

INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA

COMMENTS ON THE COOPERATIVE SOCIETIES (AMENDMENT) BILL 2016

3 MAY 2019

Comments by ICPAU

ISSUE	OBSERVATION	COMMENT
THE COOPERATIVE SOCIETIES (AMENDMENT) BILL 2016		
3	<p>Clause 3 Amendment of section 3 of the principal Act</p> <p>The clause seems to provide for the process of registration of a society. However, the particulars contained therein are insufficient to fully support and or guide on the process of registration. The current provisions under sections (4) and (5) of the Principal Act also seem to address different aspects.</p>	<p>We suggest to include a section to guide on the registration of a registered society which should read as follows;</p> <p><u>Proposed Amendment</u></p> <p>Clause 3 (2)</p> <p>“The Registrar may register a proposed society and its by-laws if he/she is satisfied that –</p> <ul style="list-style-type: none"> (a) the proposed society has complied with the provisions of this Act and the Regulations; (b) the proposed by-laws of the proposed society are not contrary to this Act and the Regulations; and (c) the proposed by-laws of the proposed society are sufficient to provide for its proper administration and management”. <p>Clause 3 (3) “For the purposes of subsection (1), the Registrar may accept a declaration made by the applicants for registration of the proposed society as to the matters specified in subsection (1)(a), (b) and (c) as sufficient evidence of those matters”.</p> <p><u>Justification:</u></p> <p>To ensure clarity regarding the process of registration.</p>

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4.	<p>Clause 4 Amendment of section 4 of the principal Act</p> <p>For the avoidance of doubt a society shall not be registered with unlimited liability</p>	<p>Whereas the proposed amendment in clause 4 seeks to emphasize the fact that a society must not be registered with unlimited liability, this seems not to address the intention inferred under section 3 of the principal Act which seeks to provide for both unlimited and limited liability of members.</p>	<p>We propose to amend the relevant provisions to avoid such a conflict.</p>
5.	<p>Clause 5 Amendment of section 5 of the principal Act</p>	<p>The practice among cooperatives world over indicate availability of a legal framework that guides the operations of a cooperative. Clear provision on the requirements regarding the society's ability to stand the economic test needs to be provided for. This would help the Registrar in assessing the viability of a society based on their projected parameters.</p>	<p>We propose to include clause 5(4) immediately after the current clause 3 the following:</p> <p><u>Proposed Amendment</u></p> <p>Clause 5(4)</p> <p>“The Registrar may require applicants to furnish additional information in regard to the proposed society including –</p> <ul style="list-style-type: none"> (a) the economic or other need for the formation of the proposed society; (b) a statement as regards the viability of the activities of the proposed society; (c) the availability of sufficient capital for the commencement of operations of the proposed society; (d) the availability of officers capable of directing and managing the affairs of the proposed society and of keeping such records and accounts of the society as the Registrar may require; and (e) such other information as may be prescribed.” <p><u>Justification</u></p> <p>This is intended to ensure that societies have a clear projection of the future right from the onset.</p>

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9.	Clause 9 Amendment of section 13 of the Principal Act	We note that the amendment seeks to lower the age of admission of individuals to membership from 18 years to 12 years and with repeal of section 13(2) such a member would be eligible to serve on committees of the society. However, this is contrary to the principle of common bond upon which cooperatives are built. One wonders what a child of 12 years would be doing in a society of adults. In the alternative we may consider preferring a cooperative among school children. If proposed amendment clause 16(2) provides for members' rights including election to organs of the society, proposed amendment clause 18A (9) bars any member from serving on the board if they are below 18 years.	We would thus propose that in order to avoid conflict of provisions the following is done; Amend proposed clause 9, which amends section 13 of the Principal Act to read as follows: Section 13 (a) "In order to be qualified for membership (a) have attained the age of eighteen years or, if the society is a school co-operative, has attained the 12 years of age;" <u>Justification</u> To ensure clarity to the fact that children do not participate in registered society of adults but where the intention is to let the children cooperate, then there should be a clear provision for their registered societies.
12.	Section 18 (1) of the Principal Act - Votes of members	We propose to amend this section to clearly provide for non-involvement of proxies in a registered society's operations	We propose to amend this section by inserting the following words 'irrespective of the number of shares he/she holds and that vote shall be exercised in person and not by proxy' immediately after the word 'society' for the section to read as follows; Section 18 Votes of members (1) Each member of a registered society shall have one vote only as a member in the affairs of the registered society <u>irrespective of the number of shares he/she holds and that vote shall be exercised in person and not by proxy.</u>
14.	Clause 14 Amendment of section 22 of the principal Act	We take note that this proposed amendment together with the provisions in the Principal Act seem not to adequately address matters of account, audits in a number of ways as demonstrated below:	We propose to delete the proposed clause 14 and adopt the proposals as discussed below

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		<p>The head note under section 22 of the principal Act seems to be inadvertently misarranged. The law in principle should not envisage to have a situation where audit come before accounts</p>	<p>We propose to amend the head note by substituting it with the following for the section to read as: Section 22 ‘Accounts , annual returns and Audits’</p>
		<p>Section 22(1) does not provide for the source of the list from which the auditors should be chosen.</p> <p>We are not in support with the proposed amendments in clause 14 of the Bill particularly (1b) and (1c). Auditing is a professional exercise that requires technical knowledge for one to give reasonable assurance as to the state of affairs of a registered society. The exercise of audit is performed under clearly streamlined auditing standards. Where you require such a task to be done by a registrar who may not be qualified in this profession one wonders how such a person is expected to conduct the exercise.</p> <p>With the ever emerging scandals among registered societies particularly SACCOs the law should not fail to avail members with a workable remedy.</p> <p>Proposed amendment 1(c) envisages societies that may have no capacity to have an audit; application of this clause may be burdensome to the registrar. The possible alternative would be for such societies to implore services of small and medium audit practices that are likely to charge less fees.</p>	<p>We propose to amend the section to read as follows: Section 22(1) “(1) Every registered society shall keep proper accounts which shall– (a) be prepared in accordance with International Accounting Standards as adopted in Uganda by ICPAU; (b) reflect the true and fair state of the society’s affairs; and (c) explain the co-operative society’s transactions including– (i) all sums of money received and paid by the society and the reasons thereto; (ii) all revenues and expenditures on goods and services by the society; and (iii) all assets and liabilities of the co-operative society. (2) The books of accounts shall be kept at the registered office of the co-operative society or at such other place as may be determined by the co-operative society and shall at all times be available for inspection by members of its supervisory committee and the auditor.”</p> <p>Section 22(2) “Every registered society shall cause its accounts to be audited at least once in every year by an auditor appointed by the annual general meeting from a list of auditors approved by the registrar, in consultation with the Institute of Certified Public Accountants</p>

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			<p>of Uganda and the cost of the auditor shall be borne by the society; except that -</p> <p>(a) no auditor chosen by a registered society to audit its books shall perform that function for more than four/ five annual audits in succession unless authorised by the registrar;</p> <p>(b) where the registered society is unable to appoint its own auditors, the registrar may appoint the auditors.”.</p> <p>Justification</p> <p>(i) To provide for record keeping among registered societies</p> <p>(ii) Audit of accounts is practicing accountancy, and therefore the registrar or his appointee cannot qualify as auditors for accounts of a registered society unless they are members of the Institute of Certified Public Accountants of Uganda. The law that regulates the accountancy profession criminalizes practice of accountancy without the necessary qualifications including a certificate of practice.</p> <p>(iii) The old professions were at a time when the country had not developed the accountancy profession.</p>
	Section 22 (2) of the Principal Act	This section requires audits to be conducted in accordance with ‘generally accepted professional audit standards’ yet the adopted framework for use in Uganda is the International Standards on Auditing.	<p>We propose to amend section 22(2) to read as follows;</p> <p>Section 22(2)</p> <p>“Audits shall be conducted in accordance with the International Standards on Auditing as adopted by the Institute of Certified Public Accountants of Uganda”</p> <p>Justification</p> <p>This provides clarity as not all International Standards on Auditing as developed may be applied wholly. There are instances when ICPAU prescribes particular application of the standards relevant to our jurisdiction. Given the fact that these standards are principle</p>

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			based a particular jurisdictional application may be preferred from time to time.
	Section 22 (3) of the Principal Act	We note that this section in the principal Act seems to limit the auditor’s rights to only access books of account and being furnished with information as he/she may wish. No effort is exhibited to cater for other known rights of an auditor.	<p>We propose to insert immediately after Section 22(3) of the Principal Act Sec 22(3A) to read as follows:</p> <p>Section 22(3A)</p> <p>“The auditor shall have the right to–</p> <p>(a) receive all notices and other communications relating to any general meeting which a member of the co-operative society is entitled to receive;</p> <p>(b) attend any general meeting of the co-operative society and be heard on any matter which concerns him as an auditor;”</p> <p><u>Justification</u></p> <p>To clearly provide for other known rights of an auditor.</p>
	Section 22 (5) of the Principal Act	This subsection still applies the terminology of ‘generally accepted professional audit standards’ and also requires the auditor to submit a ‘detailed audit report’. In principle there is no such a thing like generally accepted professional audit standards’ nor is there a detailed audit report.	<p>We propose to re-draft section 22(5) of the Principal Act by amending it to read as follows;</p> <p>Section 22(5)</p> <p>“The auditor shall present the opinion about the audited accounts to a general meeting within three months after the end of the financial year as to whether or not the co-operative society’s business has been conducted–</p> <p>(a) in accordance with the provisions of this Act and, whether the books of accounts kept by the co-operative society are in agreement therewith and give a true and fair view of the state of the affairs of the society; and</p> <p>(b) in accordance with the co-operative society’s objectives, by-laws and any other resolutions made by the society at a general meeting.”</p>

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			<p>Section 22 (5A) “No auditor shall present the audited accounts of a registered society to the members at a general meeting unless the accounts have previously been submitted to the Registrar in such form as may be prescribed.”</p> <p><u>Justification</u> To ensure clarity in the provision.</p>
		<p>There seem to be no clear illustration as to what amounts to ‘accounts’ despite the constant usage of the term throughout section 22 of the principal Act.</p>	<p>We thus propose to insert a new subsection immediately after the current section 22(7) for it to read as follows;</p> <p>Section 22 (8) “Every registered society shall, at such time and in such form as may be prescribed, file with the Registrar an annual return together with a certified true copy of the audited accounts and balance sheet of the society for each period of twelve months.”</p> <p><u>Justification</u> To provide for returns to the registrar.</p> <p>Section 22(9) “The accounts referred to in this section shall— (a) conform with International Financial Reporting Standards; (b) be approved by the Audit Committee; and (c) be authenticated by at least two Committee members including the chairman of the co-operative society.”</p>
	<p>Clause 15 of the Bill and Section 23 of the Principal Act</p>	<p>Clause 15 (1) a, the last phrase should be deleted. The two clauses make reference to appointment and approval of an auditor of accounts which is made a preserve of a person who is a registrar, or deputy or assistant registrar of cooperatives. Auditors are professionals trained to conduct their</p>	<p>We propose to delete section 23 of the Principal Act as it is rendered redundant with inclusion of guidance on appointment of auditors from a list approved by ICPAU.</p> <p>Instead the section would be replaced with a disqualification section to cater for persons who even with the requisite skill set and</p>

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		<p>work with guidance of specific standards. The use of the term auditor would hence be misleading if the intention is to make a registrar, or deputy or assistant registrar of cooperatives take charge of that noble role. Unless the Institution is that only persons qualified to be auditors can be registrar of co-operatives which we believe is not the case.</p>	<p>qualification may be prohibited from carrying on audits of a particular registered society at a given period of time.</p> <p>Section 23 of the Principal Act should be replaced to read as follows:</p> <p>Section 23 Disqualification of Auditors</p> <p>“A person shall not qualify to be appointed or to act as an external auditor of a registered society where—</p> <p>(a) that person is not on the pre-qualified list published by the registrar;</p> <p>(b) that person, and in case of a firm, every partner in the firm is not a registered member of the Institute of Certified Public Accountants of Uganda established under the Accountants Act;</p> <p>(c) that person, either directly or indirectly has a material interest in the registered society or its affiliates;</p> <p>(d) in the opinion of the registrar, circumstances exist which may impair the independence or impartiality of that person in the performance of his or her duties as an external auditor of the registered society;</p> <p>(e) that person is an officer or servant of the registered society;</p> <p>(f) that firm or its partners or audit managers serve the registered society in any other capacity other than that of external auditors or provision of professional tax services.”</p>
18	<p>Substitution of section 36 of the principal Act and amendment clause18</p>	<p>This section provides for liability of a past member. Before we take account of a past member it would be prudent to cater for the general liability of members as practice in business. Thereafter, the law should then take into account the members that become past.</p>	<p>We thus propose to introduce a new section 36A and amend the current section 36 of the principal Act as below</p> <p>Section 36A Liability of member limited by shares or by guarantee</p> <p>(1) Notwithstanding the provisions of any by-laws, the liability of a member, present or past, of a society shall extend to the nominal value of any shares held or subscribed for by the member.</p>

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		<p>The extension making reference to first audit of accounts after a member ceases to be part of a registered society seem not to properly connect with the motivation and or intention of their inclusion.</p>	<p>(2) Where in the by-laws of a registered society the amount of the liability of a member is expressed to be greater than the nominal value of any shares held or subscribed for by him/her, then the liability of the member shall extend to such greater amount.</p> <p>Section 36 Liability of Past Member “The liability of a past member for the debts of a registered society, within the limitations of section 36A, as they existed on the date on which he ceased to be a member shall not continue for a period of more than 3 years from the date of his or her ceasing to be a member.”</p> <p><u>Justification</u></p> <p>a. To provide for clarity for members’ and past members’ liability. b. To stop members from escaping from the society with debts knowing that they only have to be away for 1 year for the debt to go away.</p>
62.	<p>Section 62 of the Principal Act - Appointment of a Liquidator</p>	<p>This section of the Act gives the procedure to follow in instances of cancellation of registration of a society. However, reference is only made to cancellation of registrations under sections 56 or 57. No reference is made to the cancellation available under section 6 of the Act. One may then wonder which procedure would be applied where registration is declined under section 6.</p>	<p>We propose to amend section 62 by inserting ‘6’ before the word section for the section to read as follows;</p> <p>Section 62 Appointment of a liquidator: “Where the registration of a society is cancelled under sections 6 or 56 or 57, the registrar may appoint one or more persons to be a liquidator or liquidators of the society, and all the property of the society shall vest in the liquidator or liquidators with effect from the date of dissolution.”</p> <p><u>Justification</u></p> <p>To provide for liquidation procedure under circumstances when registration of a society is denied under section 6 of the principal Act.</p>