

# CO-OPERATIVE SOCIETIES ACT, 1989

No. 5



of 1989

## ARRANGEMENT OF SECTIONS

### PART I *Preliminary*

#### SECTION

1. Short title and commencement
2. Interpretation

### PART II *Commissioner for Co-operative Development*

3. Powers of the Minister to foster and encourage co-operative development
4. Appointment of Commissioner
5. Duties of Commissioner
6. Register of co-operative societies
7. Form of register

### PART III *Registration*

8. Societies which may be registered
9. Statement of co-operative principle
10. Application for registration
11. Name of society
12. Compulsory bye-laws
13. Requirements before registration
14. Power to request additional information
15. Registration
16. Refusal of registration
17. Provisional registration

### PART IV *Rights and Duties of Societies*

18. Societies to be bodies corporate
19. Registered address
20. Amendment by bye-laws
21. Copy of law, bye-laws to be open to inspection
22. Register of members and officers
23. Effect and proof of entry in books of a society

24. Disposal of produce to or through society
25. Charge and set-off extended to shares and interest in capital
26. Shares and other interests not liable to attachment
27. Transfer of interest on death

#### *PART V Rights and Liabilities of Members*

28. Definition of member
29. Qualifications for membership
30. Minor's contracts with societies
31. Members not to exercise rights till payment made
32. Maximum size of share holding
33. Restrictions on membership in a society
34. Voting
35. Restrictions on transfer of shares
36. Liability of past members or estate of deceased members
37. Withdrawal from membership
38. Removal of persons ceasing to qualify for membership
39. Expulsion
40. Nominations

#### *PART VI Management and Administration*

41. General meetings
42. Provisional committee
43. First general meeting
44. Annual General Meeting
45. Business at an Annual General Meeting
46. Special General Meeting
47. Notice of general meeting
48. Proceedings at general meeting
49. Committee of management
50. Election of committee
51. Qualification for election to the committee
52. Disqualification
53. Removal from the committee by the general meeting
54. Duties of the committee
55. Authentication of documents
56. Validity of acts of the committee
57. Delegation by the committee
58. Proceedings of the committee
59. Duty of care of the committee
60. Payments to officers
61. Election of chairman, secretary and treasurer
62. Duties of chairman
63. Duties of secretary
64. Duties of treasurer
65. Duties of manager
66. Optional power to appoint a supervisory board

#### *PART VII Property and Funds*

67. Creation of funds and sources of capital
68. Loans made by societies
69. Deposits and loans

70. Investment of funds
71. Restriction on capital expenditure
72. Statutory Reserve Fund
73. Distribution of net surplus
74. Commissioner's consent to payment

#### PART VIII *Accounts and Audit*

75. Duty to keep accounting records
76. Records to be kept at the registered address
77. Accounting reference date
78. First accounting reference period
79. Duty of committee to prepare profit and loss account and balance sheet
80. Report by the committee
81. Annual accounts to be laid before the Annual General Meeting
82. Annual accounts to be lodged with the Commissioner
83. Audit
84. Nomination of external auditor
85. Fee of external auditor
86. Appointment of qualified head of audit section
87. Delegation of audit function to secondary society
88. Audit reports to members, committee and Commissioner
89. Co-operative Central Fund to replace Audit and Supervision Fund

#### PART IX *Amalgamation and Division*

90. Amalgamation of societies
91. Division of a society

#### PART X *Settlement and Disputes*

92. Settlement of disputes
93. Case stated on question of law

#### PART XI *Liquidation*

94. Liquidation
95. Liquidation due to lack of membership
96. Appointment of liquidator
97. Liquidator's powers
98. Power of Commissioner to control liquidation
99. Appeal against orders
100. Limitation of the jurisdiction of a civil court
101. Closure of liquidation
102. Cancellation of registration

#### PART XII *Powers of the Commissioner*

103. Power to supply assistance
104. Commissioner may convene meetings
105. Miscellaneous powers of the Commissioner
106. Commissioner may attend meetings
107. Inspection of society
108. Discussion of inspection report
109. Investigation of a society
110. Restoration of misapplied property

- 111. Appointment of special officer
- 112. Appointment of special members
- 113. Removal of the committee by the Minister

#### PART XIII *General*

- 114. Power of the Minister to make regulations
- 115. Power of the Minister to amend Schedules 2 and 3
- 116. Prohibition of the use of "co-operative" or "tshwaragano"
- 117. Use of Setswana at Commissioner's discretion
- 118. Enforcement of duty to make returns
- 119. Notice of intention to sue society
- 120. Offences
- 121. Recovery of a society's property
- 122. Default penalty and default fine
- 123. Exemption from liability for acts or omissions of Government officers
- 124. Certain Acts not to apply
- 125. Repeal of Cap. 42:03
  - Schedule 1 Compulsory bye-laws
  - Schedule 2 Proceedings at general meetings
  - Schedule 3 Disputes procedure

**An Act to replace the Cooperative Societies Act of 1962 and to provide for the appointment of a Commissioner for Cooperative Development to supervise the formation, registration and management of cooperatives and to encourage cooperative development.**

*Date of Assent:* 3rd May, 1989.

*Date of Commencement:* 12th May, 1989.

ENACTED by the Parliament of Botswana

#### PART I *Preliminary*

1. This Act may be cited as the Co-operative Societies' Act, Short title 1989.

2. In this Act unless the context otherwise requires — *Inter-pretation*

"accounting reference date" has the meaning given to it by section 77;

"accounting reference period" has the meaning given to it by section 78;

"bonus" means the share in the net surplus of a society divided amongst its members in accordance with section 73 sub-section (5);

"bye-laws" means the registered bye-laws made by a society in exercise of any power conferred by this Act, and includes a registered amendment of the bye-laws;

"Commissioner" means the Commissioner for Co-operative Development appointed under section 4 and includes any person on whom any or all the powers of the Commissioner have been conferred in accordance with this Act;

"committee" means the committee of management of a society;

- “Co-operative Central Fund” means the Fund established under section 89;
- “dividend” means a share of the net surplus of a society divided amongst its members in proportion to the share capital held by them;
- “honorarium” means a share in the net surplus of a society divided amongst some or all of the members of the committee, chairman, the secretary or the treasurer in consideration of their services which would not otherwise be remunerated;
- “legal personal representative” in relation to a person who is dead means the person who in law or in customary law, whichever may be applicable, represents the estate of that person;
- “officer” means the chairman, vice-chairman, secretary, treasurer, members of the committee or of any supervisory board or manager of a society and includes any employee or other person empowered under this Act, any regulations or the bye-laws of a society to give directions in regard to the business of a society or to supervise such business;
- “primary society” means a society whose membership is restricted to individuals;
- “producers society” means a society one of whose objects is the provision of paid work for its members;
- “school society” means a society whose membership is restricted to the pupils and staff of a school;
- “secondary society” means a society whose membership is restricted to societies registered under this Act; such societies may be primary societies or secondary societies or both;
- “society” means a co-operative society registered in terms of this Act;
- “society with limited liability” means a society in which the liability of its members is limited by its bye-laws to —
- (a) the amount unpaid on the shares held by them; or
  - (b) such amount as they may undertake to contribute to the assets of the society in the event of its being liquidated;
- “society with unlimited liability” means a society the members of which are jointly and severally liable —
- (a) for all its obligations; and
  - (b) to contribute to any deficit in its assets in the event of its liquidation;
- “special resolution” means a resolution passed by a majority of not less than three-fourths of the members present and voting at a general meeting of which due notice has been given of the intention to propose the resolution as a special resolution and at which not less than one-half of the total membership is present.

## PART II *Commissioner for Co-operative Development*

Powers  
of the  
Minister  
to foster  
and  
encourage  
cooperative  
development

Appoint-  
ment of  
Com-  
missioner

3. The Minister in consultation with the Commissioner shall take such measures as he may see fit for the registration and supervision of co-operative societies and for the encouragement of the development of a self-reliant co-operative movement providing for the economic interests and welfare of its members within the framework of the policies for national development.

4. (1) The Minister shall appoint by notice in the Gazette a *Commissioner for Co-operative Development* and may appoint a Deputy Commissioner and Assistant Commissioners for Co-operative Development along with such other persons as may be necessary to assist the Commissioner in carrying out the purposes of this Act; and the Minister may confer on any such persons all or any of the powers of the Commissioner under this Act.

(2) Any power or duty imposed on the Commissioner by this Act may be exercised or performed by a Deputy Commissioner if —

- (a) the Commissioner is unable to exercise or perform that duty or power owing to illness or absence; or
- (b) the Commissioner authorizes the Deputy Commissioner in writing to exercise or perform that power or duty.

Duties of  
Com-  
missioner

5. (1) The Commissioner shall —

- (a) register co-operative societies and ensure their compliance with this Act;
- (b) encourage the formation of co-operative societies by providing information on co-operative principles and practice and by facilitating registration;
- (c) assist the organisation and efficient operation of co-operative societies;
- (d) provide advice and training for officers of co-operative societies, their members and employees;
- (e) carry out such other duties as may be assigned by this Act or the Minister.

(2) The Commissioner shall present an annual report to the Minister on the operation of this Act and the societies registered under it.

(3) The Commissioner may establish consultative procedures with the co-operative movement in Botswana to secure efficient co-operative development.

(4) Where a secondary society has been registered under this Act which includes in its objects the provision of educational and advisory services for co-operative enterprises the Commissioner may authorize the secondary society to provide information, assistance and advice on co-operative principles and practice, and on co-operative management to facilitate the registration of a proposed society and the efficient operation of existing societies.

6. The Commissioner shall keep or cause to be kept at his office a register of co-operative societies in which shall be entered particulars relating to the registration of societies and their bye-laws, and which shall be open to inspection by the public at all reasonable times and free of charge.

Register of co-operative societies

7. (1) The Commissioner shall maintain such registers as may be necessary to carry out the provisions of this Act.

Form of register

(2) The Minister may by regulation prescribe the form in which such registers shall be maintained.

(3) Until such time as any new register may be prepared and opened, the Commissioner shall continue to keep the register in use immediately prior to the commencement of this Act.

### PART III *Registration*

8. A society which has as its principal object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, and complying with the provisions of this Act, may be registered under it with or without limited liability.

Societies which may be registered

9. For the purpose of this Act "co-operative principles" shall inter alia mean that —

Statement of co-operative principles

- (a) membership is voluntary and open to all, men and women, able to use the services of the society;
- (b) the services of the society are mainly provided for its members;
- (c) the society is democratically controlled;
- (d) the surplus of the society is distributed in a fair and just manner amongst its members with a limited dividend on share capital;
- (e) the society promotes education and training on co-operative matters for its members;
- (f) societies co-operate at local, national and international levels.

10. (1) An application to register a society shall be submitted to the Commissioner on the prescribed form which shall be signed —

Application for registration

- (a) (i) in the case of a primary society that is a producers co-operative society, by at least 15 persons qualified for membership in terms of section 29; or
- (ii) in the case of a primary society that has as its object the promotion of thrift and the acceptance of savings from and the making of loans to its members for productive and provident purposes, by at least 50 persons qualified for membership in terms of section 29; or

	<ul style="list-style-type: none"> <li>(iii) in the case of any other primary society, by at least 20 persons qualified for membership in terms of section 29;</li> <li>(b) in the case of a secondary society by two authorized officers of at least two societies.</li> </ul>
	<ul style="list-style-type: none"> <li>(2) The application shall be accompanied by — <ul style="list-style-type: none"> <li>(a) 3 copies of the bye-laws in English;</li> <li>(b) a report on the viability of the proposed society which shall be in the prescribed form or as near thereto as circumstances permit;</li> <li>(c) in the case of an application relating to a secondary society copies of the resolutions authorizing the participation of the primary societies;</li> <li>(d) the prescribed fee.</li> </ul> </li> </ul>
Name of society	<p>11. (1) No society shall be registered by a name which is identical with that of a registered society, or so closely resembles such a name as to mislead members of the public as to its identity or which is, in the opinion of the Commissioner, undesirable.</p> <p>(2) The word “co-operative” shall form part of the name of every society and the word “limited” shall be the last word in the name of every society registered with limited liability.</p>
Compulsory bye-laws	<p>12. The bye-laws of a society shall, inter alia, include provision for the matters detailed in Schedule I and shall be adequate for the efficient running of the society.</p>
Requirements before registration	<p>13. Before registering a proposed society the Commissioner shall be satisfied that —</p> <ul style="list-style-type: none"> <li>(a) the society is a bona fide co-operative society;</li> <li>(b) the name and bye-laws of the society comply with sections 11 and 12;</li> <li>(c) there is a reasonable expectation of benefit to the members of the society;</li> <li>(d) the application complies with the provisions of this Act.</li> </ul>
Power to request additional information	<p>14. The Commissioner may request any additional information that he considers necessary about the proposed society, including —</p> <ul style="list-style-type: none"> <li>(a) the economic or other need for the establishment of the society;</li> <li>(b) the number of persons expected to become members when the society begins its activities;</li> <li>(c) the availability of sufficient capital to be subscribed by the applicants and other persons expected to become members;</li> <li>(d) the availability of officers capable of managing the affairs of the society and keeping the records and accounts required for its efficient operation and for complying with this Act;</li> <li>(e) the educational and advisory work on co-operative</li> </ul>

principles and the operation of the society carried out amongst the applicants and the other persons expected to become members.

15. (1) If the Commissioner approves the registration of the society he shall issue a certificate of registration to the society together with a copy of the bye-laws certified by him as having been approved and registered. Registration

(2) A certificate of registration signed by the Commissioner shall be conclusive evidence that the society mentioned in it is duly registered, unless it is proved that the registration of the society has been cancelled.

(3) On registration the Commissioner shall supply, free of charge, a copy of this Act and any regulations made hereunder.

16. (1) If the Commissioner refuses to register a society he shall give his reasons for his refusal in writing to the applicants. Refusal of registration

(2) An appeal shall lie to the Minister within one month from the date of refusal.

(3) The Minister's decision on the appeal shall be final.

17. (1) If the Commissioner is not satisfied that a proposed society ought to be registered at the time of the application for registration but is of the opinion that steps can and will be taken with diligence, by the persons by whom or on whose behalf the application is made, to comply with all the conditions for registration, he may provisionally register the society for such period not exceeding two years and subject to such conditions as he may specify: Provisional registration

Provided that it shall be competent for the applicants for registration of a proposed society to apply for provisional registration only.

(2) A society which has been provisionally registered shall, subject to the conditions of this section and any conditions specified by the Commissioner, have all the status and powers of a society registered under this Act and be entitled to operate as a society.

(3) The fact that a society is provisionally registered shall be legibly stated on all documents issued by the society and on every other place where the society's name is displayed to the public.

(4) The Commissioner may cancel the provisional registration of a society, without assigning any reason, by a notice in writing addressed to the society; the notice of cancellation shall operate as a refusal to register the society in terms of section 16 and from the date of service of the notice the society shall cease to be registered as a society.

(5) If upon the expiry of the period for provisional registration the society has not been registered, the society shall cease to be registered as a society.

(6) Where either sub-section (4) or sub-section (5) apply —

- (a) the provisions of Part XI shall operate for the settlement of the society's affairs;
- (b) the Commissioner shall by notice require surrender of the certificate of provisional registration to him for cancellation;
- (c) the validity of any transaction by or with the society entered into prior to the cancellation or cessation of its registration shall not be affected by such cancellation or cessation.

(7) (a) If at any time during the period of provisional registration the Commissioner is satisfied that the society complies with the conditions for registration and ought to be registered he may register the society under section 15 and the society shall thereupon be deemed to have been registered on the date of its provisional registration.

(b) The society shall on registration surrender the certificate of provisional registration to the Commissioner who shall then issue a certificate of registration bearing the date of registration in terms of paragraph (a).

#### PART IV *Rights and Duties of Societies*

Societies  
to be  
bodies  
corporate

**18.** (1) From the date of issue of the certificate of registration a society shall be a body corporate by the name under which it is registered, capable of exercising all the functions of an incorporated society having perpetual succession but with such liability on the part of its members to contribute to the assets of the society in the event of its being wound up as is mentioned in this Act.

(2) All societies, primary or secondary, shall have the power to form secondary societies to facilitate their operations or to provide such other services as may be necessary for their members.

Registered  
address

**19.** (1) A society shall have an address registered in accordance with this Act to which all notices and communications may be addressed; and the secretary shall, within 14 days thereof, notify the Commissioner in writing of any change in that address and the Commissioner shall record such change in the register.

(2) A society shall display its name in legible letters on the outside of every place or office in which its business is carried on.

(3) A society shall include its name in all business letters, notices, other official documents and publications of the society and on its common seal.

Amendment  
by  
bye-laws

**20.** (1) A society may amend its bye-laws, including a change of name, by a special resolution of the members passed at a general meeting convened for that purpose.

(2) Within 14 days from the passing of an amendment of the bye-laws, three copies of the amendment accompanied by the prescribed form shall be sent to the Commissioner who shall,

subject to the provisions of sub-section (3), register the amendment and the amendment shall thereupon come into effect.

(3) The Commissioner shall refuse to register any amendment that is, in his opinion, contrary to the provisions of this Act or regulations made hereunder.

(4) If the Commissioner registers the amendment, he shall issue a certified copy of the amendment to the society, which shall be conclusive evidence of due registration.

(5) If the Commissioner refuses to register an amendment, he shall record his reasons therefor and notify them to the society along with his decision.

(6) The Society may appeal therefrom to the Minister within one month from the date of the decision, and the Minister's decision on such appeal shall be final.

(7) An amendment which changes the name of a society shall not affect any right or obligation of the society or its members or past members, and any legal proceedings pending may be commenced or continued by or against the society under its new name.

(8) A change in the registered address of a society shall not, where the address forms part of the bye-laws, be an amendment of the bye-laws.

21. A society shall keep at its registered address and open to inspection, without charge, by its members and the public —

- (a) a copy of this Act and any regulations made hereunder;
- (b) a copy of its bye-laws;
- (c) a list of its members.

Copy of law, bye-laws to be open to inspection

22. A society shall keep —

- (a) a register of members in which shall be entered —
  - (i) the name, address and occupation of each member;
  - (ii) the date on which each person was entered in the register and the date on which any person ceased to be a member;
  - (iii) the value of shares held by each member and the amounts paid up thereon;
  - (iv) the nominee appointed under section 40;
- (b) a register of officers showing the offices, the holders of the offices and the dates of appointment and termination of officers;
- (c) such other books as may be prescribed by the Commissioner.

Register of members and officers

23. (1) The register of members shall be evidence of any matters directed or authorized by this Act to be entered therein.

(2) A copy of an entry in a book of a society regularly kept in the course of business shall, if certified in the manner prescribed in sub-section (3), be received in any legal proceedings as evidence of the existence of the entry and of the matters contained in it, and

Effect and proof of entry in books of a society

shall be admissible to the same extent as the original entry.

(3) A copy of an entry may be certified by a declaration, written at the foot of the copy, that it is a true copy of the entry and that the book containing the entry is still in the custody of the society; *the declaration shall be signed by one committee member and the secretary of the society.*

(4) No officer of a society shall in any legal proceedings to which the society is not a party be compelled to produce any of the books of a society, the contents of which can be proved by a certified copy under sub-sections (2) and (3), or to appear as a witness to prove any matter so recorded, unless the court, for special reasons, so directs.

Disposal  
of  
produce  
to or  
through  
society

24. (1) A society which has as one of its objects the disposal of any article produced or obtained by the work of its members, whether the produce of agriculture, animal husbandry, fisheries, forestry, handicraft, the manufacture of goods or otherwise, may either provide in its bye-laws or otherwise contract with its members —

(a) that every member who produces or obtains any specified article shall dispose of the whole or any specified proportion thereof to or through the society; and

(b) that any member who is proved to be in breach of the bye-law or contract shall pay as liquidated damages any sum ascertained in the manner provided for in the bye-laws.

(2) Where failure to deliver such produce to the society was due to the fact that before becoming a member of the society or signing the contract with the society he had contracted to deliver such produce to another and the prior contract was disclosed to the society when applying for membership or signing the contract, such failure shall not be a breach within the meaning of sub-section (1).

(3) No bye-laws or contract entered into under the provisions of subsection (1) shall be contested in any court or other proceedings on the ground only that it constitutes restraint of trade.

Charge  
and set-off  
extended  
to shares  
and  
interest  
in capital

25. A society shall have a charge upon and be entitled to set off any debt due from any member, past member or deceased member against any share in the society's capital or any deposit made by or dividend due to that person.

Shares and  
other  
interests  
not liable  
to  
attachment

26. Subject to the provisions of section 25, the shares or other interests of a member in the capital of a society shall not be liable to attachment or sale under decree or order of any court in respect of any debt or liability incurred by the member; and neither his trustee nor his assignee in insolvency nor a *curator bonis* duly appointed shall have any claim on the shares or other interests.

27. (1) On the death of a member a society may either —
- (a) transfer the membership and share or interest in the capital of the society belonging to the deceased member to the person nominated under section 4; or
  - (b) pay to the nominee, or if there is no person so nominated, to the legal personal representative of the deceased member, a sum representing the value of the member's share or other interest in the capital of the society ascertained in accordance with any regulations or the bye-laws of the society:

Transfer  
of  
interest  
on death

Provided that —

- (i) in the case of a society with unlimited liability the nominee or legal representative, as the case may be, may require payment by the society of the value of the share in the capital of the society of the deceased member ascertained as afore-said; and
- (ii) in the case of a society with limited liability the society may transfer the membership and share or other interest in the capital of the society of the deceased member to such nominee if the nominee is qualified in accordance with the bye-laws of the society for membership of the society, or on his application within six months of the death of the deceased member to any person specified in the application who is so qualified.

(2) A society shall pay all other monies due to the deceased member to his legal personal representative.

(3) All transfers and payments made by a society under this section shall be valid against any demand made on the society by any other person.

#### PART V *Rights and Liabilities of Members*

28. (1) The first members of a society shall be those persons who sign the application for registration and have agreed to become and become members on the registration of the society.

Definition  
of member

(2) Every other person whose application for membership has been accepted by the committee and who has signed the register of members shall be a member of the society.

(3) A person whose application for membership has been rejected by the committee may appeal to the next general meeting of the society and if such application is accepted by a two-thirds majority of the members present and voting at that meeting, such person shall be a member of the society.

29. (1) To be qualified for membership of a primary society a person must —

Qualifica-  
tions for  
membership

(a) have attained the age of —

- (i) five years in the case of a school society; or

- (ii) eighteen years in the case of any other society; and
- (b) be resident or employed within or be in occupation of land within the society's area of operation as described in its bye-laws.

(2) No society, company or other association, incorporated or not, shall be a member of a primary society.

(3) Membership of secondary societies is restricted to societies registered under this Act.

Minor's  
contracts  
with  
societies

**30.** Where a person, who has attained the age of 18 years but has not yet attained the age of majority, becomes a member of a society, he shall for the purpose of contracting with the society be taken to be of full legal capacity in so far as age is concerned:

Provided that in the case of a school society no pupil shall be registered as a member without the prior written consent of his parent or guardian and the head of the school and in that case this section shall apply as if 5 were substituted for 18.

Members  
not to  
exercise  
rights  
till  
payment  
made  
Maximum  
size of  
share  
holding

**31.** No member of a society shall exercise the rights of a member unless he has paid such membership fee and acquired such share in the capital of the society as may be set out in its bye-laws.

**32.** No member of a primary society shall hold more than one-fifth of the share capital of that society.

Restrictions  
on  
membership  
in a  
society

**33.** Except with the written consent of the Commissioner, no person shall be a member of more than one society which has as one of its objects the granting of loans to its members.

Voting

**34.** (1) Each member of a primary society shall have one vote in the affairs of the society and shall vote in person and not by proxy.

(2) Each member of a secondary society shall have such voting rights as may be prescribed by the secondary society's bye-laws and may, subject to such bye-laws, appoint any number of delegates not exceeding the number of votes allocated to exercise its voting rights.

(3) In the case of an equality of votes, the Chairman of the meeting shall have a casting vote in addition to his original vote.

Restrictions  
on  
transfer  
of shares

**35.** (1) The transfer of the share of a member, past member or deceased member in the capital of a society shall be subject to the conditions of maximum holding in section 32.

(2) In the case of a society registered without limited liability a member shall not transfer any share held by him in the society unless —

- (a) he has held such share for not less than one year; or

(b) the transfer is made to the society, or to a member of the society or to a person whose application for membership has been accepted by the society.

36. The liability of a past member or the estate of a deceased member shall be limited to those liabilities which existed at the date of termination of membership and shall cease on the expiry of one year commencing on that date.

Liability of past members or estate of deceased members

37. A member may withdraw from a society by giving such notice as may be prescribed by its bye-laws.

Withdrawal from membership

38. Following a resolution of the committee the name of a member who ceases to qualify for membership under section 29 shall be struck from the register of members, and he shall cease to be a member from that date.

Removal of persons ceasing to qualify for membership

39. (1) The bye-laws of a society may provide for the expulsion by special resolution of a member who has persistently contravened the provisions of this Act, any regulations or the bye-laws.

Expulsion

(2) Any bye-law authorized by this section shall require any complaint against a member to be made to the committee in writing; and the committee may resolve to accept the complaint and recommend to the general meeting that the member be expelled. Special notice of at least 14 days must be given to the member concerned containing —

(a) the time, date and place of the general meeting;

(b) a copy of the complaint against him and the recommendation of the committee;

(c) details of his right to attend the general meeting and state any reason or make any submission as to why he should not be expelled.

40. (1) On admission to a society a member may nominate one person to whom his membership and shares or other interests in the capital of the society may be transferred on his death.

Nominations

(2) A member may at any time cancel the nomination made under sub-section (1) or substitute another person as nominee in place of the person nominated under sub-section (1).

(3) Any nomination or change in nomination shall be in writing and signed by the member in the presence of two attesting witnesses, and shall be recorded in the register of members.

#### PART VI *Management and Administration*

41. The authority of the members as joint owners of the society is vested in the general meeting of members and subject to section 31 every member shall have the right to attend, speak and vote at every general meeting.

General meetings

Provisional  
committee

**42.** The first 10 subscribers to the application for registration, or, if there are less than 10, all of the subscribers to that application, shall form a provisional committee, with one of their number elected to act as secretary/treasurer, and such committee shall have power to —

- (a) admit applicants to membership of the society and to receive share subscriptions and membership fees;
- (b) to do all things necessary to convene the first general meeting of the members as provided for in section 43.

First  
general  
meeting

**43.** The first general meeting shall be held within two months of the date of the society's certificate of registration and the members present shall, under the chairmanship of a co-operative officer —

- (a) elect a committee of management and such other officers as this Act or the bye-laws may require to serve until the first Annual General Meeting;
- (b) receive and consider any reports and decide any matters as may be necessary for the conduct of the society in the ensuing financial year.

Annual  
General  
Meeting

**44.** A society shall provide in its bye-laws for an Annual General Meeting to be convened by the committee and to be held as soon as practicable but not later than 6 months after the end of each financial year.

Business  
at an  
Annual  
General  
Meeting

**45.** (1) The ordinary business of the Annual General Meeting shall be —

- (a) to approve the minutes of the last general meeting of the society and of any other general meeting not previously approved;
- (b) to consider and approve the reports from the auditors and any report or recommendation of the Commissioner;
- (c) to approve the accounts;
- (d) to decide the manner in which any available surplus shall be invested or distributed in accordance with the bye-laws;
- (e) to elect the committee and officers for the ensuing year;
- (f) to decide or review any maximum borrowing limit as required by law.

(2) The Annual General Meeting may transact any other business within its authority of which due notice has been given to the members.

Special  
General  
Meeting

**46.** (1) A Special General Meeting may be convened at any time by the committee.

(2) (a) A Special General Meeting shall be convened by the committee on receipt of a written requisition signed by at least one-fifth or twenty of the members, whichever is the lesser, stating the objects of the meeting.

(b) If the committee fails to convene the meeting requisitioned under paragraph (a) within one month of receipt of the

requisition, the members who have signed the requisition shall have power to convene the meeting themselves by notice to the members stating the objects of the meeting and that the committee has failed to convene a meeting.

47. All general meetings shall be convened after at least 14 clear days notice thereof has been given to members and a copy of this notice shall be sent to the Commissioner.

Notice of  
general  
meeting

48. Unless the bye-laws have alternative provisions for notice, quorum and proceedings at general meetings the provisions of Schedule 2 shall apply thereto.

Proceedings  
at general  
meeting

49. A society shall have a committee consisting —

(a) in the case of a producers co-operative society of at least 3 members; or

Committee  
of  
management

(b) in the case of any other society of at least 5 members.

50. (1) Subject to section 42 the first committee members shall be elected at the inaugural general meeting held under section 43; at the first Annual General Meeting they shall be replaced by the persons elected thereat.

Election  
of  
committee

(2) At the Annual General Meeting in every subsequent year one-third of the then members of the committee shall retire from office, or if their number is not three or a multiple of three the number next below one-third shall retire.

(3) The Commissioner or his representative present under section 106 may conduct the election of committee members and of any officers elected by the members.

(4) The committee members to retire each year shall be those who have been longest in office since their last election, but between persons who became committee members on the same day those to retire, unless they otherwise agree among themselves, shall be determined by lot.

(5) A retiring committee member may stand for re-election:

Provided, however, that a committee member who has served for two consecutive three year terms shall not be eligible for re-election for a third consecutive term during the period of 2 years from the date of his last vacation of office.

(6) If a general meeting removes a committee member it shall elect a new member to hold office till the next Annual General Meeting.

51. (1) To be qualified for election to the committee a person shall be a member of the society and 21 years of age or more.

Qualifica-  
tion for  
election  
to the  
committee

(2) A member shall be disqualified from being elected to the committee if —

(a) except in a producers co-operative society, he is in receipt of a salary or payment from the society other than an honorarium authorized by section 60;

- (b) he is carrying on for his private profit any trade or business in which the society is engaged;
- (c) he has, within 5 years immediately preceding such election, been convicted of any offence under this Act or any regulations made hereunder or of any offence involving dishonesty or has been imprisoned for 6 months or more without the option of a fine;
- (d) he has been removed by a court from an office of trust on account of misconduct;
- (e) he is an unrehabilitated insolvent.

Disqualifi-  
cation

52. A committee member shall cease to hold office if —

- (a) he resigns by notice in writing;
- (b) except in a producers co-operative society, he accepts any salary or payment from the society other than an honorarium authorized by section 60;
- (c) he is convicted of any offence under this Act or any regulations made hereunder or of any offence involving dishonesty or suffers lawful imprisonment for 6 months or more;
- (d) he is removed by the court from any office of trust on account of misconduct;
- (e) he becomes of unsound mind;
- (f) he becomes insolvent or makes any arrangement or composition with his creditors generally;
- (g) he is disqualified for any other reason specified in the bye-laws; or
- (h) he has ceased to reside within the society's areas of operation for 6 months or more.

Removal  
from the  
committee  
by the  
general  
meeting

53. A society may remove any committee member before the expiration of his term of office by a resolution of its members passed at a general meeting after due notice of the intention to propose the resolution has been given to its members.

Duties  
of the  
committee

54. (1) The committee shall be responsible for the direction and supervision of the business of the society and, subject to this Act, any regulations, the bye-laws and any directions given by a general meeting, may exercise all the powers of the society that are not reserved to the general meeting.

(2) Without restricting the generality of sub-section (1) the committee shall —

- (a) consider and decide all applications for membership of the society;
- (b) call for and examine reports from all officers of the society which disclose the true position of the society, its operations and financial position;
- (c) open and operate bank accounts and ensure that all cheques are properly signed and countersigned after produc-

tion of supporting vouchers sufficient to explain the under-lying transactions and establish that they are in accordance with the resolutions of the committee;

- (d) in conformity with section 69 exercise the borrowing powers of the society;
- (e) keep the members informed of the progress of the society, encourage interest and a sense of ownership on the part of the members and have charge of the educational and advisory work amongst the members on co-operative principles and practice and the operation of the society.

(3) A full and accurate record shall be kept of all proceedings of the committee and any sub-committee and the records shall be available for inspection by or under the direction of the Commissioner and by the auditor.

(4) The committee may appoint, on such terms as it thinks fit, a manager to carry out the affairs of the society and may employ such other persons as the committee considers necessary to assist the manager.

(5) The committee may at any time suspend or remove the secretary, treasurer or manager for irregularity in the performance his duties.

55. Except as otherwise provided, any document requiring authentication by a society shall be authenticated in the manner prescribed in its bye-laws; and where no such manner is prescribed it shall be signed by one committee member and the secretary.

Authen-  
tication of  
documents

56. The acts of any committee member or officer of a society shall be valid notwithstanding any defect that may afterwards be discovered in his appointment.

Validity  
of acts  
of the  
committee

57. (1) The committee may delegate any of its duties to a sub-committee or to an officer of the society.

Delegation  
by the  
committee

(2) Nothing in sub-section (1) shall be taken to absolve the committee from its supervisory duties and from its responsibility for the proper conduct and direction of the affairs of the society.

58. (1) The committee shall meet whenever the affairs of the society so require and in any case not less frequently than once each month.

Proceedings  
of the  
committee

(2) In the absence of contrary provisions in the bye-laws —

- (a) the quorum for a meeting of the committee shall be half the number of its members;
- (b) decisions shall be taken by a simple majority of votes, and the chairman shall have no casting vote;
- (c) the chairman shall be responsible for the proper conduct of the business of the committee in accordance with any standing orders it may adopt.

59. In the conduct of the affairs of a society the members of the committee shall exercise the prudence and diligence of ordinary

Duty of  
care of the  
committee

men of business and shall be jointly and severally liable for any losses sustained through any of their actions which are contrary to this Act, any regulations the bye-laws or the directions of the general meeting:

Provided that if in any proceedings to recover from a person mentioned in this section any amount for which he is liable, it appears that he has acted honestly and reasonably and ought fairly to be excused in whole or in part he may be relieved wholly or partly from personal liability.

Payments  
to officers

**60.** (1) Except in a producers co-operative society no member of the committee shall hold any office of profit in the society.

(2) The bye-laws may provide for the chairman or a member of the committee, or the secretary or treasurer, if not otherwise receiving an allowance or salary, to receive an honorarium from the society.

(3) Notwithstanding section 52, and sub-section (1) and (2) of this section a committee member shall be entitled to recover out of pocket expenses, incurred with the specific approval of the committee in connexion with the affairs of the society.

Election  
of chairman,  
secretary and  
treasurer

**61.** (1) Every society shall have a chairman, a secretary and a treasurer, or a secretary-treasurer, elected from among the committee members in the manner provided for in the bye-laws.

(2) If the committee appoints a person as manager of the society's business, any of the duties of secretary or treasurer may be delegated to the manager and where all the duties are so delegated the society may operate with the manager acting as secretary-treasurer of the society:

Provided, however that the manager shall not thereby become a committee member nor be entitled to vote at meetings of the committee.

Duties of  
chairman

**62.** (1) The chairman shall preside at all general meetings and all meetings of the committee and shall perform the other duties conferred upon him by the bye-laws.

(2) In the absence of the chairman, his duties shall be carried out by any vice-chairman whose appointment is authorized by the bye-laws or in the absence of a vice-chairman by one of the committee members elected by the committee.

Duties of  
secretary

**63.** The secretary shall serve the society on a regular basis and shall carry out the duties conferred upon him by the bye-laws including the duty —

(a) to maintain accurate and up-to-date registers, books and other papers of the society;

(b) to summon and attend general meetings and committee meetings and to record the proceedings in the minute book;

(c) to conduct and sign correspondence on behalf of the committee.

**64.** The treasurer shall serve the society on a regular basis and shall carry out the duties conferred upon him in the bye-laws including the duty —

Duties of treasurer

- (a) to maintain accurate and up-to-date accounts and accounting records for the society;
- (b) to take charge of all financial transactions of the society and to ensure the safe-keeping of the society's funds;
- (c) to prepare or cause to be prepared all necessary receipts, vouchers and accounts required by this Act, the regulations and the bye-laws.

**65.** (1) The duties of the manager shall be specified in the bye-laws and by any resolutions of the committee delegating to him any particular functions.

Duties of manager

(2) Where the duties of secretary or treasurer are partially delegated to the manager under section 61 the duties of these officers may be modified accordingly.

**66.** (1) The bye-laws of the society may provide for the election by the members of a supervisory board to be responsible to the members of the society for ensuring that the affairs of the society are conducted in accordance with this Act, any regulations, the bye-laws and any directions of the general meeting.

Optional power to appoint a supervisory board

(2) Such bye-laws shall provide for the election, functions, proceedings and term of office of the supervisory board and its members and in particular shall —

- (a) disqualify any committee member from election to the supervisory board;
- (b) confer a right of access to all books, accounting records and documents of the society and the committee and the right to require information or explanation from any officer or employee of the society.

#### **PART VII** *Property and Funds*

**67.** (1) The capital of a society which shall be devoted only to the carrying out of the objects of the society, the administration of the society and any other purpose authorized by this Act, any regulations or its bye-laws, may be raised from —

Creation of funds and sources of capital

- (a) membership fees;
  - (b) payments for shares;
  - (c) savings deposits from members;
  - (d) surplus carried to reserve funds; and
  - (e) loans or deposits from non-members.
- (2) Sub-section (1) is subject to the following —
- (a) no membership fees shall be refunded except where an application for admission is refused;
  - (b) no share may be redeemed except in accordance with the bye-laws and subject to the minimum shareholding specified therein;

- (c) savings deposits shall be made and may be withdrawn in accordance with the bye-laws of the society;
- (d) the Statutory Reserve Fund shall be kept and used in accordance with section 72;
- (e) loans and deposits from non-members shall be subject to section 69.

Loans made  
by societies

**68.** (1) A society shall not make a loan to any person who is not a member:

Provided that a society may with the consent of the Commissioner make loans to another society or person specified by the Commissioner or to other societies or persons generally.

(2) Except with the permission of the Commissioner a society shall not lend money on the security of any movable property other than produce or goods in which the society is authorized to deal.

(3) The Minister may by regulation prohibit or restrict the lending of money on a mortgage on any particular description of immovable property by any society.

Deposits and  
loans

**69.** (1) A society's bye-laws may contain provisions authorizing the society to receive loans and deposits from members and from non-members; any such bye-laws shall also provide that the general meeting shall set down the maximum amount of loans, deposits and bank overdrafts that may be outstanding at any time.

(2) Notification of the maximum so fixed shall be sent to the Commissioner within 14 days, and that maximum shall be subject to the approval of the Commissioner who may at any time reduce it or impose such conditions as he may consider necessary, and his decision thereon shall be final.

Investment  
of funds  
Cap. 46:04

Cap. 56:03

**70.** A society may invest or deposit its funds in —

- (a) the Botswana Co-operative Bank Limited or with any other bank authorized under the Financial Institutions Act or the Post Office Savings Bank of Botswana; or
- (b) with any other registered society approved for the purpose by the Commissioner; or
- (c) in any security issued or guaranteed by the Government of Botswana; or
- (d) in any other manner approved by the Minister by regulations under this Act.

Restriction  
on capital  
expenditure

**71.** (1) A society shall not utilise its funds for capital expenditure, such as the acquisition of land, buildings, vehicles, plant or machinery, in a sum exceeding the prescribed limit without first obtaining the written approval of the Minister.

(2) The prescribed limit shall be P3 000 or such other figure as the Minister may by regulation prescribe providing that the Minister may prescribe different limits for different classes of societies.

**72. (1)** Every society shall establish a Statutory Reserve Fund which shall be indivisible and in which no member shall be entitled to claim a specified share. Statutory Reserve Fund

(2) A society shall pay into the Statutory Reserve Fund at the end of each financial year at least twenty-five percent of the net surplus shown in the audited annual accounts.

(3) The Commissioner may, by written order in the case of a society with limited liability, grant exemption wholly or partly from contributions, to the Statutory Reserve Fund and may revoke or vary such exemption at any time.

(4) The Statutory Reserve Fund shall be invested in the manner provided in section 70.

(5) The Statutory Reserve Fund may, with the written consent of the Commissioner, be utilised in the business of the society or for capital expenditure.

(6) On the liquidation of a society the Statutory Reserve Fund shall be applied in the discharge of the liabilities of the society in the manner authorized by section 101.

**73. (1)** The remainder of any net surplus together with any unallocated surplus remaining from past years which is available for distribution may be allocated to other funds of the society or divided amongst the members by dividend or bonus or used to pay an honorarium to officers of the society as authorized by this Act or the bye-laws. Distribution of net surplus

(2) The bye-laws of a society may establish a fund for the redemption of bonus certificates or shares, a share transfer fund, an education and training fund or any other fund for the efficient operation of the society.

(3) (a) No society shall pay a dividend on shares in excess of ten percent of the paid up value of the shares or such other figure as may be specified by regulations.

(b) No dividend shall be paid by any society while any claim due to a creditor from the society remains unsatisfied.

(4) No society with unlimited liability which receives loans, deposits or goods on credit from its own members shall distribute its surplus until 10 years have elapsed from the date of its registration, but shall instead carry such surplus to its Statutory Reserve Fund.

(5) "Bonus" means the distribution of a share in the net surplus of a society divided amongst its members in proportion to the volume of business done or use made of the society's facilities, from which the surplus of the society was derived, by each member.

(6) The bye-laws of a society may provide for the distribution of any part of the free net surplus in the form of bonus certificates or bonus shares.

(7) A bonus certificate shall entitle the holder to claim

payment of the sum for which the certificate is issued out of the society's funds on a date specified in the certificate which date shall not be earlier than 5 years from the date of issue of the bonus certificate. No interest or dividend shall be paid on a bonus certificate.

(8) A bonus share may not be withdrawn or transferred before the expiry of ten years from the date of issue unless the holder has ceased to be a member.

(9) A society may, after twenty-five percent of the net surplus has been carried to the Statutory Reserve Fund, contribute an amount not exceeding ten percent of the remaining net surplus to any charitable, educational or public purpose.

Com-  
missioner's  
consent to  
payment

74. (1) No society shall pay any dividend or bonus either in cash or by way of bonus certificates or shares until the proposed scheme of division has been approved by the Commissioner.

(2) The Commissioner shall approve the scheme of division prepared by the committee before it is submitted to the Annual General Meeting and if the Annual General Meeting decides to alter the approved scheme it shall be re-submitted for approval before any payment is made.

(3) The Commissioner shall not approve the payment of dividend by a society with unlimited liability unless he is satisfied that its share capital and reserve funds are paid up and sufficient to cover its liabilities to non-members.

#### PART VIII *Accounts and Audit*

Duty to  
keep  
accounting  
records

75. A society shall maintain the prescribed accounting records, which records shall be sufficient to show and explain the society's transactions and shall —

- (a) at any given time disclose, with reasonable accuracy, the financial position of the society at that time;
- (b) enable the committee to ensure that the profit and loss account and balance sheet required by this Act comply with section 79; and
- (c) contain —
  - (i) entries from day-to-day of all sums of money received and expended by the society and the matters in respect of which the receipt and expenditure take place;
  - (ii) a record of assets and liabilities of the society;
  - (iii) if the society's business involves dealing in goods, a statement of stock held by the society at regular intervals.

Records to  
be kept at the  
registered  
address

76. The accounting records shall be kept at the registered address of the society or such other place as the committee may decide and shall be open at all times to the inspection of the committee members.

**77.** (1) A society shall have an accounting reference date, being the date on which, in each successive calendar year, the society's financial year comes to an end.

Accounting  
reference  
date

(2) The accounting reference date of a society shall be the 30th April, 31st August or 31st December next following the date of registration of the society:

Provided that if a society is registered on one of these days, the date of registration shall be its accounting reference date.

(3) The Commissioner may determine that some date other than the 30th April, 31st August or 31st December next following the date of registration shall be the society's accounting reference date.

**78.** (1) The first accounting reference period of a society shall be that period ending on the society's accounting reference date and beginning either —

First  
accounting  
reference  
period

(i) on the 1st of January immediately preceding the passing of this Act; or

(ii) on the date of incorporation of the society, whichever shall be the later and is or was a period exceeding 6 months but not exceeding 18 months.

(2) Each successive period of 12 months following as from the end of the society's first accounting reference period shall also be an accounting reference period.

**79.** (1) The committee shall cause to be prepared a profit and loss account for each accounting reference period and balance sheet as at the date to which the profit and loss account was prepared.

Duty of  
committee  
to prepare  
profit and  
loss account  
and balance  
sheet

(2) The profit and loss account shall give a true and fair view of the income and expenditure of the society for the accounting reference period; and the balance sheet shall give a true and fair view of the state of affairs of the society at the end of the accounting reference period.

(3) For the purpose of this part of the Act a profit and loss account shall be taken as referring to an income and expenditure account when the society does not trade for profit.

**80.** The committee shall prepare a report for each accounting period, to be attached to the relevant accounts required by section 79, containing a fair review of the affairs of the society and its position at the end of the accounting reference period and stating the committee's recommendations for the allocation of any surplus in accordance with section 73.

Report  
by the  
committee

**81.** (1) The annual accounts of a society shall be prepared and laid before the Annual General Meeting within 3 months of the date of the auditors report referred to in section 88.

Annual  
accounts  
to be laid  
before the  
Annual  
General  
Meeting

(2) The annual accounts shall consist of —

(a) the profit and loss account;

(b) the balance sheet;

Annual accounts to be lodged with the Commissioner	<p>(c) the report of the committee, referred to in section 80; and  (d) the auditors report thereon required by section 88.</p>
Audit	<p><b>82.</b> The secretary shall send to the Commissioner within 14 days of the Annual General Meeting —</p> <p>(a) an annual return in the prescribed form signed by the chairman and one other committee member or the secretary; and</p> <p>(b) a certified copy of the annual accounts laid before that Annual General Meeting.</p>
Nomination of external auditor	<p><b>83.</b> The accounts of every society shall be audited at least once every year by an auditor authorized by the Commissioner, either —</p> <p>(a) to audit the accounts of societies generally; or</p> <p>(b) to audit the accounts of a society specified in the Commissioner's letter of authorization.</p>
Fee of external auditor	<p><b>84.</b> (1) The general meeting of a society may nominate a person to be auditor of its accounts and shall apply to the Commissioner for a letter of authorization in terms of section 83(b) before the nominee acts as auditor.</p> <p>(2) The Commissioner may grant such a letter of authorization provided he is satisfied as to the accountancy and auditing qualifications, experience and independence of the nominee.</p> <p>(3) The Commissioner's decision on whether or not to grant a letter of authorization shall be final.</p>
Appointment of qualified head of audit section	<p><b>85.</b> An auditor authorized under section 83 (b) shall be entitled to charge his normal professional fee, from the Cooperative Central Fund, and that right shall exist whether or not his appointment was initiated by the society under section 84.</p>
Delegation of audit function to secondary society	<p><b>86.</b> The Commissioner may appoint a Deputy or an Assistant Commissioner, who has such accounting and auditing qualifications and experience as the Commissioner shall consider appropriate, to be responsible for the organization, execution and supervision of the auditing of societies' accounts and to report to the Commissioner in accordance with sub-section (5) of section 88.</p>
	<p><b>87.</b> (1) If a secondary society is registered with objects which include the auditing of the accounts of its member societies and if the Commissioner is satisfied as to the capability of the secondary society to carry out the duties of an auditor under this Part, he may authorize the secondary society to act as auditor of its member societies.</p> <p>(2) The continued adequacy of the services provided to societies under any authority granted under sub-section (1) shall be subject to the regular review of the Commissioner.</p>

**88.** (1) The auditor shall make a report to the members of the society on the profit and loss account and balance sheet examined by him.

Audit reports to members, committee and Commissioner

(2) (a) The report shall state —

- (i) whether the society's profit and loss account and balance sheet agree with its accounting records and show a true and fair view of the society's affairs in respect of the relevant accounting reference period;
- (ii) whether he has examined the accounting records and vouchers of the society and its securities and whether in his opinion proper accounting records have been kept;
- (iii) whether in his opinion all the transactions of the society which have come to his notice have been within the objects and powers of the society; and
- (iv) such other matters arising out of the audit as he considers to be matters that should be reported.

(b) The report shall also include —

- (i) a report on any overdue debts; and
- (ii) a report on the valuation of assets and liabilities.

(3) It shall be the duty of the auditor, in preparing his report, to consider whether the information given in the relevant committee report prepared by the committee in terms of section 80 is consistent with these accounts, and if the report is not consistent, he shall state that fact in his report.

(4) Immediately after his audit has been completed the auditor shall discuss with the committee the state of the accounting records as he found them, their sufficiency for the purposes of the society, the condition of accounts payable by the society and accounts receivable by the society including any debts owed by the members, and the need for any action on any of these matters.

(5) The auditor shall submit an audit report to the Commissioner including a report of any discussion under subsection (4) and any other matter he considers should be drawn to the attention of the Commissioner.

(6) The auditor shall have a right of access at all times to the accounting records, books and vouchers of the society and shall be entitled to require from the officers such information and explanation as he thinks necessary for the performance of his duties.

(7) The auditor shall have the power —

- (a) to require the production of any book, accounting record or document relating to the affairs of a society, or of any cash or securities belonging to it, by any officer, agent, employee or member; and
- (b) to summon at the time of his audit any officer, agent, employee or member of the society who he has reason to

believe can give material information about any transaction of the society or about the management of its affairs.

(8) If the auditor fails to obtain the information and explanations which to the best of his knowledge and belief are necessary for the purpose of the audit, he shall state that fact in his report.

Co-operative  
Central  
Fund to  
replace  
Audit and  
Supervision  
Fund

**89.** (1) There shall be Co-operative Central Fund (in this section referred to as 'the Fund').

(2) The Fund shall be used for the co-operative movement in Botswana, to develop and maintain co-operative education, training, audit and in any other way that the Commissioner considers will benefit the movement as a whole.

(3) (a) Every society may be required by the Commissioner to make an annual contribution to the Fund.

(b) The Commissioner shall fix the amount of the annual contribution which may be required from societies and different amounts may be fixed for different classes of societies.

(c) The amount of any annual contribution shall not exceed a maximum of 10% of the gross annual turnover of a society or be less than P5.

(4) The Commissioner shall administer the Fund and shall report annually to the Minister on the total amount in the Fund, the annual income received in contributions and the purposes for which the Fund has been utilized during that year.

(5) Whenever a secondary society has been authorized to perform any function under section 5 or 87 the Commissioner may allocate such portion of the Fund, as the Commissioner in his absolute discretion may see fit, to assist the secondary society in the execution of those functions.

(6) The annual contribution due under sub-section (3) may be levied at a lower rate or may be dispensed with in respect of societies whose accounts are audited by any secondary society authorized under section 87 or an auditor authorized under sub-section (b) of section 83.

Cap. 42:03  
Sub.Leg

(7) Any funds remaining in the Audit and Supervision Fund established under the Co-operative Societies Regulations, shall be transferred to the Fund.

#### PART IX *Amalgamation and Division*

Amalga-  
mation of  
societies

**90.** (1) Two or more societies (in this section referred to as the amalgamating societies) may, with the approval of the Commissioner, by special resolution (in this section referred to as the preliminary resolution), resolve to amalgamate as a single society (in this section referred to as the amalgamated society).

(2) Within 7 days of the date of the meeting at which the preliminary resolution was passed a copy of it and a notice

detailing the rights conferred in sub-sections (3), (4) and (5) shall be sent to all the members and creditors of each of the amalgamating societies, and to all other persons whose known interests in any of the societies will be affected by the amalgamation.

(3) Any member of any of the amalgamating societies may, notwithstanding any bye-law to the contrary, by notice in writing given to his society within two months of the date of the meeting at which the preliminary resolution was passed, intimate his intention not to become a member of the amalgamated society.

(4) Any creditor of any of the amalgamating societies may, notwithstanding any agreement to the contrary, by notice in writing given to the society concerned within two months of the date of the meeting at which the preliminary resolution was passed, intimate his intention to demand the payment of any money due to him.

(5) Any other person whose interest will be affected by the amalgamation, may, by notice in writing given to the society concerned within two months of the date of the meeting at which the preliminary resolution was passed, object to the amalgamation unless his claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution was passed a further Special General Meeting of the amalgamating societies shall be held to consider the preliminary resolution and any notice received under this section.

(7) At the Special General Meeting held under sub-section (6), provision shall be made by a further resolution of the society (in this section referred to as the second resolution) for —

- (a) the repayment of the share capital of any member who has given notice under sub-section (3);
- (b) the satisfaction of any claims by creditors who have given notice under sub-section (4); and
- (c) the satisfaction of the claims of such other persons who have given notice under sub-section (5) as the Commissioner determines, or the securing of their claims in such manner as the Commissioner directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided for in sub-section (8).

(8) Thereafter the society may, by further special resolution, confirm the preliminary resolution.

(9) If, within such time as the Commissioner considers reasonable, the Commissioner is satisfied that the provisions of the second resolution of each of the amalgamating societies and the provisions of this section have been complied with, and the certificates of registration of the amalgamating societies have

been surrendered to him, he may register the amalgamated society and the bye-laws of such society in accordance with section 15, and thereupon —

- (a) the registration of all the amalgamating societies shall be cancelled, and the amalgamating societies shall be dissolved;
- (b) the registration of the amalgamated society shall be a sufficient conveyance to vest the assets and liabilities of the amalgamating societies in the amalgamated society;
- (c) the remaining members of the amalgamating societies shall become members of the amalgamated society and subject to its bye-laws in accordance with section 18(1) and (2) of this Act; and
- (d) any creditors of the amalgamating societies, and whose claims were not satisfied in accordance with the secondary resolution, may pursue such claims or causes of action against the amalgamated society.

(10) Where the Commissioner refuses to approve the amalgamation of two or more societies under-subsection (1), appeal shall lie to the Minister whose decision shall be final.

Division of  
a society

**91.** (1) (a) A society (hereinafter referred to as the existing society) may, with the approval of the Commissioner, by special resolution (in this section referred to as the preliminary resolution), resolve to divide itself into two or more registered societies (hereinafter referred to as the new societies).

(b) The preliminary resolution shall contain proposals for the establishment of the new societies into which it is proposed to divide the existing society, and may prescribe the area of operation of, and specify the members who will constitute, each of the new societies.

(2) Within 7 days of the date of the meeting at which the preliminary resolution was passed, a copy of it and a notice detailing the rights conferred by sub-section (3), (4) and (5) shall be sent to all the members, creditors and other persons whose known interests will be affected by the division of the society.

(3) Any member of the existing society may, notwithstanding any bye-law to the contrary, by notice in writing given to the society within two months of the date of the meeting at which the preliminary resolution was passed, intimate his intention not to become a member of any of the new societies.

(4) Any creditor of the existing society may, notwithstanding any agreement to the contrary, by notice in writing given to the society within two months of the date of the meeting at which the preliminary resolution was passed, intimate his intention to demand the payment of any money due to him.

(5) Any other person whose interest will be affected by the division may, by notice in writing given to the existing society

within two months of the date of the meeting at which the preliminary resolution was passed, object to the division unless his claim is satisfied.

(6) Not less than three months after the date of the meeting at which the preliminary resolution was passed a further Special General Meeting of the existing society shall be held to consider the preliminary resolution and any notices received under this section.

(7) At the Special General Meeting held under sub-section (6), provision shall be made by a further resolution of the existing society (in this section referred to as the second resolution) for —

- (a) the repayment of the share capital of any member who has given notice under sub-section (3);
- (b) the satisfaction of any claims by creditors who have given notice under sub-section (4); and
- (c) the satisfaction of the claims of such other persons who have given notice under sub-section (5) as the Commissioner determines, or the securing of their claims in such manner as the Commissioner directs:

Provided that no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided for in sub-section (8).

(8) Thereafter the society may, by further special resolution, confirm the preliminary resolution, either without changes or with such changes as in the opinion of the Commissioner are not substantial; the decision of the Commissioner as to whether any changes are or are not substantial shall be final for all purposes.

(9) If, within such time as the Commissioner considers reasonable, the Commissioner is satisfied that the provisions of the second resolution and the provisions of this section have been complied with and the certificate of registration of the existing society has been surrendered, he may, subject to section 8 of this Act, register the new societies and their bye-laws in accordance with section 15, and thereupon —

- (a) the registration of the existing society shall be cancelled and the existing society shall be dissolved;
- (b) the registration of the new societies shall be sufficient to vest the assets and liabilities of the existing society in the new societies in the manner specified in the preliminary resolution, as confirmed;
- (c) the remaining members of the existing society shall become members of one or other of the new societies, as provided by the preliminary resolution, as confirmed; and
- (d) any creditors of the existing society and any other persons who have claims against the existing society, and whose claims were not satisfied in accordance with the second resolution, may pursue such claims or causes of action

against one or other of the new societies, as provided by the preliminary resolution, as confirmed.

(10) Where the Commissioner refuses to approve the division of a registered society under sub-section (1), an appeal shall lie to the Minister whose decision shall be final.

#### PART X *Disputes*

Settlement  
of disputes

**92.** (1) If any dispute concerning the business of a society arises —

- (a) among members, past members, and persons claiming through members, past members or deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member, and the society, its committee or any officer or employee of the society past or present; or
- (c) between the society or its committee and any officer or employee of the society past or present or any heir or legal representative of any deceased officer or employee; or
- (d) between the society and any other society,

such dispute shall be referred to the Commissioner for decision.

(2) A claim by a society for any debt, demand or damages due to it from a member, past member or the nominee or legal representative of a deceased member, or an officer or employee of the society past or present or any heir or legal representative of any deceased officer, whether such debt, demand or damages be admitted or not, shall be deemed to be a dispute touching the business of the society within the meaning of this sub-section:

Provided that this section shall not apply to disputes between a society and its employees arising out of their contracts of services.

(3) The Commissioner may on receipt of a reference in the prescribed form in terms of sub-section (1) —

- (a) decide the dispute himself; or
- (b) refer it for decision to an arbitrator or arbitrators he may appoint for the purpose; or
- (c) refer it to arbitration by an official referee, and the reference shall be deemed to be a submission within the meaning of the Arbitration Act.

Cap. 06:01

(4) Any party aggrieved by an award made by an arbitrator or arbitrators appointed in terms of sub-section (3) (b) may appeal to the Commissioner in accordance with the provisions of Schedule 3.

(5) A decision of the Commissioner under sub-section (3) (a) or on an appeal under sub-section (4) shall be final and shall not be called in question in any civil court and shall be enforced in the same manner as a judgment or order of the court.

(6) An award made by a person appointed in terms of sub-section (3) (b) shall, if no appeal is referred to the Commissioner under sub-section (4), or if any such appeal is abandoned or withdrawn, be final and shall not be called in question in any civil court and shall be enforced by any court having jurisdiction in the same manner as a judgment or order of the court.

(7) The provisions of Schedule 3 shall apply to regulate the arbitration procedure authorized by this section.

93. (1) Notwithstanding the provisions of section 92 the Commissioner, at any time after a dispute has been referred to him under that section, or the Minister, at any time when an appeal has been referred to him against any decision of the Commissioner from which an appeal lies to the Minister under this Act, may refer any question of law that may be relevant to the dispute or decision for determination by the High Court.

Case stated  
on question  
of law

(2) A determination by the High Court on any question referred to it under sub-section (1) shall be final.

#### PART XI *Liquidation*

94. (1) The Commissioner may —

Liquidation

(a) after an inspection under section 107 or an investigation under section 109; or

(b) on the application of three-fourths of the members of a society,

make an order for the liquidation of the society if he is satisfied that the society ought to be dissolved.

(2) Any member of a registered society may within six weeks from the date of an order under sub-section (1) appeal from such order to the Minister, whose decision shall be final.

(3) Where no appeal is presented within six weeks from the making of an order for the liquidation of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within six weeks, the order shall not take effect until it is confirmed by the Minister.

(4) No registered society shall be liquidated save by order of the Commissioner in terms of this Part.

95. The Commissioner may, in writing, order the liquidation of any registered society, if at any time it is proved to his satisfaction that the number of the members has been reduced to less than the minimum number of members required by section 10. Every such order shall take effect from the date thereof.

Liquidation  
due to  
lack of  
membership

96. Where an order for the liquidation of a registered society is made in terms of section 94 or section 95, the Commissioner may, either before or after the said order takes effect, appoint one or more persons to be, subject to his direction and control, liquidator or liquidators of the society. The movable and immovable property, rights and liabilities of the registered society shall vest

Appoint-  
ment of  
liquidator

in the liquidator or liquidators appointed under this section with effect from the date of such appointment:

Provided that, if any appeal made in terms of section 94 is upheld and the order for the liquidation of the society is set aside, then the appointment of any liquidator or liquidators shall cease and the property, rights and liabilities of the registered society shall forthwith vest in the registered society, but without prejudice to the validity of any acts lawfully performed by any such liquidator or liquidators in terms of this Act.

Liquidator's  
powers

**97.** (1) A liquidator appointed in terms of section 96 shall, subject to any directions given by the Commissioner and to any limitations imposed by the Commissioner by order made in terms of section 98, have power to —

- (a) take possession of the books, documents and assets of the society;
- (b) appoint a day by notice in the Gazette before which creditors whose claims are not already recorded in the books of the society shall state their claims for admission or be excluded from any distribution made before they have proved them;
- (c) call such general meetings of members and creditors as may be necessary for the proper conduct of the liquidation;
- (d) carry on the business of the society so far as may be necessary for winding it up beneficially, subject only to the condition that nothing herein contained shall entitle the liquidator of a society to grant any loan;
- (e) give such directions in regard to the collection and distribution of assets as may be necessary in the course of winding up the society;
- (f) sell the property of the society;
- (g) decide in accordance with the law relating to insolvency and subject to the provisions of section 101 any question of priority which arises between creditors;
- (h) refer a dispute to arbitration and institute and defend suits and other legal proceedings on behalf of the society by his name or office;
- (i) compromise any claim by or against the society with the approval of the Commissioner;
- (j) determine from time to time the contribution to be made by members and past members or by the estate of deceased members of the society to its assets;
- (k) decide by what persons and in what proportions the costs of liquidation are to be borne; and
- (l) arrange for the distribution of the assets of the society in a convenient manner when a scheme or distribution has been approved by the Commissioner.

(2) Subject to regulations made hereunder any liquidator appointed under this Act may, in so far as such powers are necessary for carrying out the purpose of this section, summon and enforce the attendance of parties and witnesses, examine witnesses on oath and compel the production of documents by the same means and, so far as may be, in the manner of a subordinate court.

**98.** The Commissioner may —

- (a) rescind or vary any order made by a liquidator and make whatever new order is required;
- (b) remove a liquidator from office;
- (c) call for all books, documents and assets of any society;
- (d) by order in writing limit the powers of a liquidator under section 97;
- (e) require accounts to be rendered to him by the liquidator;
- (f) procure the auditing of the liquidator's accounts and authorize the distribution of the assets of the society;
- (g) make an order for the remuneration of the liquidator; and
- (h) refer any matter in dispute between the liquidator and any third party to arbitration if that party shall have consented in writing to be bound by the decision of the arbitrator.

Power of Commissioner to control liquidation

**99.** (1) An appeal against any order of the liquidator made under section 97 may be made to the Commissioner.

Appeal against orders

(2) An appeal against any order of the Commissioner made under section 98 or on an appeal under sub-section (1) of this section may be made to the Minister.

(3) Orders made under sections 97 and 98 and under this section may be enforced by any court of competent jurisdiction in the same manner as a judgment of that court.

**100.** Save in so far as is expressly provided in this Act, no civil court shall have any jurisdiction in respect of any matter concerned with the dissolution of a registered society.

Limitation of the jurisdiction of a civil court

**101.** (1) On the liquidation of a society, its assets including the statutory reserve fund shall be applied first to the costs of liquidation, then to the discharge of the liabilities of the society, then to the repayment of the share capital and any outstanding bonus certificates and then, provided the bye-laws of the society permit, to the payment of a dividend at a rate not exceeding ten per centum for any period for which no distribution of surplus of any kind was made to the members.

Closure of liquidation

(2) When the liquidation of a society has been closed, notice of the closing and of the liquidation shall be published in the Gazette and any claims outstanding against the funds of the liquidated society shall be prescribed upon the expiry of a period of two years from the date of the publication of the Gazette Notice.

(3) Any surplus remaining after the application of the funds to

the purposes specified in terms of sub-section (1) and the payment of any claims for which an action is instituted within the period mentioned in sub-section (2), shall not be divided among the members but shall be transferred to the Co-operative Central Fund:

Provided that if within 2 years of the date of transfer a new society is registered operating in substantially the same area as that in which the dissolved society operated, the Commissioner shall credit all or part of the transferred funds to the Statutory Reserve Fund of the new society.

Cancellation of registration

**102.** When the winding up of a society has been completed in terms of this Part and the period referred to in sub-section (2) has elapsed, the Commissioner shall cancel the registration of the society and publish a notice thereof in the Gazette.

## PART XII Powers of the Commissioner

Power to supply assistance

**103.** The Commissioner, or a secondary society authorized under section 5, shall provide or cause to be provided such technical information and advice regarding the affairs of a society as may be necessary to assist its officers and members in complying with this Act and achieving the objects of the society.

Commissioner may convene meetings

**104.** (1) If a society fails to hold an Annual General Meeting, the Commissioner may call a general meeting.

(2) The Commissioner may at any time call a Special General Meeting of the society to be held at the time, date and place specified in the notice which shall also specify the matters to be discussed at the meeting; the provisions of section 47 shall not apply to such a meeting.

(3) The Commissioner or a person nominated by him shall preside at a meeting authorized by this section.

(4) Notwithstanding any other provision of this Act, any regulations or bye-laws a meeting authorized by this section shall have all the powers of a general meeting of the society convened under its bye-laws and its quorum shall be such number of members or delegates as attend the meeting.

Miscellaneous powers of the commissioner

**105.** Without prejudice to any other power under this Act, the Commissioner shall have power to —

- (a) prescribe the form of the report required by section 10 (2) (b);
- (b) prescribe the form of the annual return to be submitted by every society under section 82; and
- (c) prescribe the accounts, records and books to be kept by a society.

Commissioner may attend meetings

**106.** The Commissioner or a person authorized by him shall be entitled to attend general meetings and committee meetings of any society, and to take part in the proceedings but not to vote; and to enable him to do so, the Commissioner may require

societies to send to him copies of all notices of meetings as and when they are sent to members,

**107.** The Commissioner or a person authorized by him in writing shall be entitled at all reasonable times to inspect the books, accounting records, papers, securities and cash in hand of a society and every officer or employee of the society shall furnish all such information about the transactions and working of the society as the person making the inspection may require.

Inspection  
of society

**108.** (1) As soon as may be after an inspection under section 107 the person who conducted the inspection shall —

Discussion  
of inspection  
report

(a) meet with the committee to discuss with them the condition of the society as he found it and the need for any immediate action to be taken to improve the operation of the society or to protect the interests of its members; and

(b) submit a report on the discussions to the Commissioner for such further action as he may consider necessary.

(2) The Commissioner may make an order directing the officers of the society to take the action specified in the order within the time mentioned to remedy the defects disclosed by the inspection.

**109.** (1) The Commissioner may appoint an investigator at any time to investigate and report on the affairs of a society.

Investigation  
of a society

(2) Without prejudice to his powers under sub-section (1), the Commissioner shall, on the written application of —

(a) a majority of the committee; or

(b) a majority of any supervisory board; or

(c) one-third of the members of a society,

appoint an investigator to investigate and report on the affairs of the society.

(3) All officers, employees, agents or members of the society shall produce all books, accounting records, documents, cash and securities of or relating to the society which are in their custody or power which may be required by the investigator and give him any information and assistance in connexion with the investigation as they are reasonably able to give.

(4) In this section the terms “officers” “employees”, and “members” include past officers, employees and members of the society and the term “agents” includes past agents and also bankers and attorneys for the society.

(5) The Commissioner may, on the recommendation of the investigator, apportion the costs or such part of the costs as he may think fit, between the society, the committee member or members demanding an enquiry, and the officers of the society; and any such sum awarded by way of costs may be recovered on application to a court, in the same manner as a fine imposed by the court.

(6) Any society, or any officer, employee, agent, or member of such a society, who wilfully neglects or refuses to produce the books, accounting records, and other property, or to give any information and assistance which he is in a position to give, shall be guilty of an offence and liable on conviction by a court of competent jurisdiction to the penalty prescribed by subsection (1) of section 122.

Restoration  
of  
misapplied  
property

110. (1) Where, in the course of the audit of a society under section 82, an inspection under section 107, an investigation under section 109 or the winding up of a society, it appears that any person who has taken part in the organization or management of the society, or any past or present officer, employee, or member of the society has misapplied, retained or become liable or accountable for any money or property of the society, or has been guilty of misconduct or breach of trust in relation to the society, a court of competent jurisdiction may on the application of the Commissioner inquire into the conduct of that person and make an order requiring him to repay or restore the money or property or any part thereof to the society with interest at such rate as the court thinks just, or to contribute such sum to the assets of the society by way of compensation for the misapplication, retention, misconduct or breach of trust as the court thinks just.

(2) This section shall apply notwithstanding that the offence is one for which the offender is criminally responsible.

Appoint-  
ment of  
special  
officer

111. (1) The Commissioner may appoint one special officer to the committee of a society and one special officer to any supervisory board of a society.

(2) Action may be taken under sub-section (1) if —

- (a) the society is provisionally registered under section 17; or
- (b) it is necessary to assist the society to achieve its objects or to protect the interests of its members; or
- (c) the society has received directly or indirectly a grant or loan from the Government or a Government agency; or
- (d) a loan made to the society has been guaranteed by the Government or a Government agency and the guarantee is still outstanding.

(3) A special officer shall remain a member of the committee or of the supervisory board until his appointment is terminated by the Commissioner; but whilst he is a member of the committee or of the board, he shall not be counted as a member of it for the purpose of any provisions relating to the number of members of the committee or of the board.

(4) A special officer shall exercise all the rights of a member of the committee or of the board as the case may be except the right to vote.

**112.** (1) The Commissioner may appoint not more than 3 special members to the committee of a society and one special member to any supervisory board of a society.

Appoint-  
ment of  
special  
members

(2) Action may be taken under sub-section (1) if —

(a) the society has received directly a grant or loan from the Government or a Government agency and the loan or a part thereof has not been repaid by the society in accordance with the loan conditions; or

(b) a loan made to a society has been guaranteed by the Government or a Government agency and the Government or its agency has been called upon to implement its guarantee and the society has failed to reimburse the Government or its agency in all or a portion of the sum paid out to implement the guarantee; or

(c) such an appointment has been recommended in an investigators report after an investigation under section 109.

(3) Special members shall be full members of the committee or supervisory board and may exercise all the rights of a committee member or board member including the right to vote; notwithstanding any provision to the contrary herein contained, no meeting of the committee or board shall be considered as having the required quorum if the special members are not present.

(4) The Commissioner may by written notice to the society require that, for as long as the special members hold office —

(a) no cheque issued by the society shall be valid without the counter-signature of a special member; or

(b) decisions of the committee should be referred to the Commissioner for approval by the special members and, pending such approval, shall be of no effect.

(5) A special member may be removed from the committee or board by the Commissioner at any time.

(6) The allowances of special members shall be paid from the funds of the society.

**113.** (1) Where, after an investigation into a society held under section 109 it is disclosed that the committee of the society has failed to carry out its functions properly, has failed to carry out directives under section 120 (4) of this Act or has acted in a way detrimental to the interests of the members or creditors, and the society has been significantly prejudiced thereby, the Commissioner may submit to the Minister a copy of the report of the investigator along with a recommendation that the Minister exercise his powers under this section and remove all or some of the members of the committee who, the Commissioner is satisfied, are principally responsible for the failure of the committee to carry out its functions.

Removal  
of the  
committee  
by the  
Minister

(2) If the Minister is satisfied that the Commissioner's

recommendation is reasonable and ought to be accepted he shall cause to be served on the society a copy of the report and recommendation together with a notice informing the committee of its right to make written submissions to him within 14 days of the date of service of the notice on the society as to why the recommendation should not be accepted.

(3) The Minister may, after due consideration of any submissions made to him by the committee or any member of it, order that all or so many of the members of the committee as are, in his opinion, responsible for the default should cease to be members of the committee. This order shall be served on the society and shall come into force on such service.

(4) Where an order by the Minister under sub-section (3) results in the dismissal of the whole committee, the Commissioner shall forthwith appoint not more than three administrators to protect the interests of the society and its members and creditors; and any administrators so appointed shall have and may exercise all the powers of the committee under this Act or the bye-laws until such time as the Special General Meeting required by sub-section (5) is held, and such allowance or salary for the administrators as may be decided upon by the Commissioner shall be paid from the funds of the society.

(5) The Commissioner shall, within one month of the service upon the society of an order made by the Minister under subsection (3), convene a Special General Meeting of the society to elect a new committee or new members, as the case may be, to replace those removed by the Minister.

(6) The Special General Meeting shall be held, and the elections completed within three months of the date of the order of the Minister.

(7) A person removed from membership of a committee under this section shall not be eligible for re-election to the Committee or for election to the committee of any other society:

Provided that after the expiry of two years from the date of the order for removal a person so removed may apply to the Minister for cancellation of the disqualification imposed by this sub-section.

(8) This section shall apply notwithstanding that the offence is one for which the offender is criminally responsible.

### PART XIII — *General*

Power of  
the Minister  
to make  
regulations

114. The Minister may make —

- (a) regulations providing for anything required by this Act to be prescribed by regulations;
- (b) regulations increasing any fee or financial limit set by this Act, other than the penalties prescribed by section 122;

(c) any other regulations he may consider necessary for carrying out the purpose of this Act.

115. The Minister may by notice published in the Gazette amend Schedules 2 and 3 to this Act.

Power of the Minister to amend Schedules 2 and 3

116. No person other than a society shall, without the written consent of the Commissioner, trade or carry on business under any name or title of which the term 'co-operative' or 'tshwaragano' is part:

Prohibition of the use of 'co-operative' or 'tshwaragano'

Provided that nothing in this section shall apply to the use of these terms by any person or his successor in title in any name or title under which he traded or carried on business at 9th April, 1964.

117. (1) The Commissioner may, where he considers it desirable, cause the bye-laws of a society or any model bye-laws prepared under his authority to be translated into Setswana.

Use of Setswana at Commissioner's discretion

(2) Any forms or returns prescribed under this Act or regulations may be issued in English and Setswana.

(3) In the case of conflict between the English and Setswana versions of bye-laws or forms authorized by this section, the English version shall prevail.

118. (1) If a society has —

Enforcement of duty to make return

(a) failed to comply with any provision of this Act which requires it or any of its officers to file with, deliver or send to the Commissioner any return, account or document or to give notice to him of any matter; and

(b) failed to make good the default within 14 days after the service of a notice on it by the Commissioner calling upon it to do so,

a court of competent jurisdiction may, on the application of the Commissioner or any member of the society, make an order directing the society or the officer concerned to make good the default within the time specified in the order.

(2) Any order made under this section may provide that the costs of and incidental to the application shall be borne by the society or by the officer responsible for the default.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a society or on its officers in respect of any default specified in this section.

119. No civil summons shall be issued out of any court against any registered society unless the party instituting proceedings has given to the Commissioner at least 14 days written notice of his intention to do so.

Notice of intention to sue society

120. (1) It shall be an offence for a society or an officer or a member of a society to —

Offences

- (a) fail to do or cause to be done any act or thing which is required by this Act or any regulations; or
- (b) do anything prohibited by this Act or any regulations; or
- (c) wilfully neglect or refuse to do any act or to furnish any information required for the purposes of this Act by the Commissioner or any person authorized by him; or
- (d) wilfully make a false return or furnish false information with respect to any return or information required by this Act;
- (e) wilfully perform any act requiring the consent of the Commissioner without having obtained that consent.

(2) It shall be an offence for any person to —

- (a) act or purport to act as an officer of a society when he is in fact not an officer of that society; or
- (b) wilfully and without reasonable excuse disobey any order, summons or requirement issued under this Act or fail to furnish any return of information required from him by this Act or by any person authorized under this Act.

(3) Any society or officer, member of a society or any other person who commits an offence under sub-sections (1) or (2) shall be liable to the penalty prescribed by subsection (1) of section 122.

(4) When the Commissioner, after such enquiry as he may consider necessary, is of the opinion that a member of the committee or board of any registered society who was appointed by him under section 112 (1) is unable to discharge his duties efficiently, the Commissioner may, in writing, require the committee or board to dismiss such member, officer or employee before the appointed date and the committee or board, as the case may be, shall comply with the said order of the Commissioner.

121. (1) Any person who —

- (a) by false representation or theft obtains possession of any property belonging to a society; or
- (b) has any property belonging to a society in his possession and withholds or misapplies that property; or
- (c) wilfully applies any property belonging to a society to any purpose other than those authorized by this Act or the bye-laws of the society,

shall, upon a complaint of the Commissioner or the society or any of its members, be liable on conviction by a court of competent jurisdiction to the fine prescribed by subsection (2) of section 122 and to an order to deliver up all such property or to repay all monies applied improperly.

(2) If a person convicted under sub-section (1) fails to deliver up the property, repay the money or pay the fine, he shall be liable to the penalty, prescribed by subsection (1) of section 122.

**122.** (1) Where any section of this Act provides for a penalty under this subsection, that penalty shall be a fine of P500 and imprisonment for 6 months. Default penalty and default fine

(2) Where any section of this Act provides for a fine under this subsection, that fine shall be P50 and in the case of a continuing offence a further fine of P10 for every day the offence continues.

**123.** No act or omission whatever of the Commissioner or of any co-operative officer, clerk, or other person in the employment of the Government having duties to perform under this Act shall render the Government or the Commissioner or any co-operative officer, clerk, or person liable for any loss or damage sustained by any person as a result of any such act or omission unless the act or omission was mala fide or was caused by the failure to exercise reasonable care or diligence. Exemption from liability for acts or omissions of Government officers

**124.** The Companies Act shall not apply to any Co-operative Society and the registration of a Co-operative Society under that Act shall be void. Companies Act not to apply  
Cap. 42:01

**125.** (1) The Co-operative Societies' Act and regulations made under that Act are hereby repealed. Repeal of  
Cap. 42:03

(2) Notwithstanding the repeal of the Co-operative Societies' Act —

- (a) societies and bye-laws registered under that Act shall be deemed to have been registered under this Act;
- (b) any register kept in compliance with that Act shall be deemed to be part of the register to be kept in compliance with this Act;
- (c) any document referring to a provision of that Act shall be construed as referring to the corresponding provision of this Act;
- (d) any orders, directions, appointments and other acts lawfully carried out under a provision of that Act and in force immediately before the commencement of this Act shall be deemed to have been carried out under the corresponding provision of this Act and shall continue to have effect accordingly.

#### SCHEDULE 1

1. The following provisions shall be included in the bye-laws of a society —
- (1) the name of the society;
  - (2) the place and postal address of the registered office;
  - (3) the objects for which the society is established including the purposes for which its funds may be applied;
  - (4) the common bond formed by the area of operation of the society as required by section 29;
  - (5) the qualifications for membership, and the terms of admission and withdrawal of members;
  - (6) the value of each share and the terms of issue, cancellation, withdrawal or transfer as the case may be;

(7) the minimum share qualification for each member, the minimum amount payable on application and the methods of payment of any amount remaining unpaid on the minimum qualification;

(8) the manner of raising funds and the maximum rate of interest on deposits;

(9) the nature and extent of the liability of members;

(10) the entry and membership fees if any;

(11) the procedures for summoning general meetings and the procedure and powers of such meetings;

(12) the procedures for the appointment, the term of office and the procedures for the removal of committee members;

(13) the procedures for the appointment and the term of office, the removal of officers of a society and provisions defining the powers of such officers;

(14) the powers and duties of the committee of management;

(15) the procedure for the authorization of an officer or officers to sign documents on behalf of the society;

(16) provisions governing the disposal of accumulated funds and the distribution of the annual net surplus or profit;

(17) restrictions on transactions with non-members.

2. If the objects of a society include the creation of funds to be lent to members, provision for —

(a) the place of work, occupation or residence of members;

(b) the conditions on which loans may be made to members including —

(i) the rate of interest;

(ii) the maximum amount that may be lent to a member;

(iii) the purpose of loans;

(iv) the extension of the term and or renewal of loans;

(v) the maximum period for which loans can be made; and

(vi) the security for repayment.

3. In the case of a secondary society the bye-laws shall provide for the method of representation of members at general meetings, the appointment of delegates and the manner of voting.

## SCHEDULE 2

### *Notice of General Meetings*

1. A minimum of 14 clear days written notice shall be given of all general meetings. The notice shall specify the place, day and hour of the meeting and in the event of any special business to be discussed, the general nature of that business.

2. The non-receipt of a notice by any person entitled to receive it shall not invalidate the proceedings at the meeting if the despatch of the notice is established to the satisfaction of the committee.

### *Proceedings at General Meetings*

3. All matters other than those set out in section 45 shall be special business whether it is transacted at a Special General Meeting or at an Annual General Meeting.

4. Subject to the exception set out in subsection (4) of section 104, no business shall be transacted at a general meeting unless a quorum of members is present..

5. If within half an hour from the time appointed for the meeting a quorum is not present the meeting —

(a) if it was convened following a requisition from the members, shall be dissolved; or

- (b) if it was summoned by the Commissioner under section 104, shall proceed with the membership present forming a quorum; or
  - (c) in any other case, shall be adjourned to the same day in the next week at the same time and place, and a notice to that effect shall be published by the secretary within three days of the adjournment. If at that adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the members present shall form a quorum. No resolution for the amendment of the bye-laws may be passed at such an adjourned meeting.
6. (a) The chairman of the society or a vice-chairman shall preside at a general meeting. In their absence any member elected on a majority of those present shall preside.
- (b) If the meeting was summoned by the Commissioner, he or his representative may preside.
7. Except where a special resolution is called for, a question or resolution referred to the members present at a meeting shall be decided by a majority of votes.
8. Each member shall have one vote. The vote shall be exercised personally and not by proxy.
9. The chairman shall declare whether every resolution put to the vote has been carried or lost and shall cause an entry to be made in the minute book of the society which when signed by him shall be a conclusive record of anything contained therein.
10. The chairman shall have a second or casting vote in the event of a tie.
11. The chairman may, with or without a request from the members to hold such a ballot, direct that the voting on a particular resolution shall be by secret ballot conducted in the manner directed by him.
12. The secretary, or in his absence some other member delegated for this purpose by the meeting, shall keep accurate minutes of the proceedings at all general meetings and the minutes shall be read and confirmed at the very next general meeting and signed by the chairman.

### CHEDULE 3

1. (1) Reference of a dispute to the Commissioner for decision under the provisions of section 92 of the Act may be made —
- (a) by the committee; or
  - (b) by the society in accordance with a resolution of a general meeting; or
  - (c) by any party to the dispute; or
  - (d) where the dispute concerns a sum of money payable by a member of the committee or other officer, by any member of the society.
- (2) Every reference under section 92 shall be made by a statement in writing addressed to the Commissioner. Such statement shall —
- (a) be dated;
  - (b) specify the dispute;
  - (c) set out the full particulars of the dispute; and
  - (d) be signed by the party making it.
2. (1) Where under section 92 the Commissioner decides to refer a dispute to arbitration such decision shall be embodied in an order of reference under his hand.
- (2) Every order of reference under this regulation shall —
- (a) specify the name, surname, place of abode and occupation of the arbitrator or arbitrators;
  - (b) set out the dispute and full particulars thereof or annex the original or duplicate of the reference to the Commissioner; and

- (c) limit the time within which the award shall be forwarded by the arbitrator or arbitrators to the Commissioner:

Provided that, on good cause shown, the Commissioner may by a further order enlarge the time, whether before or after the time limited by the order of reference has expired.

(3) Where the Commissioner decides to refer a dispute to more than one arbitrator, such reference shall be to three arbitrators, of whom one shall be nominated by each of the parties to the dispute and the third shall be nominated by the Commissioner and shall act as chairman.

(4) Where under paragraph (3) of this rule reference is made to three arbitrators, the following provisions shall have effect —

- (a) if any party to the dispute fails to nominate an arbitrator within such time as the Commissioner may specify, the Commissioner may make the nomination himself;
- (b) if an arbitrator nominated by one of the parties to the dispute dies, or refuses or neglects to act, or by absence or otherwise becomes incapable of acting, the Commissioner shall call upon the party concerned to nominate a new arbitrator within such time as the Commissioner may specify, and if no new arbitrator is nominated accordingly, the Commissioner may nominate one himself;
- (c) if the arbitrator who dies, or refuses or neglects to act, or becomes incapable of acting, was nominated by the Commissioner, a new arbitrator shall be nominated in his place by the Commissioner; and
- (d) the opinion of the majority of the arbitrators shall prevail.

(5) The Commissioner may direct the whole or any portion of the expenses which are likely to be incurred in determining the dispute to be paid in advance by the party in the position of the plaintiff.

(6) Where a dispute concerning a sum of money payable by a committee member or other officer is referred to arbitration by any member of the society, such member shall have the power to act on behalf of the society in execution of proceedings and shall be entitled to the payment of any reasonable expenses incurred by him in that connexion.

3. (1) The proceedings before the arbitrator or arbitrators shall, as nearly as possible, be conducted in the same way as proceedings before a court of law; provided that no legal practitioner shall be allowed to represent either party. In particular the following provisions shall have effect in respect thereof —

- (a) notice of the time and place at which the proceedings are to be held shall be given to the parties to the dispute, and such notice shall be not less than ten (10) days' notice;
- (b) in all proceedings under this rule an arbitrator or arbitrators shall have the power —
  - (i) to administer oaths;
  - (ii) to require the attendance of the parties and witnesses and to require the production of all necessary books and documents by a summons delivered orally or sent by hand or through the post under registered cover or through the nearest civil court having jurisdiction in the area in which the society carries on business; and
  - (iii) to order the expenses incurred in determining the dispute to be paid out of the funds of the society or by such party or parties to the dispute as he or they may think fit;

- (c) the Commissioner or the arbitrator or arbitrators shall hear the evidence of the parties to the dispute and their witnesses who attend, and upon that evidence and after consideration of any documentary evidence produced by either party shall give the decision or award, as the case may be, in accordance with justice, equity and good conscience. The award of the arbitrator or arbitrators shall be reduced to writing, announced to the parties present and forwarded to the office of the Commissioner or to such subordinate officer as the Commissioner may direct along with the record of the proceedings to be filed of record and such award shall be available to the parties for the purpose of execution proceedings;
  - (d) where any party to a dispute who is duly summoned does not attend, the dispute may be decided *ex parte*;
  - (e) a record of the evidence adduced before the arbitrator or arbitrators shall be made, dated and signed by the arbitrator or arbitrators;
  - (f) documents produced as exhibits before the arbitrator or arbitrators shall be marked, cited and initialed by the arbitrator or arbitrators and shall be attached to the file of the proceedings.
- (2) The award of the arbitrator or arbitrators shall —
- (a) be in writing;
  - (b) be dated and signed by the arbitrator or arbitrators; and
  - (c) state the amount of the cost and expenses of the arbitration, if any, and by which party or parties to the dispute the same are to be paid.
- (3) Upon the completion of the proceedings, the arbitrator or arbitrators shall forward to the Commissioner —
- (a) the file of the proceedings; and
  - (b) the award.
4. Where in pursuance of the provisions of the Act, the Commissioner exercises the power of deciding a dispute himself, the proceedings before him in relation thereto shall, as nearly as possible, be conducted in the same way as proceedings before a court of law and the provisions of Rule 3 shall apply *mutatis mutandis* to such proceedings.

### *Appeal*

5. Every appeal to the Commissioner from an award of an arbitrator or arbitrators shall be made within thirty days from the date of such award, by a written statement setting out the grounds of appeal. Every such appeal shall be forwarded to the Commissioner with a sum of money computed according to the scale prescribed for the purpose by the Commissioner to be held in deposit pending the determination of the appeal. The sum so deposited shall be returned to the party appellant after the disposal of the appeal unless the Commissioner is of the opinion that the appellant had no reasonable grounds to appeal in which case the sum so deposited shall be credited to the Cooperative Central Fund.

PASSED by the National Assembly this 5th day of April, 1989.

C.G. MOKOBI,  
*Clerk of the National Assembly.*