

THE CO-OPERATIVE SOCIETIES ACT, 1998

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SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 20 of 1998 Date of Assent: 7th October 1998.

An Act to revise the law relating to the formation, registration and regulation of co-operative societies; to repeal the Co-operative Societies Act, 1970; and to provide for matters connected with or incidental to the foregoing.

[12th October, 1998

ENACTED by the Parliament of Zambia.

PART 1

PRELIMINARY

1. This Act may be cited as the Co-operative Societies Act, 1998, and shall come into operation on such date as the Minister may, by statutory instrument, appoint.

2. In this Act, unless the context otherwise requires-

" agricultural charge "has the meaning assigned to it under the Agricultural Credits Act;

" board " means the board of directors of a co-operative society elected under section *thirty-eight*;

" by-laws " means the by-laws of a co-operative society that have been registered under section *nineteen* and includes any amendments made to the by-laws and registered under section *twenty*;

" committee " means a committee established by a co-operative society under section *thirty-nine*;

„ co-operative " means any enterprise or organisation owned collectively by its members and managed for their joint socio-economic benefit and whose activities are not prohibited by law;

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

"co-operative union" means a co-operative which is registered under this Act as a co-operative union, operating in the same field of business or at district level, whose membership comprises two or more co-operative societies operating in the same field of business or in that district;

" credit union " means a co-operative society which is registered as a savings and credit

co-operative union under this Act for the purposes specified under section *sixty-eight*;

" delegate " means-

(a) a representative of a co-operative society, which is a member of a co-operative union or a federation, who has been elected to attend the meetings of the co-operative union or federation, and who is entitled to vote at meetings of the co-operative union or federation as provided under the by-laws of the co-operative union or federation;

(b) a representative of members residing in a particular district or a representative of a particular group or class of members, and who has received a mandate from such members or group or class of members to vote at meetings of their co-operative society in accordance with the by-laws;

" federation" means a co-operative which is registered as a federation under section *seventy-seven*, and whose membership comprises two or more co-operative union, operating in the same field of business or at district level;

" former company" means a company which has converted into a co-operative society in accordance with section *eleven*;

" member " means an individual who, or a body corporate which, has been admitted to the co-operative society as a member in accordance with the by-laws;

" officer " means a chairperson, a vice-chairperson, a director of a board, a member of a committee, a secretary, a treasurer, an employee or other person, empowered under this Act or the by-laws to direct or supervise the business of a co-operative society;

" patronage bonus " means a percentage of the net surplus realised by a co-operative society which is distributed to the members of that co-operative society, in accordance with its by-laws;

" Registrar " means the person appointed Registrar of Co-operatives under section *six*;

"Registrar of Agricultural Charges" means the person appointed Registrar of Agricultural Charges under the Agricultural Credits Act;

" Registrar of Companies " means the person appointed Registrar of Companies under the Companies. Act;

" repealed Act " means the Co-operative Societies Act, 1970; and

" special resolution " means a resolution passed by a three quarter majority of the members or delegates present at a meeting called for the purpose specified in the resolution; and where at least twenty-one clear days notice, in writing, was given of the meeting.

PART II

DEVELOPMENT OF CO-OPERATIVES, CO-OPERATIVE SOCIETIES, AND PUBLIC OFFICERS

3. (1) The Minister shall adopt policies, as the Minister considers necessary, to encourage the development and sustainability of co- operatives and co-operative societies.

(2) The Minister shall, pursuant to subsection (1)-

(a) cause to be collected, classified and analysed information and statistics on co-operatives and co-operative societies; and

(b) provide such other services as may be necessary for the development of co-operatives and co-operative societies.

4. (1) The Minister may direct any officer of a co-operative society to furnish the Minister with any information relating to the, operation of the co-operative society and such officer shall comply: with such a directive.

(2) Any officer who fails to comply with any directive made by the Minister under subsection (1), or who knowingly makes to the Minister a statement which is false in any material particular, shall be guilty of an offence.

5. (1) As soon as practicable, but not later than six months after the expiry of each financial year, every board shall submit, to the Minister, a report concerning the activities of its co-operative society during such financial year and such other information as the Minister may require.

(2) The Minister shall, after receipt of the reports submitted under subsection (1), cause to be prepared a report on the status and operations of co-operative societies in the country.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next, after receipt of the report referred to in subsection (2), lay the report before the National Assembly.

6. There shall be a Registrar of Co-operatives who shall be a public officer appointed by the Public Service Commission and who shall exercise the functions prescribed by or under this Act.

7. (1) The Public Service Commission may appoint a Deputy Registrar of Co-operatives, who shall be a public officer and such other public officers, as may be necessary, to assist the Registrar in the performance of the Registrar's functions under this Act.

(2) Any function conferred by or under this Act on the Registrar may be performed by any person acting as Registrar if the Registrar is unable to perform any function due to any cause.

PART III

REGISTRATION AND ORGANISATION OF CO-OPERATIVE SOCIETIES

8. Any co-operative with ten or more members shall, within a period of not more than twelve months from the date of adoption of its by-laws, and subject to section *nine* and on payment of the prescribed fee, be registered as a co-operative society under this Act.

9. (1) An application for registration as a co-operative society shall be made in the prescribed form to the Registrar.

(2) An application for registration as a co-operative society shall be submitted with-

(a) four copies of the by-laws of the co-operative society to be registered; and

(b) a statement by the applicants, seeking registration of the co-operative society, that the capital, to be furnished initially by such applicants and other persons expected

to become members, is sufficient for the commencement of operations; and

(c) a notice of situation of registered office.

10. Subject to the other provisions of this Act, and within thirty days of receipt of the application, the Registrar shall register a co-operative as a co-operative society if the Registrar is satisfied that-

(a) the application complies with subsection (2) of section nine;

(b) the by-laws make adequate provision for-

(i) regular audits to be carried out;

(ii) the education, training and provision of advisory services to the members of the co-operative society; and

(c) the by-laws are not *ultra-vires* this Act or any other written law.

11. (1) A company registered under the Companies Act may, by a resolution made in accordance with the Companies Act, convert itself into a co-operative under this Act.

(2) A company that has converted into a co-operative in accordance with subsection (1), shall apply to the Registrar for the registration of the co-operative as a co-operative society.

(3) An application for registration made under subsection (2) shall be accompanied by-

(a) the resolution made by the company converting itself into a co-operative as provided under subsection (1);

(b) four copies of the by-laws of the co-operative to be registered signed by ten members of the company and the secretary of the company;

(c) a resolution-

(i) authorising the ten members and the secretary of the company to sign the by-laws;

(ii) authorising the ten members and the secretary of the company to accept any alterations made by the Registrar without further consultations with the company or :authorising such members to submit to the company in a general or extraordinary meeting any alterations made by the Registrar;

(d) a resolution confirming that the capital to be furnished, initially by the members of the company, is sufficient for the commencement of operations as a co-operative society; and

(e) notice of situation of registered office.

(4) Subject to the other provisions of this Act, where the Registrar is satisfied that the application, made under subsection (2), complies with subsection (3) and paragraphs (b) and (c) of section *ten*, the Registrar shall register the co-operative as a co-operative society.

12. (1) The Registrar shall issue a certificate of registration to a co-operative society upon its registration.

(2) The word , "limited " shall be the last word in the name of every co-operative society and, except as otherwise provided in this Act, the word , " co-operative shall form part of the name of every co-operative society.

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13. After registering a Co-operative, formed under section *eleven*, as a co-operative society

(a) the Registrar shall return to the co-operative society three copies of the by-laws duly certified by the Registrar;

(b) the secretary of the company shall submit a copy of the resolution, made under section *eleven*, under the seal of the company with the certificate of registration, issued under section *twelve*, to the Registrar of companies who shall register the resolution and the certificate; and the company shall cease to be a company registered under the Companies Act and the provisions of this Act shall apply, in all respects, to such co-operative society, as from the, date of such registration with the Registrar of Companies; "

(c) the registration shall not affect any right or claim subsisting for or against the former company or any liability incurred by the former company;

(d) for the purpose of enforcing any right, claim or liability under paragraph (c), the former company may be sued and proceeded against in the same manner as if it had not been registered as a co-operative society under this Act; and

(e) any right,claim or liability ; specified under paragraph (c), :

shall have priority against the property of the co-operative society over all other right ,claims or liabilities of the co- operative society.

14. A co-operative society, shall be a body corporate with perpetual succession, a common seal and limited liability and shall, subject to the other provisions of this Act and its by-laws, have power to do all such acts and things as a body corporate may by law do or perform.

15. (1) If the Registrar is not satisfied with an application submitted by a co-operative, the Registrar shall refuse to register the co-operative as a co-operative society and shall,give reasons' for such refusal, within thirty days of receipt of the application..

(2) Any person who is aggrieved by a decision of the Registrar, not to register a co-operative under this section, may, within thirty days of receipt of the decision, appeal to the Minister, subject to further appeal to the High Court.

16. The equity capital of a co-operative society shall consist of the sum of the shares of the members, the reserve funds and such additional funds or investments as may be provided for in the by-laws.

17. The liability of the members for debts and liabilities of a co-operative society shall be limited to the amount, if any, unpaid on the shares respectively held by them, or on the membership fee, as the case may be.

18. (1) A co-operative society shall-

(a) cause its registered name to be painted or affixed, in a conspicuous place and in letters which are easily legible, at its registered office and at every other office or place at which the business of the co-operative society is carried on; and

(b) engrave its registered name, in legible characters, on its seal; and shall emboss its registered name-

(i) on all notices, advertisements and other official publications of the co-operative society;

(ii) on all business letters of the co-operative society; and

(iii) on all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of the co-operative society.

19. (1) The by-laws of a co-operative society shall include provisions relating to the matter specified in the Schedule.

(2) The Registrar shall register the by-laws of a co-operative society if such by-laws comply with paragraphs (b) and (c) of section ten.

20. (1) Subject to the other provisions of this Act and to the by-laws, the by-laws may be amended by a resolution of two-thirds of the members present at a general meeting of the co-operative society.

(2) An amendment to the by-laws shall take effect after the amendment has been registered with the Registrar; and for this purpose four copies of the amendment, signed by the chairperson, of the general meeting at which such amendments were made, and the secretary of the co-operative society, shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that the amendment is not contrary to any provision of this Act, the Registrar shall register the amendment and shall forthwith return three copies of the amendment, duly certified by the Registrar, to the co-operative society.

(4) The provisions of section fifteen shall apply, with the necessary modifications, to a decision of the Registrar not to register any amendment to the by-laws.

21. A co-operative society shall keep a copy of its regulations, by-laws and list of members open to inspection by any member free of charge or any member of the public on payment of a prescribed fee, at all reasonable times, at the registered office of the co-operative society.

PART IV

RIGHTS AND LIABILITIES OF MEMBERS

22. A co-operative society may pay out a patronage bonus to its members; or may use such surplus for any other purpose specified in its by-laws or as may be decided by the general meeting of the co-operative society.

23. Subject to the other provisions of this Act, membership of a co-operative society shall be governed by its by-laws, but in no case shall a co-operative society fix any limit to the number of its members.

24. (1) Notwithstanding anything contained in any other law, a minor may form or become a member of a co-operative society.

(2) Notwithstanding anything contained in the by-laws or any other law, where any member has not reached the age of eighteen years, that member may execute or cause to be executed any instrument under this Act; and any contract entered into by that member with the co-operative society shall be valid whether as principal or as surety, and shall be enforceable at law.

25. Any person who wishes to be a member of a co-operative society shall not exercise the rights of a member until that person has paid to the co-operative society the amount required for membership of that co-operative society, or such person has acquired such interest in the co-operative society, as may be prescribed in or under this Act or the by-laws.

26. (1) Where a co-operative society does not have any share capital, a member who has paid the membership fee, as set by the co-operative society, in full, shall be issued with a certificate of membership.

(2) Where a co-operative society is registered with share capital and each member is obliged to take up shares in the co-operative society as a condition for being or remaining a member of the co-operative society, the shares may be paid for in instalments at the times and in the manner prescribed by the by-laws; but no share certificate shall be issued to a member until the shares to which it relates have been fully paid for.

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27. A co-operative society shall have a lien over the shares or 1

other interest of its members' for debts due from them to the co-

operative society; and such shares or interest shall be subject to a set-off for any indebtedness by that member to the co-operative society.

28. (1) A co-operative society shall keep a register of its members and of the shares held, if any, by each member, or any membership fee paid, by its members; and the register shall be *prima facie* evidence of-

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(a) the names, addresses and occupations of the members; , (b) the number of, and amounts paid for any shares held by such members;

~ (c) the date on which a member was registered as a member;

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(d) the date on which a member ceased to be a member. ""

(2) A co-operative society shall furnish the Registrar with a list of its members; and such list shall be open for inspection, by any person, at the office of the Registrar, on payment of a prescribed fee.

29. (1) Subject to the other provisions of this Act, the by-laws shall provide for the holding of general and special meetings of the co-operative society, for the procedure at such meetings and the keeping of minutes at such meetings.

(2) A member or delegate shall have one vote at meetings of a co-operative society; and there shall be no voting by proxy.

(3) Subject to subsection (4), the by-laws may provide for plural voting rights for delegates or members who contribute above average to the development of the co-operative society; which may be determined in accordance with the patronage bonus such member or delegate receives from the co-operative society.

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(4) Notwithstanding subsection (3)-

(a) no co-operative society, other than a co-operative union or a federation, shall provide for the determination of the number of voting rights on the basis of the number of shares held by a member;

(b) no member shall have more than three voting rights;

(c) plural voting rights shall not be exercised when a decision of the meeting requires a special resolution; and

(d) in the event of an equality of votes, the chairperson shall have a casting vote in addition to the chairperson's deliberative vote.

Section 30. A member shall not hold more than one-fifth of the share capital of a co-operative society unless the by-laws provide otherwise for share holding by other co-operative societies.

Section 31. (1) Subject to the provisions of subsection (2), shares may be assigned, transferred, redeemed or re-purchased by a member or by a co-operative society.

Assignment of

(2) An assignment, transfer, redemption or re-purchase of a

share shall

(a) be subject to such conditions as may be prescribed in the by-laws; and

(b) not be valid unless approved by the board; except that the board shall not give the approval if it would reduce the total number of members below the minimum required by this Act for the registration of a co-operative society.

32. (1) The shares or other interests of a member in the capital

of a co-operative society shall not be liable to attachment or sale,

in execution of a decree or order of any court, in respect of any debt or liability

incurred by a member.

(2) Subject to any condition that may be imposed in the by-laws, nothing contained in subsection (1) shall prohibit the transfer, assignment or sale of shares or other interests of a member to the co-operative society or to any member of the co-operative society.

33. (1) On the death of a member, a co-operative society may—

(a)

transfer (a) the shares or other interests of the deceased

or

(b) nominate

another member to a person nominated in accordance with the

rules made in that behalf; and if there is no person so-nominated, to the legal representative of the deceased

member; or

(b) pay to any nominee or legal representative, as the case may be, a sum, representing the value of such member's share or other interests, as may be provided in the by-laws.

(2) A co-operative society shall pay, to the legal representative of that member, all other moneys due to a deceased member from the co-operative society.

(3) All transfers and payments made by a co-operative society, in accordance with this section, shall be valid and have effect against any demand made upon the co-operative society by any other person.

34. (1) Subject to section *seventeen*, and subsection (2), the liability of a former member for the debts of a co-operative society, as they exist on the date on which that member ceased to be a

member, shall continue for a period of two years reckoned from that date.

(2) Notwithstanding subsection (1) if the first audit of the

accounts of the co-operative society, after that member ceased to be a member, discloses a credit balance in favour of the co-operative society, the financial liability of that member shall forthwith cease.

(3) Subject to section *seventeen*, and subsection (2) the estate of a deceased member shall be liable, for the debts of a co-operative society as they existed on the date of the death of that member, for a period of two years reckoned from that date.

35. (1) Subject to any prior claim of the Republic on the C property of a debtor or a lien or claim of a landlord in respect of rent ~~

or any money recoverable as rent or to any agricultural charge or, 0 in the case of immovable property, to any prior registered charge 54

thereon, any debt or outstanding demand due and payable to a co- operative society by any member or former member shall be a first charge on all assets of that member or former member.

(2) Nothing contained in subsection (1) shall affect the claim of any *bona fide* purchaser, for value, without notice, of a loan given by the co-operative society.

36. (1) A member may, at any time, withdraw from a co- J operative society, subject to the other provi-ions of this Act and the t by-laws.

(2) Where a member withdraws from a co-operative society under subsection (1) or under circumstances such as illness, disability , permanent removal from the area or district served by the co-operative society or death, payment of the shares or other interests of the member shall be made in such order or priority as the by-laws may prescribe; or where not so prescribed, in such order or priority as the board may

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(3) Where the financial stability of a co-operative society would be impaired if the co-operative society made payment for the shares. held by a member who has withdrawn from the co-operative society, at their par or paid-up value. or of any other interests of such a member at the value shown on the books of the co-operative society. the directors may suspend payment for such period as may be approved by the annual general meeting, except that. such period shall not exceed one year from the time the member withdrew from the co-operative society.

lof 37. (1) Upon any complaint arising against a member, th~ secretary shall, upon the instructions of the board, provide the member with a written notice of the particulars of the complaint and of the date, time and place of the meeting of the board at which the complaint shall be considered.

(2) The board may, after having given the member, against whom the complaint has been made, the opportunity to make representations or submissions, orally or in writing, or both. in rebuttal or in mitigation, recommend to the general meeting, in a report detailing the complaint and the opinion of the board, that the member be expelled.

(3) The general meeting may, after considering the repol1 sub- mitted by the boal'd, expel a member by a resolution passed by at least a two-thirds majority vote of the members of the co-operati ve society.

(4) The secretary of the co-operative society shall, within two weeks from the date on which the member was expelled, inform the member. in writing, of the decision of the general meeting.

(5) Subject to section *thirty-four*. a member who has been expelled from a co-operative society, under this section shall-

(a) forfeit all rights to share in the net surplus or other benefits of the co-operative society from the date of such expul- sion; and

(b) be refunded that member's share capital or other interest held in the co-operative society, together with such dividend as may later be declared and calculated up to the date of expulsion.

(6) A person who has been expelled from a co-operative society shall not be eligible for re-admission as a member of that co-operative society within a period of two years from the date of expulsion.

PART V

BOARD OF DIRECTORS -

38. (1) A co-operative society shall have a board of directors, consisting of such number of persons as shall be prescribed in its by-laws, who shall be elected, by the members, at an annual general meeting, from amongst the members.

(2) The persons whose names appear in an application for the Registration of a co-operative society shall, upon registration, be deemed to have all the powers and duties of directors; and shall direct the affairs of the co-operative society until directors have been elected at the first general meeting of the co-operative society.

39. (1) A co-operative society shall, at an annual general meeting, establish such number of committees as it may consider necessary for the purpose of assisting the board carry out its so functions under this Act.

(2) A co-operative society shall elect from amongst its members at least three persons, who are not employees of the co-operative society, to constitute each committee.

(3) A co-operative society may confer upon a committee established under subsection (1) such specific functions as it may consider necessary in the interest of the co-operative society.

(4) A board may delegate to any committee established under subsection (1) such of its functions as it may determine.

(5) A committee established under subsection (1) shall, subject to the by-laws, determine its own procedures.

(6) The provisions of subsections (5) and (6) of section/six shall apply, with the necessary modifications, to a committee established under subsection (1).

40. Where the by-laws provide for the election of directors by

members or delegates voting by districts or zones, the board so

elected shall be deemed to be elected by all the members or delegates of the co-operative society.

41. (1) The board shall represent the co-operative society, subject to the provisions of the by-laws.

(2) The board shall- (a) direct and supervise the business of a co-operative society; (b) be the custodian of the property of the co-operative

society; and

(c) exercise all such powers of the co-operative society as are not required by or under this Act or the by-laws to be exercised by resolution of the co-operative society in a general or special meeting.

