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**KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT – SECOND SESSION**

**DEPARTMENTAL COMMITTEE ON
AGRICULTURE, LANDS AND NATURAL
RESOURCES**

**REPORT OF THE SACCO SOCIETIES
BILL, (Bill No. 8) 2008**

**Clerks Chambers
National assembly
Parliament Buildings
NAIROBI**

July 2008

PREFACE

Mr. Speaker Sir,

On behalf of Members of the Departmental Committee on Agriculture, Lands and Natural Resources, I feel honoured to present to the House the Committee's Report on the Sacco Societies Bill (No. 8), 2008, pursuant to provision of Standing Order No. 151(4).

Mandate of the Committee

The Departmental Committee No. A on Agriculture, Lands and Natural Resources is established pursuant to provisions of Standing Order No. 151 with the following terms of reference:

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries and departments and the effectiveness for implementation;
- c) to study and review all legislation after First Reading, subject to the exceptions under Standing Order 101A (4);
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objectives;
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

Mr. Speaker Sir,

The Committee oversees the following Government Ministries; namely: -

1. Ministry of Agriculture;
2. Ministry of Lands and settlement;
3. Ministry of Water and Irrigations;

4. Ministry of Co-operative Development and Marketing;
5. Ministry of Regional Development;
6. Ministry of Northern Kenya and Arid Lands;
7. Ministry of Livestock Development;
8. Ministry of Fisheries Development;
9. Ministry of Environment and Minerals Resources; and
10. Ministry of Forestry and Wildlife.

The following are the Members of the Committee:

1. Hon. Bett, Franklin, M.P. - **Chairman**
2. Hon. Mureithi, Erastus, M.P.
3. Hon. Mututho, John, M.P.
4. Hon. Washiali, Benjamin Jomo, M.P.
5. Hon. Muriuki, Ruteere Silas, M.P.
6. Hon. Mbai, Itwiku Benson, M.P.
7. Hon. Kazungu, Kambi Samuel, M.P.
8. Hon. (Dr.) Munyaka Victor Kioko, M.P.
9. Hon. Akula, Evans Bulimo, M.P.
10. Hon. Simam, Peris Chepchumba, M.P.
11. Hon. (Dr.) Monda Robert Onsare, M.P.

Mr. Speaker, Sir,

The Sacco Societies Bill (Bill No. 8) 2008 was referred to the Committee by the House on Tuesday, June 10, 2008 after the First Reading pursuant to the provision of Standing Order No. 101A.

The principal object of the Bill is to provide a legal framework for the regulations of Sacco Societies carrying out deposit –taking business which the Bill seeks to distinguish from Co-operatives Societies which continue to be governed by the Co-operatives Act.

The Bill establishes a regulatory authority – the Sacco Societies Regulatory Authority, which shall be a body corporate to regulate and supervise the operations of the Sacco Societies;

The Bill further seeks to establish the Deposit Protection Fund to be managed by a board of Trustees, to provide protection for deposits up to an amount of one hundred thousands shillings and every Sacco Society shall pay or contribute to the Fund;

Mr. Speaker Sir,

The Committee in its consideration of the Bill held three Sittings, as a Committee and with two sets of stakeholders, who proposed several amendments herein appended.

The Bill is as a result of a study tour made by the Committee to the United States of America with other stakeholders in the sub sector.

Among the stakeholders who met the Committee are – Kenya Union of Savings and Credit Co-operatives Ltd - (KUSSCO), Kenya National Federation of Co-operatives – KNFC, Harambee Sacco, Ukulima Sacco, Mwalimu Sacco, Ufundi Sacco, Co-operative College, Afya Sacco, Stima Sacco, Elimu Sacco and Kenya Rural Sacco Societies - (KERUSO);

The Minister for Co-operatives Development and Marketing accompanied by the Commissioner of Co-operatives also held a consultative meeting with the Committee.

The Committee wishes also to note that the most important role the Bill will play is to outlaw pyramid schemes, DECI programmes which have been used to fleece millions of Kenyans; the Bill will further put to an end the rampant collapse of the Saccos and disappearance of depositors money due to mismanagement.

The Committee is grateful to the secretariat and the office of the Clerk, for facilitating and providing technical support.

Finally, it is now my pleasant duty, on behalf of the Departmental Committee on Agriculture, Lands and Natural Resources, to present and recommend this report to the House pursuant to the provisions of Standing Order No. 162 of the National Assembly.

SIGNED:.....

**HON. FRANKLIN BETT, MP
CHAIRMAN
DEPARTMENTAL COMMITTEE ON AGRICULTURE, LANDS AND
NATURAL RESOURCES**

DATE:.....

PROPOSED AMENDMENTS TO THE SACCO SOCIETIES BILL,
(BILL NO. 8) 2008

Universal Amendment to the Bill

- i) **Co-operative Act, 1997** – That the title of the Act referred to be changed to Co-operative Act.

Comment

The Committee amended this as the Co-operative Act No. 12 of 1997 has also been amended several times and to specify 1997 will be detrimental to the Bill;

- ii) **Licensed Society** – (i) That the words "**Licensed Society**" be deleted from the definitions;
(ii) That the words "**Licensed Society or Society**" whenever appearing in the Bill be deleted and substitute thereof the words "**Sacco Society**".

Amendments to the Bill

- Title** - That the title be amended by deleting the words "**certain**" on the title of the Bill;

Comment

The Committee recommends this amendment so that the legislation when in effect shall cover all Sacco societies and none shall be outside this law.

Definitions

- i) **Board of trustees** – means the trustees board in charge of the Deposit Protection Fund under section 58 of the Act;
- ii) **Core Capital** – means the fully paid up members' shares, capital issued, disclosed reserves, retained earnings, grants and donations all of which are not meant to be expended unless on liquidation of the Sacco;

iii) **Deposits –**

means a sum of money received or paid on terms under which it shall be repaid, with or without interest or premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;

iv) **Dormant account –**

means savings or current account maintained by a Sacco Society which is not operational, or has had no transaction by the depositor within the maximum period prescribed.

COMMENT

The Committee recommends that the terms be defined in the context of Sacco Societies and as the definitions provided on the Bill relates to the banking sub-sector;

- (i) **Clause 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 – agreed to;**
- (ii) **Clause 24 -**
- (i) That Clause 24(2) (e) (i) be amended by inserting the word "**Society**" after the words "**Sacco**";
 - (ii) That Clause 24(3) be amended by deleting the words "**only**" appearing on the second line after the word "**licence**";
 - (iii) That clause 24(3) be amended by deleting the word "**fourteen**" appearing on the second line after the word "**within**" and substituting thereof the word "**thirty**";
 - (iv) That Clause 24(3) be amended by deleting the words "**being notified of the refusal**" and substituting thereof the words "**receipt of notification of refusal**"; and
 - (v) That Clause 24(5) be amended by deleting the word "**may**" appearing on the first line after the word "**Authority**" and substituting thereof the word "**shall**".

Comments

The Committee recommends the amendments for the following reasons:-

- i. On Clause 23(3): by taking into consideration the time taken to mail the decisions to Sacco Societies in remotest parts of the Republic; and*
- ii. On clause 24(3): by re-wording to include "receipt of notification" perhaps to state that upon receipt of refusal to grant license, shall be conclusive evidence that the Sacco may appeal.*

- Clause 25: -**
- (i) That clause 25(2) be amended by inserting the word "**society**" after the word "**Sacco**" appearing on the third line;
 - (ii) That clause 25(2) be amended by adding a proviso after the word "**business**" to read "**Provided that the authority shall issue the license within 14 days of payment of the prescribed fee**"

Comment

The Committee recommends the insertion of the proviso to give a time-frame within which the authority shall be required to issue the licence upon being satisfied that the applicant has met all requirements.

- Clause 26: -** That Clause 26 be amended by deleting the words "**may**" appearing after the words "**Authority**" on the first line and substitute thereof the word "**shall**".

- Clause 27 : -**
- (i) That Clause 27(3) be amended by deleting it entirely; then re-number the sub-clauses accordingly;
 - (ii) That clause 27(6) be amended by deleting the word "**license**" appearing after the word "**its**" on the second line and substituting thereof the word "**licence**";
 - (iii) That clause 27(6) be amended by deleting the word "**fourteen**" appearing on the third line after the word "**within**" and substituting thereof the word "**thirty**"; and
 - (iv) That clause 27(8) be amended by deleting the word "**Minister**" appearing on the first line after the word "**The**" and substituting thereof the word "**Tribunal**".

Comment

- i. *The Committee recommends the deletion of clause 27(3) as it contradicts Clause 27(a);*
- ii. *On Clause 27(6), the Committee recommends that the time within which a Sacco, dissatisfied with a decision to revoke a licence, should appeal to the Minister ought to be extended to 30 days from 14 days;*
- iii. *The Committee recommends the introduction of a Tribunal as set out in the Co-operatives Act;*

Clause 28: - (i) Sides to read "settlement of disputes";

- (ii) That clause 28 be deleted and substituted thereof with a new clause 28 to read:-

28. *That all disputes arising out of the Sacco – Society business, shall be referred to the Tribunal as established under the Co-operatives Societies Act.*

Comment

- (i) *The Committee recommends that there should be a mechanism of solving disputes in Sacco Societies which was not provided for. The Committee further recommends that the Minister be assisted in solving disputes through the Tribunal;*
- (ii) *The Committee recommends that the Co-operative Act be amended to accommodate under section 76(2) to define a dispute in the context of the Sacco Societies.*

Clause 29: - agreed to;

Clause 30: - (i) That Clause 30 be amended by deleting the words "specified in the second schedule" appearing on second line after the word "requirements" and substitute thereof the words "as may be prescribed by the Authority".

- (ii) Sub-Clauses 30(2) and (3) be amended by deleting them entirely;

Comment

- i. *The Committee recommends that the Capital requirements be set up by the Authority taking into consideration the nature of the Sacco society in Kenya, not well-established as in the banking sector.*

- ii. *The Committee further recommends that setting of minimum capital requirements be left to the authority as not all Sacco Societies are engaged in Sacco Society Business therefore different capital levels.*

Clause 31: - agreed to

- Clause 32: -**
- (i) That clause 32 be amended by deleting it entirely;
 - (ii) That a new clause 32 be introduced to read "**All Sacco Societies in Kenya shall engage only in such business as the Authority shall prescribe or authorize**"

Comment

The Committee is of the view that the clause 32 as originally constructed would be detrimental to the growth of Sacco Societies especially those undertaking FOSA business.

Clause 33: - agreed to

- Clause 34: -** (i) That clause 34(5) be amended by deleting the word "**may**" appearing on the first line and substitute thereof the word "**shall**", and insert the word "**Sacco**" after the word "**that**" appearing on the second line.

Comment

The Committee recommends that it shall be mandatory for the Sacco Society not to grant loans to non-members to protect the Sacco Societies from defaulters.

Clause 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 - agreed to;

- Clause 45: -** That clause 45 be amended to by adding the words "**and approved by the Annual General Meeting**" after the word "**46**" appearing on the third line; and further be amended by deleting the words "**approved for appointment**" appearing on the third line, after the word "**and**", substituting thereof the word "**appointed**"

Comment

The Committee recommends that the shareholders or members of a Sacco Society should have a role to play in both determining the financial management of the Sacco Society and also be able to select and approve the external Auditors.

Clause 46: - (i) That a new clause 46(b) be introduced to read:-

***(b) is among the listed auditors by the Authority,
Approved and duly registered by the Authority.***

(ii) That clause 46(b) be re-numbered "**46(c)**";

Comment

The Committee recommends additional clause 46(b) to rein in on Sacco Societies that retain one external auditor for years and to disallow the selection of only a few known external auditors. The Committee further recommends that the Authority shall conduct market survey to establish well established audit firms which can conduct audit of accounts of Sacco Societies.

Clause 47: - That clause 47(1) be amended by deleting the word "**exhibit**" appearing on the first line after the word "**shall**" and substituting thereof the word "**display**";

Clause 48: - (i) That clause 48 be amended by deleting it;
(ii) That a new clause 48 be introduced to read as follows.

AGM: Clause 48; The Annual General Meeting shall be the supreme organ of any Sacco Society as established under the Co-operatives Societies Act.

Comment

- i. The Committee recommends the amendments to clause 48 as this is in good spirit with the financial management of Sacco Societies where the regulator (Authority) has a role in correcting errors of mismanagement to suit those running the Sacco Societies and also a third audit is expensive for the Sacco Societies;*
- ii. The Committee recommends that the AGM should be accorded its rightful role in the management of Sacco Societies.*

Clause 49: - (i) That clause 49 be amended by deleting it entirely.
(ii) That the subsequent clauses be re-numbered accordingly.

Comment

The Committee recommends the deletion of clause 49 as it is more or less the same as clause 41 of the Bill.

Clause 50, 51 and 52 - agreed to and re-numbered as 49, 50, and 51 respectively;

- Clause 53:** - That clause 53 be amended by: -
- (i) Re-numbering it to be clause 52;
 - (ii) That clause 52(f) be amended by deleting the words "**more frequent inspection**" appearing after the word "**undertake**" and substituting thereof the word "**regular inspections**";
 - (iii) That clause 52 (f) be amended by deleting the words "**that society**" appearing after the word "**of**" and substitute thereof the words "**Sacco Societies**".

Comment

The Committee recommends regular inspection by the Authority on Sacco Societies instead of more frequent as that would be ambiguous.

Clause 53, 54, 55 and 56 - agreed to;

- Clause 57:** - That clause 57(2) be amended by deleting the word "**may**" appearing after the word "**Minister**" and substituting thereof the word "**shall**".

Comment

The Committee recommends that the procedure of nomination of the board of trustee shall be mandatory by the Minister to avoid overlooking of the participation of Sacco Society members.

Clause 58, 59 and 60 – agreed to;

- Clause 61:** (i) That clause 61(4) be amended by deleting the words "**or terminate the protection of the deposits of such society**";
- (ii) That clause 61(5) and (6) be amended by deleting them entirely;

Comment

- i) *The Committee recommends that the Authority shall not terminate the protection of deposits of a society as result of mismanagement as this affects depositors;*
- ii) *The Committee recommends that if the power to terminate protection of deposits has been waved under sub-clause 62(4) then sub-clause (5) and (6) do not apply.*

Clause 62 - agreed to;

Clause 63: - That clause 63 be amended by deleting the words **"and all licensed societies or that a particular licensed society"** appearing on the sixth line after the word **"society"**.

Note

Repetition

Clause 64, 65 and 66 - agreed to;

Clause 67: - (a) That clause 67(b) be amended by inserting the word **"thousand"** after the word **"hundred"** appearing at the beginning of the fourth line; and

(b) That clause 67(b) be amended by inserting the words **"or upon conviction, for a jail term of not less than twelve months or both"** after the word **"shillings"** appearing on the fourth line.

Comment

The Committee recommends alternatives to the Courts for any penalty and make the contravention of the law more punitive.

Clause 68 - agreed to;

Clause 69: - That clause 69 be amended by deleting the words **"may, on the recommendation of"** appearing on the first line after the word **"Minister"** and substitute thereof the words **"shall, in consultation with"**.

Comment

The Committee recommends that the Minister puts in place rules and regulations in consultation with the regulatory Authority of the sub sector in order to bring more input,

Clause 70: - (a) That clause 70(i) be amended by:-

- (i) Re-numbering it as clause 70;
- (ii) That the word **"longer."** appearing on the fourth line before the word **"such"** be deleted;

- (iii) That the words "**in any case, not exceeding Twelve months**" be inserted after the word "**period**" appearing on the fourth line.
- (iv) That the words "**or cease to carry out such business**" appearing on the sixth line be deleted.

(b) That sub-clause 70(2), (3), (4), and (5) be amended by deleting them entirely.

Comment

- i) The Committee recommends that the Minister shall have sufficient time to license all Sacco Societies that have applied for a licence and have been conducting deposit – taking business;*
- ii) The Committee recommends that the Board of the authority upon establishment by the Minister shall conduct proper recruitment based on the market qualifications.*

Clause 71 and 72 - agreed to;

New Clause 73: - That a new clause 73 be inserted in the Bill to read:

Clause 73: - Section 76(2) of the Co-operatives Act, be amended by inserting section 76(2) (c) to read: -

76(2) (c): a claim by Sacco Society for any refusal to grant or revocation of licence or any other due, from the Authority;

Comment

The Committee recommends that there shall be claims to be made by Sacco Societies from their dealings with the Authority hence the need for Clause 76 (2) (c) and shall be defined in the context of the Sacco Societies.

FIRST SCHEDULE - Agreed to;

SECOND SCHEDULE

That the Second Schedule be deleted.

Comment

The Committee recommends that the Authority sets the minimum capital requirements based on the findings or set out rules and regulations of the Act.

ANNEXES

- ✓ **MINUTES OF THE COMMITTEE DURING CONSIDERATION OF THE SACCO SOCIETIES BILL, 2008 PURSUANT TO STANDING ORDER NO. 162(2) ARE HEREIN ATTACHED;**

MINUTES OF THE FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES, HELD ON TUESDAY, JUNE 24, 2008, IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT:

The Hon. Franklin Bett, MP. - **Chairman**
The Hon. John M. N. Mututho, MP.
The Hon. (Dr) Robert O. Monda, MP.
The Hon. Erastus K. Mureithi, MP.
The Hon. Evans B. Akula, MP.
The Hon. Ruteere M. Silas, MP.
The Hon. (Dr) Victor K. Munyaka, MP.
The Hon. Kambi K. Samuel, MP.
The Hon. Benjamin J. Washiali, MP.

ABSENT WITH APOLOGY:

The Hon. Benson I. Mbai, MP.
The Hon. Peris S. Chepchumba, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY:

Mr. Rana Tiampati - Clerk Assistant.
Mr. Ambrose Ngetich - Parliamentary Intern.

Min. No. 01/2008: INTRODUCTION

Prayers were offered by the Chair.

The Chairman called the meeting to order at Twenty minutes past Ten O'clock and welcomed the Members and other persons present in the meeting. The chair further called on the Members present to adopt the agenda.

The Committee noted with appreciation the kind gesture and educative briefing session conducted by the Minister for Wildlife and Forestry and his team when he appeared before the Committee on Tuesday June 17, 2008.

Min. No. 02/2008: CONFIRMATION OF MINUTES

Minutes of the Sixth Sitting of the Committee were confirmed by the Members present after being proposed and seconded by Hon. Ruteere, MP and Hon. Kambi, MP, respectively, as true record of deliberations of the Committee Sittings and signed by the Chairman.

Min. No. 03/2008: MATTERS ARISING

a) Committee Workplan

▶ **Meeting with the Minister for Agriculture**

The Minister for Agriculture had requested for a re-scheduling of the proposed meeting from Friday, June 27, 2008 at 10.00 a.m. to **Monday, June 30, 2008** at 10.00 a.m. same venue. The Committee agreed with the proposal.

▶ **Meeting with the Minister for Lands**

The Committee resolved to meet with the Minister for Lands as requested on Tuesday, July 01, 2008 at 10.00 a.m.

▶ **Meeting with the Minister for Water and Irrigation**

The Committee resolved to meet with the Minister for Water and Irrigation on Monday, June 30, 2008 at 3.00 p.m.

Min. No. 04/2008: THE SACCO SOCIETIES BILL (NO. 8), 2008

The Committee was informed that the Bill has been outstanding since 2003 due to various reasons including stakeholder's vested interest. However, the Bill is very important to the Kenyan Society as it will help in protecting the Common mwananchi from the collapse of Saccos and the mushrooming of pyramid schemes.

The Committee was further informed that the Committee in the 9th Parliament visited the United States of America to study the operations and management of Saccos which resulted into a workshop and later the draft Bill.

The Committee therefore resolved to call key stakeholders – Kenya Union of Saccos (KUSCO), large Saccos – Harambee, Ukulima, Afya, Mwalimu and Ufundi to give submissions and their views before the Ministry for Co-operatives appears.

The meeting is scheduled for Thursday, July 03, 2008 at 10.00 a.m. for the Large Saccos and Friday, July 04 2008 at 3.00p.m for KUSCO. And finally the Minister for Co-operatives on Tuesday, July 08 2008 at 10.00 a.m.

Min. No. 05/2008: ADJOURNMENT

There being no other business, the Chairman adjourned the Sitting at Fifteen Minutes past Twelve O'clock, until Monday, June 30, 2008 in Committee Room fifth floor Continental House, Parliament Buildings at 10.00 a.m.

SIGNATURE _____

DATE _____

Chairman

MINUTES OF THE SECOND SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES, HELD ON THURSDAY, JULY 03, 2008, IN COMMITTEE ROOM ON FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 A.M.

PRESENT:

The Hon. Franklin Bett, MP. - **Chairman**
The Hon. John M. N. Mututho, MP.
The Hon. Benjamin J. Washiali, MP.
The Hon. (Dr) Victor K. Munyaka, MP.
The Hon. Erastus K. Mureithi, MP.
The Hon. Ruteere M. Silas, MP.
The Hon. Peris S. Chepchumba, MP.
The Hon. Benson I. Mbai, MP.

ABSENT WITH APOLOGY:

The Hon. (Dr) Robert O. Monda, MP.
The Hon. Kambi K. Samuel, MP.
The Hon. Evans B. Akula, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY:

Mr. Rana Rampati - Clerk Assistant.
Mr. Ambrose Ngetich - Parliamentary Intern.

CO-OPERATIVE MOVEMENT REPRESENTATIVES

Carilus Ademba - KUSCCO;
Francis Munane - KNFC Ltd;
Shem Mutuka - Mwalimu Sacco;
Felix M. Ndizi - Afya Sacco;
J. A. Magomere - CIC;
Edwin Otieno - Elimu Sacco;
Joseph K. Maiyo - Chuna Sacco;
Mathias Oliech - Asili Sacco;
Benson E. Obunaka - Asili Sacco;
Joe Nganga - Stima Sacco;
James Mbui - Stima Sacco;
Mercy M. Njeru - KERUSSO;
Caren Ouma - Co-operative College;
James Wandera - Harambee Sacco;
Daniel Ndambuki - Ukulima Sacco;
Habib Owiti - Ufundi Sacco;

Min. No. 06/2008: INTRODUCTION

Prayers were offered by the Chair.

The Chairman called the meeting to order at Ten O'clock and welcomed the Members and other persons present in the meeting. He further called on the Members present to adopt the agenda and defer deliberations on agenda item No. 2 and 3 to a later date.

He further introduced the Members of the Committee and secretariat, and called the Sacco Societies representatives to introduce themselves.

The Chair welcomes once again the Sacco Societies representatives informing them of the procedure in Committees of Parliament and their expected role in the Meeting.

Min. No. 07/2008: CONFIRMATION OF MINUTES

Confirmation of minutes of the Ninth Sitting of the Committee was postponed to a later date.

Min. No. 08/2008: DELIBERATION ON THE SACCO SOCIETY BILL, 2008

The Chairman informed co-operators that the Sacco Societies Bill, 2008 has been before the Committee and it's their time to give more inputs before the Committee meets with the Ministry of Co-operatives.

The Bill is to regulate Sacco societies in order to safeguard depositors' funds, prevent proliferation of Saccos in form of pyramid schemes and further enable depositors and the regulator to follow up with managers of Saccos in case of mismanagement.

The Chair then invited the representative, Kenya National Federation of Co-operatives (KNFC) to submit their proposals on the bill,

The Co-operatives informed the Committee, that: -

- i. Clause 24(3) be amended by deleting the words 'fourteen days' and replacing them with 'thirty days' - **agreed to;**
- ii. Clause 25(2) be amended by adding a proviso immediately after the words 'Sacco business' to read, 'provided that the authority shall issue the license within 60 days of payment of the prescribed fee' - **agreed to;**
- iii. Clause 27(6) be amended by replacing the words 'fourteen days' with 'thirty days' thereof; - **the Committee agreed with the fourteen days;**
- iv. Clause 30(1) be amended by adding the words 'all licensed societies shall meet and maintain at all times the minimum capital requirements as may be prescribed by the authority' - **the Committee rejected the proposal;**

v. Clause 30(3) be amended by deleting it in its entirety; - **The Committee rejected the proposal;**

vi. Clause 30(4) be amended by deleting it in its entirety; **The Committee accepted the proposal;**

vii. Clause 62(4) be amended by deleting the words 'or terminate the protection of the deposits of such society' – **agreed to;**

viii. Clause 62(5) be deleted in its entirety – **agreed to;**

ix. Clause 62(6) be deleted in its entirety – **agreed to;**

x. Clause 68(1) (b) be amended by replacing the words 'one hundred' with the words 'one hundred thousands' – **agreed to;**

xi. Clause 71(1) be amended by adding a proviso to read 'provided that the maximum period for which a Minister may allow shall not exceed one year' – **agreed to;**

xii. Clause 71(2), (3), (4), (5) be amended by deleting them entirely – not agreed to as the Committee seeks further guidance on the clauses as they spell out transitional provisions.

After deliberations, The Committee sought clarifications on the following:

- i. Settlement of disputes under clause 28 on the revocation of license and carrying out of business as a co-operative;
- ii. The possibilities of controlling the splitting of major Saccos into smaller Saccos is rampant and what causes, for instance, Mwalimu Sacco is breaking up into smaller Saccos; and
- iii. That Kenya's Co-operatives need to benchmark with others in the international market and the world in general;

Papers Laid:

The leader of the Co-operatives Movement, Mr. Francis A. Munane, tabled a duly signed memorandum of the proposed amendments to the Sacco Societies Bill, 2008 by the Co-operatives movement.

MIN. NO.09/2008: A.O.B

The Co-operatives thanked the Committee for giving them the opportunity to take part in the meeting, give views and participate in the legislation process.

MIN. No. 010/2008: ADJOURNMENT

And there being no other business, the Chairman adjourned the Sitting at Forty Minutes past one O'clock, until Friday, July 04, 2008 in Committee Room, fifth floor, Continental House, Parliament Buildings at 10.00 a.m.

SIGNATURE _____

DATE _____

Chairman

MINUTES OF THE THIRD SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES, HELD ON TUESDAY, JULY 08, 2008, IN COMMITTEE ROOM ON FIFTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 08:00 A.M.

PRESENT:

The Hon. Franklin Bett, MP. - **Chairman**
The Hon. Erastus K. Mureithi, MP.
The Hon. Muriuki R. Silas, MP.
The Hon. Peris Simam, MP.

ABSENT WITH APOLOGY:

The Hon. John M. N. Mututho, MP.
The Hon. Benson I. Mbai, MP.
The Hon. Kambi K. Samuel, MP.
The Hon. Benjamin J. Washiali, MP.
The Hon. (Dr) Robert O. Monda, MP.
The Hon. Evans B. Akula, MP.
The Hon. (Dr) Victor K. Munyaka, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Rana Tiampati - Clerk Assistant
Mr. Ambrose Ngetich - Parliamentary Intern

MINISTRY OF CO-OPERATIVES DEVELOPMENT AND MARKETING

Hon. Joseph Nyagah, MP - Minister;
Mr. Seno Nyakenyanya - Permanent Secretary;
Mr. Fred Odhiambo - Commissioner of Co-operatives;

PRAYERS

Prayers were offered by the Chair.

The Chairman called the meeting to order at Ten minutes past Eight O'clock and welcomed the Members and others present in the meeting. He introduced Members of the Committee, and the Secretariat and reminded the meeting on the procedure of such meetings. He then called on the Minister to introduce his team.

MIN. NO. 11/2008: CONFIRMATION OF MINUTES

Confirmation of Minutes of the 1st and 2nd Sittings of the Committee was deferred to a later date.

MIN. NO. 12/2008: SCRUTING OF THE SACCO SOCIETIES BILL, 2008

The Chairman informed the meeting that the procedure will involve the Minister taking the Committee through the Bill, clause by clause, then discussion to follow later.

The Committee proceeded to scrutinize the Bill clause by clause

Universal Amendment to the Bill

- iii) **Co-operative Act, 1997** – That the title of the Act referred to be changed to Co-operative Act.

Comment

The Committee amended this as the Co-operative Act No. 12 of 1997 has also been amended several times and to specify 1997 will be detrimental to the Bill;

- iv) **Licensed Society** – (i) That the words "**Licensed Society**" be deleted from the definitions;
(ii) That the words "**Licensed Society or Society**" whenever appearing in the Bill be deleted and substitute thereof the words "**Sacco Society**".

Amendments to the Bill

Title - That the title be amended by deleting the words "**certain**" on the title of the Bill;

Comment

The Committee agreed to this amendment so that the legislation when in effect shall cover all Sacco societies and none shall be outside this law.

Definitions

- v) **Board of trustees** – means the trustees board in charge of the Deposit Protection Fund under section 58 of the Act;
- vi) **Core Capital** – means the fully paid up members' shares, capital issued, disclosed reserves, retained earnings, grants and donations all of which are not meant to be expended unless on liquidation of the Sacco;
- vii) **Deposits** – means a sum of money received or paid on terms under which it shall be repaid, with or without interest or premium and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it;
- viii) **Dormant account** – means savings or current account maintained by a Sacco Society which is not operational, or has had no transaction by the depositor within the maximum period prescribed.

COMMENT

The Committee recommends that the terms be defined in the context of Sacco Societies and as the definitions provided on the Bill relates to the banking sub-sector;

- (i) **Clause 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23** – agreed to;
- (ii) **Clause 24** - (i) That Clause 24(2) (e) (i) be amended by inserting the word "**Society**" after the word "**Sacco**";
(ii) That Clause 24(3) be amended by deleting the words "**only**" appearing on the second line after the word "**licence**";

- (iii) That clause 24(3) be amended by deleting the word "**fourteen**" appearing on the second line after the word "**within**" and substituting thereof the word "**thirty**";
- (iv) That Clause 24(3) be amended by deleting the words "**being notified of the refusal**" and substituting thereof the words "**receipt of notification of refusal**"; and
- (v) That Clause 24(5) be amended by deleting the word "**may**" appearing on the first line after the word "**Authority**" and substituting thereof the word "**shall**".

Comments

The Committee recommends the amendments for the following reasons:-

- iii. *On Clause 23(3): by taking into consideration the time taken to mail the decisions to Sacco Societies in the remotest parts of the Republic; and*
- iv. *On clause 24(3): by re-wording to include "receipt of notification" perhaps to state that upon receipt of refusal to grant license, shall be conclusive evidence that the Sacco may appeal.*

- Clause 25:** - (i) That clause 25(2) be amended by inserting the word "**society**" after the word "**Sacco**" appearing on the third line;
- (ii) That clause 25(2) be amended by adding a proviso after the word "**business**" to read "**Provided that the Authority shall issue the license within 14 days of payment of the prescribed fee**"

Comment

The Committee recommends the insertion of the proviso to give a time-frame within which the Authority shall be required to issue the licence upon being satisfied that the applicant has met all requirements.

- Clause 26:** - That clause 26 be amended by deleting the words "**may**" appearing after the words "**Authority**" on the first line and substitute thereof the word "**shall**".

- Clause 27 :** - (i) That clause 27(3) be amended by deleting it entirely; then re-number the clauses accordingly;
- (ii) That clause 27(6) be amended by deleting the word "**license**" appearing after the word "**its**" on the second line and substituting thereof the word "**licence**";
- (iii) That clause 27(6) be amended by deleting the word "**fourteen**" appearing on the third line after word "**within**" and substituting thereof the word "**thirty**"; and
- (iv) That clause 27(8) be amended by deleting the word "**Minister**" appearing on the first line after the word "**The**" and substituting thereof the word "**Tribunal**".

Comment

- iv. *The Committee recommends the deletion of clause 27(3) as it contradicts Clause 27(a);*
- v. *On Clause 27(6), the Committee recommends that the time within which a Sacco, dissatisfied with a decision to revoke a licence, should appeal to the Minister ought to be extended to 30 days from 14 days;*

vi. The Committee recommends the introduction of a Tribunal as set out in the Co-operatives Act;

Clause 28: - (i) Sides to read "**settlement of disputes**";

(ii) That clause 28 be deleted and substitute thereof with a new clause 28 to read:-

28. ***That all disputes arising out of the Sacco – Society business, shall be referred to the Tribunal as established under the Co-operatives Societies Act.***

Comment

- (i) *The Committee recommends that there should be a mechanism of solving disputes in Sacco Societies which was not provided for. The Committee further recommended that the Minister be assisted in solving disputes through the Tribunal;*
- (ii) *The Committee recommends that the Co-operative Act be amended to accommodate under section 76(2) to define a dispute in the context of the Sacco Societies.*

Clause 29: - agreed to;

Clause 30: - (i) That Clause 30 be amended by deleting the words "**specified in the second schedule**" appearing on the second line after the word "**requirements**" and substitute thereof the words "**as may be prescribed by the Authority**".

(ii) Clause 30(2) and (3) be amended by deleting them entirely;

Comment

- iii. *The Committee recommends that the Capital requirements be set up by the Authority taking into consideration the nature of Sacco societies in Kenya, not well-established as in the banking sector.*
- iv. *The Committee recommends that setting of Minimum capital requirements be left to the Authority as not all Sacco Societies are engaged in Sacco Society Business therefore different capital levels.*

Clause 31: - agreed to

Clause 32: -

(i) That clause 32 be amended by deleting it entirely;

(ii) That a new clause 32 be introduced to read "**All Sacco Societies in Kenya shall engage only in such business as the Authority shall prescribe or authorize**"

Comment

The Committee recommends that clause 32 as originally constructed is detrimental to the growth of Sacco Societies especially those undertaking FOSA business.

Clause 33: - agreed to

Clause 34: - (i) That clause 34(5) be amended by deleting the word "**may**" appearing on the first line and substitute thereof the word "**shall**", and insert the word "**Sacco**" after the word "**that**" appearing on the second line.

Comment

The Committee recommends that it shall be mandatory for Sacco Societies not to grant loans to non-members to protect the Sacco Societies from defaulters.

Clause 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 - agreed to;

Clause 45: - That clause 45 be amended by adding the words "**and approved by the Annual General Meeting**" after the word "**46**" appearing on the third line; and further be amended by deleting the words "**approved for appointment**" appearing on the third line, after the word "**and**", substituting thereof the word "**appointed**"

Comment

The Committee recommends that the shareholders or members of a Sacco Society should have a role to play in both determining the financial management of the Sacco Society and also be able to select and approve the external Auditors.

Clause 46: - (i) That a new clause 46(b) be introduced to read:-

***(b) is among the listed auditors by the Authority,
approved and duly registered by the Authority.***

(ii) That clause 46(b) be re-numbered "**46(c)**";

Comment

The Committee recommends additional of clause 46(b) to rein in on Sacco Societies that retain one external auditor for years and further to disallow the selection of only a few known external auditors. Further, the Committee recommends that the Authority shall conduct market survey to establish well established audit firm that can conduct audit of account of Sacco Societies.

Clause 47: - That clause 47(1) be amended by deleting the word "**exhibit**" appearing on the first line after the word "**shall**" and substituting thereof the word "**display**";

Clause 48: - (i) That clause 48 be amended by deleting it entirely;

(ii) That a new clause 48 be introduced to read.

AGM: Clause 48; The Annual General Meeting shall be the supreme organ of any Sacco Society as established under the Co-operatives Societies Act.

Comment

iii. *The Committee recommends the amendments to clause 48 as this is in good spirit with the financial management of Sacco Societies where the regulator (Authority) has a role in correcting errors of mismanagement to suit those running the Sacco Societies and also a third audit is expensive for the Sacco Societies;*

iv. *The Committee recommends that the AGM should be accorded its rightful role in the management of Sacco Societies.*

Clause 49: - (i) That clause 49 be amended by deleting it entirely.

(ii) That the subsequent clauses be re-numbered accordingly.

Comment

The Committee recommends deletion of clause 49 as it is more or less the same as clause 41 of the Bill.

Clause 50, 51 and 52 - agreed to and re-numbered as 49, 50, and 51 respectively;

Clause 53: - That clause 53 be amended by: -

(i) Re-numbering it to clause 52;

- (ii) That clause 52(f) be amended by deleting the words "**more frequent inspection**" appearing after the word "**undertake**" and substituting thereof the word "**regular inspections**";
- (iii) That clause 52 (f) be amended by deleting the words "**that society**" appearing after the word "**of**" and substitute thereof the word "**Sacco Societies**".

Comment

The Committee recommends regular inspection by the Authority on Sacco Societies instead of more frequent as it's ambiguous.

Clause 53, 54, 55 and 56 - agreed to;

Clause 57: - That clause 57(2) be amended by deleting the word "**may**" appearing after the word "**Minister**" and substituting thereof the word "**shall**".

Comment

The Committee recommends that the procedure of nomination of the board of trustee shall be mandatory by the Minister to avoid overlooking of the participation of Sacco Society members.

Clause 58, 59 and 60 – agreed to;

- Clause 61:** (i) That clause 61(4) be amended by deleting the words "**or terminate the protection of the deposits of such society**";
- (ii) That clause 61(5) and (6) be amended by deleting them entirely;

Comment

- iii) *The Committee recommends that the Authority shall not terminate the protection of deposits of a society as a result of mismanagement as this affects depositors;*
- iv) *The Committee recommends that if the power to terminate protection of deposits has been waved under clause 62(4) then clause (5) and (6) do not apply.*

Clause 52 - agreed to;

Clause 63: - That clause 63 be amended by deleting the words "**and all licensed societies or that a particular licensed society**" appearing on the sixth line after the word "**society**".

Note

Repetition

Clause 64, 65 and 66 - agreed to;

- Clause 67:** - (a) That clause 67(b) be amended by inserting the word "**thousand**" after the word "**hundred**" appearing at the beginning of the fourth line;
- (b) That clause 67(b) be amended by inserting the words "**or upon conviction, for a jail term of not less than twelve months or both**" after the word "**shillings**" appearing on the fourth line.

Comment

The Committee recommends alternatives to the courts for any penalty and make the contravention of the law more punitive.

Clause 68 - agreed to;

Clause 69: - That clause 69 be amended by deleting the words "**may, on the recommendation of**" appearing on the first line after the word "**Minister**" and substitute thereof the words "**shall, in consultation with**".

Comment

The Committee recommends that the Minister puts in place rules and regulations in consultation with the regulatory Authority of the sub sector in order to bring more input,

Clause 70: - (a) That clause 70(i) be amended by:-

- (i) Re-numbering it as clause 70;
- (ii) That the word "**longer**" appearing on the fourth line before the word "**such**" be deleted;
- (iii) That the words "**in any case, not exceeding twelve months**" be inserted after the word "**period**" appearing on the fourth line.
- (iv) That the words "**or cease to carry out such business**" appearing on the sixth line be deleted.

(b) That clause 70(2), (3), (4), and (5) be amended by deleting them entirely.

Comment

iii) The Committee recommends that the Minister shall have sufficient time to license all Sacco Societies that have applied for a licence and have been conducting deposit – taking business;

iv) The Committee recommends that the Board of the Authority upon establishment by the Minister shall conduct proper recruitment based on the market qualifications.

Clause 71 and 72 - agreed to;

New Clause 73: That a new clause 73 be inserted in the Bill to read.

Clause 73: - Section 76(2) of the Co-operatives Act, be amended by inserting section 76(2) (c) to read: -

76(2) (c): a claim by Sacco Society for any refusal to grant or revocation of licence or any other due, from the Authority;

Comment

The Committee recommends that there shall be claims to be made by Sacco Societies from their dealings with the Authority hence the need for Clause 76 (2) (c) and shall be defined in the context of the Sacco Societies.

FIRST SCHEDULE - Agreed to;

SECOND SCHEDULE

That the Second Schedule be deleted.

Comment

The Committee recommends that the Authority sets the minimum capital requirements based on the findings or set out rules and regulations of the Act.

Min. No. 013/2008: ADJOURNMENT

And there being no other business, the Chairman adjourned the sitting at Forty Minutes past Twelve O'clock, until Friday, July 04, 2008 in Committee Room, fifth floor, Continental House, Parliament Buildings at 10.00 a.m.

SIGNATURE _____

DATE _____

Chairman

