if the chargor has been adjudged bankrupt, the bankruptcy trustee of the estate of the charger.

**179.** Section 54 of the Kenya Deposit Insurance Act is amended—

Amendment of section 54 of No.10 of 2012.

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The appointment of the Corporation as the liquidator of an institution shall have the same effect as an appointment of a liquidator by the Court under Part VI of Insolvency Act, 2015.

- (b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) No liquidator shall be appointed in respect of an institution under Part VI of the Insolvency Act, 2015 if the Corporation has already been appointed as liquidator in respect of the institution.”

