

1937

38316

C0533/486
KENYA

38316

CO-OPERATIVE SOCIETIES LEGISLATION

Previous

18213/32

H. Dawe	7.3.38
D. Tenbury	8/3
M. Dawe	9.3
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Subsequent

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R. 297

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R. 307

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Mr. J. Steward

13/7

Mr. Frank

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Mr. S. D. ...

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R. 297

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11.8

Mr. Robert. ...

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Mr. Ross

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Mr. Dale

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Mr. Gannon

24.6

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7/10

S. E. Steward

7/12

Mr. P. ...

11

Sir F. Stoddale

The Gov. considers that there is no need yet for a Co. op bill to deal with small native societies but sends up the draft for examination.

The Committee's report is hard to follow because the "Old Bill" mentioned appears to refer to Sir A. Macgregor's draft which we have not got.

In general I agree with the Gov. in para 3 when he says that it is a mistake to impose co-operation from the top. Much better let it grow up. But when the demand comes it is just as well to be ready with a workable law.

Now in 1931/2 it was recognized that the present Ordinance was not suitable for small native societies - though they could be registered under it - but the view taken was that to have a separate law for such native societies would be a piece of racial discrimination which could not be defended. I must say I don't see why. There can be no discrimination in providing for small societies of a simple character in a separate law, and to make special provision for natives if it is discrimination at all is discrimination in their favour which won't be attacked. A large native society if one is formed could come under the present law.

I think we can accept the Governor's view that it is not necessary to proceed with the Bill and tell him as and say it will be examined in detail. And, if you agree, say that it does seem doubtful whether the same law should attempt to cover the small unlimited mainly native societies and that a separate measure might perhaps be simpler.

J. S. Flood
6.7.37

Mr. Flood.

Owing to my departure for Fiji on July 16th, I

Mr Flood

When work made it quite impossible for me to get down to this complex problem & I asked Dr Pringony to assist me with it. His views are set out in the note which is attached to this file. I had hoped to have had time to discuss them with him, but this, in the week & a half passing work before leaving for Hallia, has been impossible.

Perhaps the main points set out by Dr Pringony could be put into a form for consideration by the Legal Com.

J. A. Kirkdale
7/12

Mr Flood.

It appears that there are three interrelated though distinct sets of arguments in this discussion which it is convenient to distinguish. It has been agreed - in (2) - that this particular Bill should be dropped. In order to frame another two questions must be answered. In the first place, does the existing ordinance provide what is required for existing "largescale" coops, or does it need amending? In this connection the argument over the provision in §29(2) - that a member cannot sue the Society - and the ground that the Society's regulations are in restraint of trade - and the wrangle over §31 - whether the burden of disproving an allegation of breach of contract should or should not rest on the member - are particularly relevant. These two points arise also in connection with the framing of new "smallscale" legislation; but, as the categorical clauses appear in the law now in force, they arise (unlike other considerations below) even if "smallscale" legislation is for the moment abandoned.

I

(§32 falls in GWS category too)

In the second place, what kind of "smallscale" legislation is required if this is no good? This asks the question "are bill or two?" It has been generally felt in the discussion that it will be so cumbersome as to be almost impossible to deal with both small and largescale coops in one Bill.

II

In this connection the necessity to insert clauses cancelling, for smallscale coops, the effect of other clauses, is relevant - particularly §23 about rights of members and §40 about liabilities of past members. In §41 a similar device is used - of deliberately making a law for large and another for small-scale; and it is suggested by Dr Pringony that in the cases of §66, or similar

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(see file in ones category too)

§11, §25, §27, §33, §34, & §39(k) it would be wise to go further in this direction and abandon the attempt to make one set of provisions cover both types.

III Finally, there are some points which are chiefly of not wholly criticisms of detail in the framing of the smallscale legislation, and will be relevant even if ~~it has been~~ decided to make two separate Ordinances. §§ 35, 37, 38, 39, 44, 61 & 62 (these last two are also relevant under I above) require further consideration, it is suggested

IV There is one further point. It is stated that the bill as it stands is such that Coops registered under the current Ordinance would not register under this law were it to become such. Detailed reasons why they would refrain from doing so are, however, not given. Would it be a good idea to ask Kenya exactly why, so that, if it is decided after all to make an Ordinance, the Coops' criticisms may be ~~met~~ met

Clavin White
1/12

Dr. Tempany.

I took this over to-day from Mr. Paskin who has been unable to deal with it owing to heavy pressure. It seems to me pointless to pursue the question unless Kenya is really going ahead and our labours are likely to bear fruit.

I think that the best thing I can do is to write semi-officially to Sir A. Wade as in the draft. As you have gone to all the trouble of preparing your memorandum I should like to send him a copy provided you have no

objection

objection. Perhaps you would edit it for transmission to him as you think fit. I have made one or two suggested alterations in pencil.

A. Wade
7.3.38.

I agree and have been over the memo and made a few minor alterations; I have initialled the draft to Sir Armigel Wade.

H. Thompson
8,3,38.

Then proceed as in the dft.

Clavin
A. Wade
9.3

3. To Sir A. Wade. (w/ amended memo) 50 - 15 3 38

C. O.

Mr. Dawe. 7 3.38.

Dr. Tempany 8.3.38

Mr. Dawe 9.3

Sir H. Moore.

Sir G. Tomlinson.

Sir C. Bottomley.

Sir J. Shuckburgh.

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

C. D.
R 9-MAR
D 12 11

38316/37. Kenya.

Semi-official for Mr. Dawe's signature.

Downing Street.

15. March, 1938.

Dear Wade,

Would you please refer to

the despatch from the Secretary of State No. 570 of the 22nd July, 1937, about the proposed Co-operative Societies Ordinance?

In the third paragraph of that despatch the Secretary of State intimated that he proposed to have the ~~draft~~ Bill examined in detail with a view to preparing comments which may be helpful when the time comes to bring forward a revised version. A certain amount of work has been done on this here; but ^{we are} I am anxious not to legal cotton further bother the various experts on this

DRAFT.

SIR ARMIGEL WADE, C.M.G., O.B.E.

Memo. by Dr. Tempany.

as altered in pencil

FURTHER ACTION.

~~cost of thing~~ unless there is ~~some really~~

practical point in doing so. If the

proposal ^{legislation} has been put definitely into

cold storage and is not likely again to

see the light of day within any predictable

period, I ~~think~~ ^{imagine that} we might drop the matter.

But

I enclose ~~however~~ a copy of a memorandum

giving the views of Dr. Tempany, our Assistant

Agricultural Adviser, which may be of

interest. Unless ^{we} hear from you that ~~you~~

~~the matter is a live issue~~, we should not propose to

~~not~~ continue the correspondence.

~~agricultural co-operation in other Colonies,~~

~~it seems to me that what we want is a~~

~~perambulating expert on the subject to~~

~~co-ordinate our knowledge and advise on~~

~~particular cases. If you are going on with~~

~~the proposal it might perhaps be worth your~~

~~while asking an expert from India or~~

~~elsewhere~~

4.5.

(Signed) A. J. D.

e. 2A
PROPOSED CO-OPERATIVE SOCIETIES
ORDINANCE, KENYA.

MEMORANDUM BY ASSISTANT AGRICULTURAL ADVISER
TO MEMBERS OF LEGISLATIVE COUNCIL.

The ordinance is based on Tanganyika ordinance No. 7 of 1932 with a considerable number of additions which are apparently designed to meet special conditions in Kenya, with particular reference to the conversion of moderately large scale undertakings, which are operated on the basis of existing company law, to a co-operative mode of working.

It is somewhat difficult to appreciate exactly what would be the advantages of such a conversion, while the fact that the Kenya Farmers Association would be unwilling to take advantage of the facilities proposed in the Bill indicates that in its existing form the machinery proposed does not meet their requirements.

On the other hand one cannot escape the conclusion that under the terms of the draft the special provisions intended for application to large scale Societies could not be debarred from application to smaller units. Doubtless this is unlikely to occur in the generality of native Societies in Kenya but under oriental conditions I certainly would not put it beyond the ingenuity of co-operators to endeavour to take advantage of these conditions in relation to small urban or rural societies with consequences and possible complications which might be to say the least of it decidedly uncomfortable.

Taking now the sections of the Bill seriatim. Clauses 3 to 8 are reproduced from the Tanganyika Territory Ordinance and call for no special comment, save to remark that the Ceylon Ordinance allows as an additional

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qualification for membership (clause 6 a.) the ownership of immovable property in the area of operations of the Society. Such a qualification in the case of an African Society is however probably undesirable.

Clauses 9 to 12 deal with the machinery proposed for the conversion of a limited liability company to a co-operative society. They were originally identical with clause 5 of the existing Kenya Ordinance No. 24 of 1931 and were amended by the committee which considered the Bill, to bring procedure into line with that provided under the English Provident Societies Act of 1893. They provide for the conversion of a Society into a company and vice versa. A particular point that calls for comment is that any holding of share capital exceeding £200 can be converted into transferable loan stock bearing fixed rates of interest.

Clause 11 deals with special resolutions which are defined in the definition clause 2. The provision is innocuous but may be unduly cumbersome for small primary societies.

Clause 13 deals with registration. Its wording differs from the Tanganyika Territory clause corresponding, and gives special powers to the Registrar to amend regulations submitted with the application. It is no doubt framed expressly to deal with larger undertakings.

Clause 14 deals with regulations and amendments to regulations, for which it is prescribed that a special resolution is necessary, the second third and fourth sections of this clause are identical with 1, 2 and 3 of section 11 of the Tanganyika Territory Ordinance.

15 provides for an appeal to the Governor against a refusal on the part of the Registrar to register a society.

society or its regulations.

16 provides that no Society shall be registered under a name identical with that of another Society.

17 empowers a Society to change its name by special resolution. I can see no objection to any of these three (15, 16, and 17).

18 is practically identical with 10 of the Tanganyika Territory Ordinance.

19, 20, 21 and 22 are identical to all intents with 12, 13, 14 and 15 of the Tanganyika Territory Ordinance, they deal with rights and liabilities of members.

23 exempts from the provisions of clauses 19, 21 and 22 any society which was previously a company. This cuts right across provision in relation to ineligibility of members to exercise rights until payment of dues has been made, the restriction of voting power to one vote per member and restriction of transfers of shares and interest. It is probably desirable in the case of Societies that approximate to Companies but it is a direct negation of what are considered essential principles in small scale co-operation; it seems to me to be an admirable example of how irreconcilable the two objects are within the bounds of one ordinance.

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a desirable provision in relation to large commercial societies but unnecessary and probably unworkable in the case of primary societies.

27 is identical with 18 in the Tanganyika Territory Ordinance with the addition of clause 3 which provides that every society shall forward to the Registrar a copy of the balance sheet which shall be open to inspection on payment of a fee. An unnecessary provision in the case of primary societies.

28 is a modification of 19 in the Tanganyika Territory Ordinance, it does not call for comment I think.

29 (1) provides that the regulations shall bind members. 29 (2) is very contentious and provides that no action shall lie with any member against the Society on the ground that the regulations of the Society are in restraint of trade. The provision has already been objected to by the Secretary of State once but the committee return to the charge pages 4 and 5 of the report, although it is difficult to see that they have added anything to the arguments in favour of the procedure except that they want to be provided with powers of that type.

30 is identical with Tanganyika Territory paragraph 35.

31 provides for the imposition of fines on members for infringement of regulations. In particular it provides that if a fine is imposed for breach of a contract to sell produce through the society and a legal suit results the onus of disproving the allegation lies on the member. This has already once been objected to by the Secretary of State. The case is argued by the Committee, pages 6 and 7, but their arguments do not seem to be convincing especially

when one bears in mind that later on in the ordinance the provision exists that if in any district 75 per cent. of the people are co-operators sale through co-operative organisations is compulsory.

32 provides for the settlement of disputes which may be provided for under regulations. In the circumstances the Registrar is empowered to appoint an arbitrator. Surely it would be better to provide in the ordinance as in Ceylon for the Registrar to have power to arbitrate personally or to appoint an arbitrator in his discretion?

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37. The first part is identical with Tanganyika Territory 22, the second half deals with proceedings in the case of a bankrupt member, see in this connection the note of the Committee on page 8. I am inclined to think that here they are right.

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Territory Ordinance with the important addition that if the first accounts (by which I presume is meant the first annual statement of accounts) after a member's resignation show a balance in favour of the Society the financial liability of the member in respect of the Society shall terminate forthwith. I am inclined to be dubious of the wisdom of this modification.

39 is similar to 25 in the Tanganyika Territory Ordinance with a similar modification in relation to the estate of a deceased member. Again I am dubious.

40 provides that neither 38 nor 39 shall apply to a society which is a converted company, another example of the difficulty of harmonising the two sets of conditions in one bill.

41 is based on Tanganyika Territory 23 but on the representation of the Public Trustee has been modified so that only in the case where the share or interest of a deceased member is less than £100 can such interest be transferred to a nominee, in all other cases transference must be to the legal personal representative.

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It should however here be noted that the Committee have struck out from the original draft the section corresponding to Tanganyika Territory 29 which provides that there should be exemption from compulsory registration of instruments relating to shares and debentures of registered societies. Similar provision to this exists in the Gold Coast and

Nigerian Ordinances while power to exempt such instruments is given to the Governor in the Ceylon Ordinance section 29. The omission of such provision would seem to place small primary societies under a disability as compared with other colonies.

Sections 45 to 48 are taken from 31 to 34 of the Tanganyika Territory Ordinance.

Sections 49 to 60 are taken from 36 to 47 of the Tanganyika Territory Ordinance, save that in section 57 provision is also made to confer jurisdiction in the sense indicated on a court.

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62 is similar to 49 in the Tanganyika Territory Ordinance save that any sum approved by the Registrar as damages against delinquent promoters can be recovered as a civil debt. The addition seems unobjectionable.

63 is section 55 of the Tanganyika Territory Ordinance with the addition of clause 2 which allows the retention of the word co-operative in the title of any business carried on under that name prior to September 1931.

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Sections 66 and 67 of the Ordinance are similar to Tanganyika Territory 56 and 57.

68 is parallel to 59 in the Tanganyika Territory Ordinance.

69 is similar to the Tanganyika Territory Ordinance with the addition of clause (k) which allows for the making of rules governing the inspection of documents and registers at the Registrar's office. Possibly necessary in the case of large Societies but hardly so in the case of primary societies.

70 is 51 in the Tanganyika Territory Ordinance.

71 repeals the previous ordinance and safeguards societies registered thereunder.

As a general observation it appears to me that the draft shows how difficult it is to reconcile the legitimate claims and aspirations of large scale co-operative enterprises with the demands which must be satisfied in relation to small scale primary loan, thrift or trading societies. This is exemplified particularly in the special provisions necessary in relation to shares and debentures in excess of a certain amount, voting power, contracts and other things.

The Kenya Government have done their best to produce a document which meets both requirements with the result that it is apparently not acceptable to larger trading ventures that are interested and to my mind presents certain obvious dangers in so far as the smaller type of society is concerned.

I can only conclude that the real solution will be found to lie in two ordinances as already suggested.

(Sgd.) H. Tempany.

15

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70 is 51 in the Tanganyika Territory Ordinance.

71 repeals the previous ordinance and safeguards societies registered thereunder.

As a general observation it appears to me that the draft shows how difficult it is to reconcile the legitimate claims and aspirations of large scale co-operative enterprises with the demands which must be satisfied in relation to small scale primary loan, thrift or trading societies. This is exemplified particularly in the special provisions necessary in relation to shares and debentures in excess of a certain amount, voting power, contracts and other things.

The Kenya Government have done their best to produce a document which meets both requirements with the result that it is apparently not acceptable to larger trading ventures that are interested and to my mind presents certain obvious dangers in so far as the smaller type of society is concerned.

I can only conclude that the real solution will be found to lie in two ordinances as already suggested.

(Sgd.) H. Tompany.

Proposed Co-operative Societies Ordinance ¹³

Memo by Assistant Secretary

Advised Secret

for Kenya
12/1

Sir Frank Stockdale,

I have now been through the draft of this ordinance and in order to facilitate discussion have summarised my observations below.

As it stands the ordinance is based on the Tanganyika ordinance No. 7 of 1932 with a considerable number of additions which apparently designed to meet special conditions in Kenya, with particular reference to the conversion of moderately large scale undertakings, which are operated on the basis of existing company law, to a cooperative mode of working.

I must confess that I find it (somewhat difficult to appreciate exactly what would be the advantages of such a conversion, while the fact that it has been indicated that as ^{shown} ~~indicated~~ in para 3 of 1 the Kenya Farmers Association would be unwilling to take advantage of the facilities proposed in the Bill indicates that in its existing form the machinery proposed does not meet their requirements.

On the other hand one cannot escape the conclusion that under the terms of the draft the special provisions intended for application to large scale Societies could not be debarred from application to smaller units. Doubtless this is unlikely to occur in the generality of native Societies in Kenya but under oriental conditions I certainly would not put it beyond the ingenuity of ~~would be oriental~~ cooperators to endeavour to take advantage of these conditions in relation to small urban or rural societies with consequences and possible complications which might be to say the least of it decidedly uncomfortable.

Copy to Wade

a special resolution is necessary, the second third and fourth sections of this clause are identical with 1, 2 and 3 of section 11 of the T.T. ordinance.

15 provides for an appeal to the Governor against a refusal on the part of the Registrar to register a society or its regulations.

16. Provides that no Society shall be registered under a name identical with that of another Society

17. Empowers a Society to change its name by special resolution. I can see no objection to any of these three (15, 16, and 17).

18. is practically identical with 10 of the T.T. ordinance.

19, 20, 21, and 22 are identical to all intents with 12, 13, 14 and 15 of the T.T. ordinance they deal with rights and liabilities of members.

23. exempts from the provisions of clauses

19, 20 and 22 any society which was previously a company. This cuts right across provision in relation to ineligibility, ^{of members} to exercise rights until payment of dues has been made, #####

~~#####~~ the restriction of voting power to one vote per member and restriction of transfers of shares and interest.

It is probably desirable in the case of Societies that approximate to Companies but it is a direct negation of what are considered essential principles in small scale cooperation; it seems to me to be an admirable example of how irreconcilable the two objects are within the bounds of one ordinance.

is imposed for breach of a contract to sell produce through the society and a legal suit results the onus of disproving the allegation lies on the member. This has already once been objected to by the S. of S. The case is argued by the Ctee, pages 6 and 7, ^{ent-} ~~I must say that I find~~ their arguments ^{do not seem to be} unconvincing especially when one bears in mind that later on in the ordinance the provision exists that if in any district 75 percent of the people are cooperators sale through cooperative organisations is compulsory.

32. provides for the settlement of disputes which may be provided for under regulations. In the circumstances the Registrar is empowered to appoint an arbitrator. Surely it would be better to provide in the ordinance as in Ceylon for the Registrar to have power to arbitrate personally or to appoint an arbitrator in his discretion?

33. Deals with details of contracts entered into by a society. It is much more elaborate than similar provision in other legislation no doubt by reason of the fact that it is intended to govern the operations of large scale concerns.

34. provides for a society to hold land and to build on it. Similar remarks apply as to 33. See however also the note by the Ctee p. 7.

35. is identical with 20 in the T.T. ordinance ^{save} that priority is inserted for any prior registered ~~it~~ it differs from the Ceylon ordinance for example

in that under (a) it is not provided that the crops or produce have been raised in whole or in part by moneys advanced by the society.

36. is identical with T.T. 21.

37. The first part is identical with T.T. 22 the second half deals with proceedings in the case of a bankrupt member, see in this connection

X See the note of the Ctee on page 7.

while power to exempt such instruments is given to the Governor in the Ceylon Ordinance section 29. The omission of such provision would seem to place small primary societies under a disability as compared with other colonies.

Sections 45 to 48 are taken from 31 to 34 of the T.T. ordinance.

Sections 49 to 60 are taken from 36 to 47 of the T.T. ordinance, save that in section 57 provision is also made to confer jurisdiction in the sense indicated, on a court.

61 is section 48 of the T.T. ordinance save that the addition has been made that all property of a dissolved Society shall vest in the liquidator from the date ~~of~~ the cancellation order takes effect. The addition seems to be a good one.

62 is similar to 49 in the T.T. ordinance save that any sum approved by the Registrar as damages against delinquent promoters can be recovered as a civil debt. The addition seems unobjectionable.

63 is section 55 of the T.T. ordinance with the addition of clause 2 which allows the retention of the word cooperative in ^{the title of} any business carried on under that name prior to Sept 1931.

64. is 53 of the T.T. ordinance.

65 is based on T.T.54 but on the advice of the C/Sec has been modified to provide that a fine not exceeding £25 and damages awarded by the Court shall be the penalty for soliciting violation of contracts in place of a set fine of Sh.500 and payment to the Society of the market value of the produce so sold.

Sections 66 and 67 of the ordinance are similar to T.T. 56 and 57.

68 is parallel to 59 in the T.T. ordinance.

69 is similar to the T.T. ordinance with the addition of clause (k) which allows for the making of rules governing the inspection of documents and registers at the Registrar's office. Possibly necessary in the case of large Societies but hardly so in the case of primary societies.

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The Kenya Government have done their best to produce a document which meets both requirements with the result that it is apparently not acceptable to larger trading ventures that are interested and to my mind presents certain obvious dangers in so far as the smaller type of society is concerned.

I can only conclude that the real solution will be found to lie in two ordinances as already suggested.

Colonial Office,
1938

H. J. [Signature]
[1938]

C. O.

38316/37

Mr. Flood. 147

Mr. 9. Sturdeale *mm*
15/17

Sir C. Parkinson

Sir G. Tomlinson

X Sir C. Bottomley 16.7f

Sir J. Shuckburgh

Permt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

DOWNING STREET.

22 July, 1937.

84

Sir,

C.D.
R 16 JUL
R 20

DRAFT.

KENYA

NO. 570

GOVERNOR

I have etc. to refer to your despatch No.243 of the 30th April in which you forwarded a revised Co-operative Societies Ordinance to replace the existing one with amendments. I have examined the report of the Committee which was enclosed in your despatch and on consideration I agree with the view that it is scarcely practicable to attempt to frame an Ordinance to govern large co-operative societies at the same time as ^{unlimited} small societies formed by a few native producers. For instance, it would be very difficult to ^{enact} ~~frame~~ legislation to ^{which} ~~be~~ ^{would deal with} cover the activities of the Kenya Farmers

FURTHER ACTION.

Farmers

as well as with a
Farmers' Association and all the small
^{would} societies in a few villages, though it
^{might} should not be impossible.

2. I agree with your view that it would
probably be dangerous to attempt to apply any
advanced system of co-operative organisation to
native producers at present, and there can
be no doubt that, as you say, co-operation
should grow from a demand from the people
concerned if it is to be a success. It is,
however, very desirable that suitable
legislation should be ready ^{to} and be introduced
as soon as possible after the demand for
such societies has arisen and ^{when} a beginning
is being made in the direction of forming
co-operative societies.

3. I agree therefore, with your ~~view~~
that it is not advisable to proceed further
with the Bill at present, and I propose to
have it examined in detail with a view to
preparing comments which may be helpful in
preparing a revised version. As you are
no doubt aware, various measures for dealing
with

C. O.

- Mr.
- Mr.
- Mr.
- Sir C. Parbhoo.
- Sir G. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shackburgh.
- Parlt. U.S. of S.
- Parly. U.S. of S.
- Secretary of State.

DRAFT.

with co-operative societies have been
introduced in various Colonies, but
there are always local differences which
have to be taken into account and what
is suitable for one is not necessarily
the most desirable model for another.
It may be that in Kenya it will eventual
be necessary to have two Co-operative
Societies Ordinances, one to deal with
large societies, which would be mainly
European, and the other to deal with
the smaller societies, which might be
expected to be mainly ^{African or Indian} native.

I have, etc.

(Signed) W. ORMSBY GORE.

FURTHER ACTION.

KENYA.

No 243



GOVERNMENT HOUSE,
NAIROBI,
KENYA

30 APRIL 1937.

Sir,

I have the honour to refer to Sir Philip Cunliffe-Lister's (now Viscount Swinton's) despatch No. 462 of the 22nd June, 1932, in which it was suggested that a new Ordinance should be prepared to replace the Co-operative Societies (Registration) Ordinance, 1931 and to include such provisions as experience in other countries has shown to be in the interests of the small producer.

2. To give effect to this suggestion a Bill was prepared by the then Attorney General in 1933. This Bill was referred for consideration to a Committee consisting of the Attorney General, the Chief Native Commissioner, the Director of Agriculture, the Registrar of Co-operative Societies, the General Manager, Kenya Farmers Association (Co-op) Ltd., the Secretary, Kenya Co-operative Creamery Ltd., and the Managing Director, Thika Planters Co-operative Union, Ltd. This Committee has recently submitted a report and a revised Bill, copies of which are enclosed.

3. It will be observed from paragraph 3 of the report that the Committee expresses the opinion that it is not entirely practical to frame an Ordinance to govern the activities of both large non-native Co-operative

Societies

THE RIGHT HONOURABLE

W. ORMSBY GORE, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON. S.W. 1.

Societies and Societies formed by the small native producer. The Committee states that the largest Co-operative Society in the Colony (the Kenya Farmers Association (Co-op) Ltd.,) intimated that, if the provisions of this Bill became law, its Directors would prefer to remain a Limited Liability Company rather than register under the provisions of the Bill.

4. There appears to me to be little advantage and considerable danger in attempting to apply to the native producer at the present time an advanced system of co-operative organization. It is generally recognized that the co-operative movement, if imposed from above, is liable to break down and is then doubly difficult to restore. I agree with the views expressed by Sir Alan Pim in paragraph 295 of his Report: - "For a considerable time to come it will not be advisable to create under Government auspices organizations introducing the principle of any serious individual or collective financial responsibility..... Progress cannot be hurried, and if co-operation is expanded beyond the capacities of the members of the Associations the result will be, as has been illustrated in many countries, a severe set-back to the movement". For the present more valuable progress can be made by way of the organization of marketing, by inspection services and by measures designed to secure to the native producer a fair return based on the quality of his produce, rather than by attempting to upset the existing course of trade in favour of an elaborate system which the producer cannot yet understand. In this way the foundations can be and are being laid for the gradual evolution of co-operation as a natural economic development.

5. In these circumstances I suggest that the

introduction

introduction of the new Bill is unnecessary at present. I am, however, furnishing you with copies of the Bill, in order that it may be examined in due course by your advisers and in order that any observations you may wish to offer on it may be considered when its introduction becomes desirable.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

RB Brooke-Popham

AIR CHIEF MARSHAL

GOVERNOR.

R E P O R T
ON
A BILL RELATING TO THE CONSTITUTION
AND REGULATION OF CO-OPERATIVE SOCIETIES

Sir,

By your letter No.C/AGR.1/15/63 of the 23rd March, 1934, we were appointed to consider the provisions of a draft Co-operative Societies Bill, 1935. Owing to pressure of other work the Chairman found it impossible to convene the Committee for some considerable time, and it was not until the 28th January, 1935, that we met for the first time. A second meeting was held on the 6th February, 1936.

2. It might here be convenient to summarise the history of the Bill which we were appointed to consider. In 1931 a Co-operative Societies (Registration) Ordinance (No.24 of 1931) was enacted in order to provide legislation for the control of such organizations. This Ordinance was based largely on South African Law and came into force on the 8th September, 1931. Since that date nine non-native Societies of which three were limited companies, and one African Society have been registered. The latter has since been dissolved. The Ordinance in due course was submitted to the Secretary of State for His Majesty's approval and on the 22nd June, 1932, the Secretary of State in his Despatch Kenya No.462 stated that, while in the meantime His Majesty would not be advised to exercise his powers of disallowance in respect of this Ordinance, it was not considered that the Ordinance was entirely suitable for those Societies formed among small native producers. He enclosed a Memorandum, which was a critical examination of the provisions of the Ordinance, and suggested that a new Ordinance

(2) 1931/32

(10) 1930/31

should be prepared including such provisions as experience in other countries had shown to be in the best interests of the small producer. He added that the latest Colonial legislation on the subject was to be found in the Co-operative Societies Ordinance, 1932, of Tanganyika Territory. Sir Alasdair (then Mr.) MacGregor, the then Attorney General, who had discussed the matter at the Colonial Office, after his return from leave drafted in 1933 a Bill on the lines of the Tanganyika legislation and it was this Bill which was before the Committee for consideration.

31143/3277
 Date
 1933

3. At the two meetings of the Committee the Bill was examined Clause by Clause, and the amendments which we recommend are dealt with in detail below and have been embodied in the draft Bill annexed hereto. We may say, however, that we are of the opinion that it is not entirely practical to frame an Ordinance to govern the activities of both large non-native Co-operative Societies and Societies formed by the small native producer and contemplated by the Secretary of State. In fact the largest Co-operative Society in this Colony has intimated that if the provisions of this Bill become law its Directors would prefer to remain a Limited liability company rather than register under the provisions of the Bill.

Old Clause 9: It was represented that the provisions of this Clause, which are the same as those contained in section 5 of the existing Kenya Ordinance, gave rise to difficulties in practice, and we recommend that the provisions of the English law contained in sections 54 et seq of the Industrial and Provident Societies Act, 1893, and relating to the conversion of a company into a Registered Society, and vice versa, be adopted.

Old Clause 18 (now Clause 21): This Clause provides that each member of a registered society shall have only one vote as a member in the affairs of the Society. In consequence of our recommendations regarding Clause 9 it has been found necessary to redraft old Clause 20 (now Clause 23).

Old Clause 22 (now Clause 23): We feel that, having regard to the fact that a copy of the accounts may be inspected at the offices of the Registrar, there is no necessity for the Society to keep open to inspection by any person at its registered address the audited accounts for the preceding year. We therefore recommend that inspection at such address should be confined to members.

Old Clause 23 (now Clause 27): We consider that it is unnecessary for the Auditor to include a valuation of the assets and liabilities of a Society, as this might prove a highly expensive process if the Auditor is to value the assets and liabilities himself. Indeed it is doubtful whether an Auditor would be competent to undertake the actual valuation of assets. We consider that adequate security will be provided if the Auditor submits a report upon the valuation of the assets and liabilities. In regard to sub-clause (4) of this Clause we do not consider it essential that a complete copy of the accounts should be submitted to the Registrar. In our opinion a copy of the balance sheet signed by the Auditor and by the Secretary of the Society should suffice, and we have made the necessary provision.

Old Clause 27 (now Clause 32): We have thought it advisable to make it clear that the settlement of disputes between the Society and any of its members by arbitration provides for no appeal; in other words the Arbitrator's decision shall be final.

Old Clause 25(2) (now Clause 29): In the Memorandum

enclosed to the Secretary of State's despatch referred to supra, exception was taken to this provision which also exists in the Colony's Ordinance No.24 of 1931. It was objected to on the ground that no precedent exists and that no good reason has been shown for its retention. It is respectfully submitted that this provision is very essential in order to avoid contracts being set aside on the grounds that such contracts are in restraint of trade. It is true that no precedent can be found for such a categorical restriction as is provided in this Clause, but an interesting side-light is thrown upon it by the perusal of correspondence between Sir Alasdair (then Mr.) MacGregor, Colonel Griffiths, one of the members of this Committee, and Mr. Strickland who was, we believe, responsible for the drafting of the Tanganyika Ordinance. The following extracts from Mr. Strickland's letter ("A") to Colonel Griffiths, which was submitted to Mr. MacGregor, and the latter's reply thereto ("B") make the position clear -

(2) on 10/11/31

"A" - I am now drafting for Tanganyika an Ordinance for the benefit of Co-operative Societies, which may be formed both by Europeans and natives, and have been discussing with the Attorney General the difficulty of the contract. You are no doubt aware that such contracts have been successfully maintained in the courts of law in America and Canada, and are enforced in England and Ireland. It is only a matter of adopting, so far as Europeans are concerned, one of the standard forms, and asking the High Court how it proposes to condemn a system held valid by High Courts in a number of British Dominions and America. You win in the end, though it takes time. In Tanganyika, as in Palestine and Malaya, I am making a short cut past the difficulty in ~~India~~ the way which has long been customary in India. The Acts or Ordinance provides that every dispute between a Society and its members shall only be settled by the Registrar of Co-operative Societies or arbitrators appointed by him, and that the award is final and conclusive. A court of law has only to enforce it in execution as a decree, and may not question it. Thus no

member has any locus standi in Court, and the question of the validity of the contract cannot be raised. Perhaps your members would not welcome a Registrar with such powers! It seems the only practicable way for dealing with native societies, which would probably not be efficient enough, though useful and valuable in general, to obtain an annual contract from every member."

"B" - "Many thanks for letting me see Strickland's letter, which is very interesting. I am afraid I had taken rather a short cut through the difficulty he writes of, by debarring anyone from pleading restraint of trade".

We must admit, however, that the provision to which Mr. Strickland refers does not appear in the Tanganyika Ordinance. Having regard, however, to the provisions of Clause 46 (now Clause 30 of the draft Bill attached to this Report) we feel that the provisions of Clause 25(2) (now Clause 29) are unobjectionable. We submit that, as specific provision exists for such contracts to be made, no harm can be done by retaining a complementary provision which simply states in effect that such contracts once entered into cannot be avoided on the ground that they are in restraint of trade, and the Committee is of the opinion that such a provision is absolutely essential. The essence of the co-operative movement amongst producers of agricultural products is that a society should be able to proceed to arrange forward sales of its products. Consequently there must be no possibility of supply being withheld by its members at the last moment on the ground that the contract, under which the producer covenants to sell all his produce through the Society, is in restraint of trade. It is submitted that the fact that this provision has existed for the past five years without any objections thereto being raised by the parties actually concerned, is itself a sufficient justification for the retention of this Clause. With regard to the Secretary of State's objection that no precedent is

known we respectfully submit that somebody has to create a precedent. In all the circumstances we trust that the Secretary of State will raise no objections to the reinsertion of this provision,

Old Clause 26(now Clause 31): This Clause provides inter alia, that, if legal proceedings are instituted for payment of a fine imposed by a Society under its Regulations on a member for failure to sell his produce through the Society, the burden of disproving the allegation of the Society, in respect of which the fine has been imposed, shall lie upon the member. The Secretary of State objects to this provision. He admits, however, that similar provision occurs in the South African Act and that there are precedents in Kenya legislation for imposing the burden of proof on the defendant. He argues, however, that there appear to be no grounds in this case sufficient to justify a provision which, in the absence of special justification, is objectionable. He submits that it would be as easy for the Society to prove that its member sold his produce elsewhere as for the member to prove that he did not. He supports this contention on the ground that the Society must have evidence to that effect before they can inflict a fine and he goes on to add that it would be desirable to omit this provision. With the Secretary of State's argument we respectfully disagree. Here again the provision has appeared upon the Statute Book of this Colony for the past five years, and no objection has yet been raised. It should be appreciated that membership of a Co-operative Society is not compulsory. If a person joins a Society voluntarily he should be aware of the provisions if they already exist in the

Regulations before he joins, and if the Regulations contain no such provision at that time but are subsequently amended on those lines, then the member can leave the Society if he objects. Again, while it is true that evidence must be available to prove that the member did in fact dispose of his produce through other sources before a fine can be imposed, experience has proved - and we must be guided in these matters by those who have had practical experience in this Colony of the working of the existing law which contains this provision - that it would not involve any hardship on a member to require him to prove that he did not so dispose of his products. Whereas it might require a considerable amount of investigation, time and expense to prove that he did. The provision has, therefore been reproduced in the revised draft Bill, and it is hoped that the Secretary of State will waive his objection.

Old Clause 29 (now Clause 34): Throughout this Clause we have included charges and charges.

Old Clause 30 (now Clause 35): We consider that the provisions of this Clause as drafted would prove singularly inequitable to a lender of money who, although he had complied with the law and obtained a registered charge to secure his money, would automatically lose priority and have his security rendered valueless. We have therefore redrafted this Clause (which is now Clause 35) to include amongst prior claims any prior charge duly registered according to law.

Old Clause 31 (now Clause 36): This Clause as drafted provides that a registered Society shall have a charge upon the share of interest etc of a member or past member etc. We presume that

this means a first charge and we have made the necessary amendment.

Old Clause 32 (now Clause 37): The Registrar of Co-operative Societies, who is the Official Receiver, objected strongly to this Clause. We can see no reason why a member of a Society should be placed in such an extremely favourable position. It would be a simple matter for a person to go bankrupt and yet, if the Society were dissolved, to acquire what might be a considerable sum of money which would be exempt from attachment by his creditors. We have met this objection by providing that, where a Society is dissolved, the shares or interest of a bankrupt person shall vest in the trustee in bankruptcy. The effect of this provision is that such a member's share will remain inviolate during the existence of the Society, but, if the Society is dissolved, his share or interest will become available for distribution to his creditors.

Old Clause 35 (now Clause 40): The amendment to this Clause is consequential upon the inclusion in the Bill of the English system of converting a company into a society.

Old Clause 36 (now Clause 41): The Registrar of Co-operative Societies objected, as Public Trustee, to this Clause. We have therefore amended it to provide that only in cases where the amount of money or the interest or share of a member is under one hundred pounds may the amount or share be paid to or dealt with by the nominee. In other cases the procedure will be as with all other property, that is to say, the legal personal representative will be the person with whom the Society will deal.

Old Clause 37: This Clause has been transposed into Clause 25, and provides that variations in the

register of members shall be submitted at short intervals to the Registrar, and that such register shall be open to inspection by any person on payment of a prescribed fee.

Old Clause 40: This Clause, which exempts from compulsory registration any instrument relating to shares of debentures of a registered Society, has been deleted as we can see no good reason for its retention.

Old Clause 59 (now Clause 61): This Clause, read in conjunction with Clause 58 (now Clause 60), would appear to be incomplete; for, as drafted, the Society would first be cancelled and after its cancellation a liquidator would be appointed. It seems to us that once a Society is cancelled it would no longer be a Society, and it would thus be difficult to appoint a liquidator to wind up the affairs of a Society which had no existence. We have therefore amended Clause 59 (now Clause 61) to provide that, where the registration of a society has been cancelled, the Registrar may appoint a liquidator and all the property of the Society shall thereupon vest in the liquidator.

Old Clause 60 (now Clause 62): This Clause empowers the Registrar to assess damages against delinquent promoters or officers of a Society but does not specify the manner in which such damages are to be recovered. We consider it advisable to prescribe that any sum of money so assessed shall be recoverable as a civil debt at the suit of the liquidator.

Old Clause 61: It is considered that in view of the powers conferred upon the Registrar by old Clause 52 (now Clause 54) et seq, the retention of Clause 61 is unnecessary.

Old Clause 63: Deleted. We do not consider this Clause to be necessary.

Clause 65: As drafted, this Clause required an offender not only to pay a fine but to pay to the Society concerned the market price of the produce in respect of which the offence has been committed. We consider this provision far too drastic, and are of the opinion that the Society should only recover such damages as the Court may see fit to award. The necessary amendment has been made.

4. There are a number of other amendments to the Bill, but, as these are mainly of drafting nature and in no way affect principles, we have not specifically commented upon them.

5. At the request of the members of the Committee I have signed the report for and on their behalf.

I have the honour to be,

Sir,

Your obedient servant,

(SGD) W. HARRAGIN.

CHAIRMAN.

Nairobi,

25th March, 1937.

42
COLONY AND PROTECTORATE OF KENYA



A BILL RELATING TO THE CONSTITUTION
AND REGULATION OF CO-OPERATIVE
SOCIETIES

1806—50c. A.G.—25 3-37

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

A Bill relating to the Constitution and Regulation of Co-operative Societies.

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows :—

1. This Ordinance may be cited as the Co-operative Societies Ordinance, 1937. Short title.

2. In this Ordinance, unless there is anything repugnant in the subject or context— Interpretation.

“committee” means the governing body of a registered society to whom the management of its affairs is entrusted ;

“member” includes a person or registered society joining in the application for the registration of a society, and a person or registered society admitted to membership after registration in accordance with the regulations ;

“officer” includes a chairman, secretary, treasurer, member of committee, or other person empowered under the Rules or regulations to give directions in regard to the business of a registered society ;

“registered society” means a co-operative society registered under this Ordinance ;

“regulations” means the registered regulations made by a society in the exercise of any power conferred by this Ordinance, and includes a registered amendment of the regulations ;

“Rules” means the Rules made by the Governor in Council under this Ordinance ;

“special resolution” means a resolution which has been passed by a majority of not less than three-fourths of such members as being entitled so to do, vote in person or, where proxies are allowed, by proxy at a general meeting of which not less than twenty-one days’ notice, specifying the intention to propose the resolution as a special resolution has been duly given :

Provided that, if all the members entitled to attend and vote at any such meeting so agree, a resolution may be proposed and passed as a special resolution at a meeting of which less than twenty-one days' notice has been given.

REGISTRATION.

3. The Governor may appoint a Registrar of Co-operative Societies for the Colony and may appoint assistant registrars as may be required, who shall act under the control of the Registrar and who shall have all the powers of the Registrar under this Ordinance.

4. Subject to the provisions hereinafter contained, a society which has for its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established for the purpose of facilitating the operations of such societies, may be registered under this Ordinance with or without limited liability:

Provided that unless the Governor by general or special order otherwise directs—

- (a) the liability of a society of which a member is a registered society shall be limited;
- (b) the liability of a society of which the primary object is the creation of funds to be lent to its members and of which the majority of the members are agriculturists and of which no member is a registered society, shall be unlimited.

5. No member, other than a registered society, shall hold more than one-fifth of the share capital of any co-operative society.

6. (1) No society, other than a society of which a member is a registered society, shall be registered under this Ordinance which does not consist of at least ten persons who have attained their majority and, where the object of the society is the creation of funds to be lent to its members or for the marketing of produce grown by native producers, unless such persons—

- (a) reside in the same town or village or in the same group of villages; or

Power of Governor to appoint Registrar and assistant registrars.

Societies which may be registered.

Restrictions on interest of members of society with limited liability and a share capital.

Conditions of registration.

(b) save where the Registrar otherwise directs, are members of the same tribe, class or occupation.

(2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Ordinance.

7. When any question arises whether for the purposes of this Ordinance a person is an agriculturist or whether any person is a resident in a town or village or group of villages or whether two or more villages shall be considered to form a group or whether any person belongs to any particular tribe, class or occupation, or has attained his majority, the question shall be decided by the Registrar, whose decision shall be final.

8. (1) For purposes of registration an application to register shall be made to the Registrar.

(2) The application shall be signed—

- (a) in the case of a society of which no member is a registered society, by at least ten persons qualified in accordance with the requirements of sub-section (1) of section 6; and
- (b) in the case of a society of which a member is a registered society, by a duly authorized person on behalf of every such registered society, and where all the members of the society are not registered societies, by ten other members or, when there are less than ten other members, by all of them.

(3) The application shall be accompanied by two copies of the proposed regulations of the society, and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require.

9. (1) A registered society may by special resolution determine to convert itself into a company under the Companies Ordinance, 1933, or to amalgamate with or transfer its engagements to any such company.

(2) If a special resolution for converting a registered society into a company contains the particulars by the Companies Ordinance, 1933, required to be contained in the memorandum of association of a company, and a copy thereof has been registered at the office of the Registrar, a copy of such resolution under the seal or stamp of the Registrar shall have the same effect as a memorandum of association duly signed and attested under the said Ordinance.

Power of Registrar to decide certain questions.

Application for registration.

Conversion of society into company.
No. 28 of 1933.

No. 28 of 1933.

(3) If a registered society is registered as, or amalgamates with, or transfers all its engagements to, a company, the registration of such society under this Ordinance shall thereupon become void, and the same shall be cancelled by the Registrar; but the registration of a society as a company shall not affect any right or claim for the time being subsisting against such society, or any penalty for the time being incurred by such society; and, for the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company; and every such right or claim, or the liability to such penalty, shall have priority, as against the property of such company, over all other rights or claims against or liabilities of such company.

Conversion of company into society. No. 28 of 1933.

10. (1) A company registered under the Companies Ordinance, 1933, may, by a special resolution, determine to convert itself into a registered society, and, for this purpose, in any case where the nominal value of its shares held by any member other than a registered society exceeds two hundred pounds, may, by such resolution, provide for the conversion of the excess of such share capital over two hundred pounds into a transferable loan stock bearing such rate of interest as may thereby be fixed, and repayable on such conditions only as are in such resolution determined.

(2) A resolution for the conversion of a company into a registered society shall be accompanied by a copy of the regulations of the society therein referred to, and shall appoint seven persons, members of the company, who, together with the secretary, shall sign the regulations, and who may either be authorized to accept any alterations made by the Registrar therein, without further consulting the company, or may be required to lay all such alterations before the company in general meeting for acceptance as the resolution may direct.

(3) With the regulations a copy of the special resolution for conversion of the company into a registered society shall be sent to the Registrar, who, upon the registration of the society, shall give to it, in addition to the acknowledgment of registry, a certificate similarly sealed or signed that the regulations of the society referred to in the resolution have been registered, but in the registered name of the company as a society the word "company" shall not be used.

(4) A copy of the resolution for the conversion of the company into a registered society under the seal of the company, together with the certificate so issued by the Registrar, shall be sent for registration to the office of the Registrar of Companies, and, upon the registration of such resolution and certificate, the conversion shall take effect.

(5) Upon the conversion of a company into a registered society the registry of the company under the Companies Ordinance, 1933, shall become void, and shall be cancelled by the Registrar of Companies; but the registration of a company as a registered society shall not affect any right or claim for the time being subsisting against the company, or any penalty for the time being incurred by such company, and, for the purpose of enforcing any such right, claim, or penalty, the company may be sued and proceeded against in the same manner as if it had not become registered as a society. And every such right or claim, and the liability to such penalty, shall have priority as against the property of such society over all other rights or claims against or liabilities of the society.

No. 28 of 1933.

11. A copy of every special resolution for any of the purposes mentioned in this Ordinance signed by the Chairman of the meeting at which the resolution was passed, and countersigned by the secretary of the society, shall be sent to the Registrar and registered there, and until that copy is so registered the special resolution shall not take effect.

Registration of special resolutions.

12. An amalgamation or transfer of engagements in pursuance of this Ordinance shall not prejudice any right of a creditor of any registered society party thereto.

Saving for rights of creditors.

13. (1) On any application under this Ordinance the Registrar may in his discretion approve or disallow the registration of a society or may allow the application subject to such conditions with regard to amendment of the regulations or otherwise as he may think fit.

Registration.

(2) In the event of the approval of the application the society and its regulations shall be registered by the Registrar.

14. (1) Every society may, subject to the provisions of this Ordinance, by special resolution make regulations for any such matters as are necessary or desirable for the purposes for which such society is established.

Power to make by-laws.

(2) No amendment of the regulations of a registered society shall be valid unless the same has been registered under this

Ordinance, for which purpose two copies of the amendment shall be forwarded to the Registrar.

(3) If the Registrar is satisfied that the amendment of the regulations is not contrary to this Ordinance, he may, if he thinks fit, register the amendment.

(4) When the Registrar registers an amendment of the regulations of a registered society he shall issue to the society a copy of the amendment, certified and signed by him, which shall be conclusive evidence that the amendment is duly registered.

Appeal.

15. From every refusal of the Registrar to register a society or its regulations or any amendment of its regulations an appeal shall lie to the Governor in Council, whose decision shall be final.

Society not to use name already registered.

16. (1) No society shall be registered under a name identical with that under which any other existing society is registered, or under any name likely, in the opinion of the Registrar, to mislead the members or the public as to its identity, and no society shall change its name except in the manner hereinafter provided.

(2) The word "Co-operative" shall form part of the name of every registered society.

Power to change name.

17. A registered society may, by special resolution, with the approval in writing of the Registrar, change its name: but no such change shall affect any right or obligation of the society, or of any member thereof, and any pending legal proceedings may be continued by or against the society notwithstanding its new name.

Evidence of registration.

18. A certificate of registration signed by the Registrar shall be conclusive evidence that the society therein mentioned is duly registered unless it is proved that the registration of the society has been cancelled.

RIGHTS AND LIABILITIES OF MEMBERS.

Member not to exercise rights until due payment made.

19. No member of a registered society shall exercise any of the rights of a member unless and until he has made such payment to the society in respect of membership or has acquired such interest in the society as may be prescribed by the regulations of the society.

Restriction on membership in society.

20. No person other than a registered society shall be a member of more than one registered society with unlimited liability, except with the sanction of the Registrar first had and obtained.

21. Each member of a registered society shall have one vote only as a member in the affairs of the registered society: Votes of members.

Provided that a registered society which is a member of any other registered society shall have as many votes as may be prescribed by the regulations of such other society, and may, subject to such regulations, appoint any number of its members, not exceeding the number of such votes, to exercise its voting power.

22. (1) The transfer or charge of the share or interest of a member in the capital of a registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Ordinance or by Rules. Restrictions on transfer of share or interest.

(2) In the case of a society registered with unlimited liability, a member shall not transfer or charge any share held by him or his interest in the capital of the society or any part thereof, unless—

(a) he has held such shares or interest for not less than one year; and

(b) the transfer or charge is made to the society or to a member of the society.

23. The provisions of sections 19, 21 and 22 of this Ordinance shall not apply to members of a registered society which before it was registered under the provisions of the Co-operative Societies (Registration) Ordinance, 1931, or before it was converted into a registered society under the provisions of this Ordinance, was a company limited by shares or by guarantee. Saving for limited liability companies. No 24 of 1931.

DUTIES OF REGISTERED SOCIETIES.

24. Every registered society shall have a registered address to which notices and communications may be sent, and shall send to the Registrar notice of every change thereof. Address of society.

25. (1) Every registered society shall within one month after its registration forward to the Registrar a register or list of its members, and thereafter at intervals of not more than two weeks a list of any changes in its membership, showing the following particulars:— List of members.

(a) The date at which the name of any person was entered in such register or list as a member.

(b) The date at which any such person ceased to be a member.

(2) Such register or list of members shall be open to inspection at the office of the Registrar by any person on payment of the prescribed fee, and shall be prima facie evidence of the particulars set out in sub-section (1) of this section.

Copy of Ordinance and regulations open to inspection.

26. Every registered society shall keep a copy of this Ordinance and of the Rules and of its regulations, together with all amendments thereof, and of its audited accounts for the preceding year, open to inspection by members, free of charge, at all reasonable times at the registered address of the society.

Audit.

27. (1) The accounts of every registered society shall be audited once at least in every year by the Registrar or by an auditor approved by the Registrar.

(2) The audit under sub-section (1) of this section shall include an examination of overdue debts, if any, and a report by the auditor on the valuation of the assets and liabilities of the society.

(3) Every registered society shall, as soon as may be after the completion of the annual audit, forward to the Registrar a copy of the balance sheet signed by the auditor and the secretary of the society. Such copy shall be in the English language and shall be open, at the office of the Registrar, to inspection by any person on payment of the prescribed fee.

(4) The Registrar, or any person authorized by him in writing, shall at all times have access to all the books, accounts, papers or securities of a registered society, and every officer, servant or member of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

(5) The Registrar and every other person approved by him to audit the accounts of a society shall have power when necessary—

- (a) to summon at the time of his audit any officer, agent, servant or member of the society who he has reason to believe can give valuable information in regard to any transactions of the society or the management or its affairs; or
- (b) to require the production of any book or document relating to the affairs of, or any cash or securities belonging to, the society by the officer, agent, servant or member in possession of such book, document, cash or securities.

PRIVILEGES OF REGISTERED SOCIETIES.

28. The registration of a society shall render it a body corporate by the name described in the certificate of registration, by which name it may sue or be sued, with perpetual succession and a common seal, and shall vest in any society all property for the time being vested in any person in trust for the society; and all legal proceedings pending by or against the trustees of any such society may be prosecuted by or against the society in its registered name without abatement.

Societies to be bodies corporate.

29. (1) The regulations shall, when registered, bind the society and the members thereof to the same extent as if they were signed by each member, his heirs, executors, administrators and assigns, to observe all the provisions of the regulations, subject to the provisions of this Ordinance.

Regulations to bind members.

(2) It shall not be competent to a member of a registered society to contest any suit, claim, action or proceeding between such member and the society or any other member of the society on the ground that any regulation of the society constitutes a contract in restraint of trade.

30. (1) A registered society, having as one of its objects the disposal of any produce of agriculture or animal husbandry or handicrafts, may contract with its members, either in its regulations or by a separate document, that they shall dispose of all their produce, or of such amounts or descriptions as may be stated therein, to or through the society, and may in the contract provide for payment of a specific sum per unit of weight or other measure as liquidated damages for infringement of the contract, and such sum shall be a debt due to the society.

Contract with members to dispose of produce.

(2) Any such contract shall create in favour of the society a first charge upon all produce mentioned therein, whether existing or future, in order to secure the due marketing of the same in accordance with the contract.

(3) The covenants or obligations imposed by the contract shall run with any lands, trees, buildings or other structures mentioned therein, and shall be binding on all assignees and transferees, and any transfer or conveyance of property subject to such a contract shall be deemed to operate also as a like transfer or assignment of the contract and of all shares which may have been issued in respect of the contract.

Imposition
of fines upon
members.

31. The regulations of a registered society may prescribe fines to be imposed on its members for infringement of the regulations, but no such fine shall be imposed upon any member until written notice of intention to impose the fine and the reason therefor has been transmitted to him and he has had an opportunity of showing cause against the imposition of the fine, and, if he so desires, of being heard with or without witnesses. Any such fine may be recovered by suit in any competent court. If a fine is imposed on a member of a society because of failure to sell his produce through the society and legal proceedings are instituted for payment of the fine the burden shall lie upon the member of disproving the allegation of the society in respect of which the fine was imposed. The whole or any part of the fine may be set-off against any moneys due to such member in respect of produce delivered by him to the society. A member shall not be deemed to have infringed the regulations of a society by reason of his having failed to deliver produce to the society if such failure was due to the fact that before becoming a member of the society such member had contracted to deliver such produce to some other person. It shall be an obligation on every person applying for membership of a registered society to disclose to the society particulars of all such contracts.

Settlement of
disputes by
arbitration.

32. The regulations of a registered society may provide for the settlement of all disputes between the society and any of its members by the arbitration of a sole arbitrator to be appointed by the Registrar, and may further provide that from the award of such arbitrator an appeal shall lie to the Registrar whose decision shall be final.

Contracts how
made, varied
or discharged.

33. (1) Contracts on behalf of a registered society may be made, varied, or discharged as follows:—

- (a) Any contract, which if made between private persons would be by law required to be under seal, may be made on behalf of the society under the common seal of the society, and may in the same manner be varied or discharged.
- (b) Any contract, which if made between private persons would be by law required to be in writing and signed by the persons to be charged therewith, may be made on behalf of the society in writing by any

person acting under the express or implied authority of the society, and may in the same manner be varied or discharged.

- (c) Any contract under seal which, if made between private persons, might be varied or discharged by a writing not under seal, signed by any person interested therein, may be similarly varied or discharged on behalf of the society by a writing not under seal, signed by any person acting under the express or implied authority of the society.
- (d) Any contract, which if made between private persons would be by law valid though made by parole only and not reduced into writing, may be made by parole on behalf of the society by any person acting under the express or implied authority of the society, and may in the same manner be varied or discharged.
- (e) A signature, purporting to be made by a person holding any office in the society, attached to a writing whereby any contract purports to be made, varied or discharged by or on behalf of the society, shall prima facie be taken to be the signature of a person holding at the time when the signature was made the office so stated.

(2) All contracts which may be or have been made, varied, or discharged according to the provisions contained in this section, shall, so far as concerns the form thereof, be effectual in law and binding on the society and all other parties thereto, their heirs, executors or administrators as the case may be.

34. A registered society may (if its regulations do not direct otherwise) hold, purchase, or take on lease in its own name any land, and may sell, exchange, mortgage, charge, lease or build upon the same (with power to alter and pull down buildings and again rebuild) and no purchaser, assignee, mortgagee, chargee or tenant shall be bound to inquire as to the authority for any such sale, exchange, mortgage, charge, or lease by the society, and the receipt of the society shall be a discharge for all moneys arising from or in connection with such sale, exchange, mortgage, charge or lease.

Holding of
land.

Priority of claim of registered society as against crops, agricultural produce, cattle, implements, raw material and material and articles.

35. Subject to the prior claims of the Government on property of its debtors and of landlords in respect of rent, or any money recoverable as rent, or to any prior charge duly registered under any law for the time being in force, a registered society shall have a first charge—

- (a) upon the crops or other agricultural produce of a member or past member, at any time within two years from the date when seed or manure was advanced, or money was lent to such member or past member in respect of the unpaid portion of such advance or loan;
- (b) in respect of the supply of cattle, fodder for cattle, agricultural or industrial implements or machinery, or raw material for manufacture or of the loan of money for the purchase of any of the foregoing animals or things upon any such animals or things so supplied or purchased in whole or in part from any such loan or on any articles manufactured from raw materials supplied or purchased.

Charge and set-off in respect of shares or interest of members.

36. A registered society shall have a first charge upon the shares or interest in the capital and on the deposits of a member or past member and upon any dividend, bonus, or accumulated funds payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

Share or interests not liable to attachment.

37. Subject to the provisions of section 36 of this Ordinance, the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member, and a trustee in bankruptcy under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest: Provided that, where a society is dissolved, the property in the shares of any member who has been adjudicated a bankrupt under the provisions of any such law relating to bankruptcy shall vest in the trustee in bankruptcy.

Liability of past member.

38. (1) The financial liability of a past member to the registered society of which he was a member shall continue for a period of two years from the date of his ceasing to be a member: Provided that, if the first accounts of the society after his

ceasing to be a member disclose a credit balance in favour of the society, the financial liability of such past member shall forthwith cease.

(2) The regulations of every registered society shall contain a provision as to the time at which, and the notice after which, a member may resign from the society.

39. The financial liability of the estate of a deceased member to the registered society of which he was a member shall continue for a period of one year from the time of his decease: Provided that, if the first accounts of the society after his decease disclose a credit balance in favour of the society, such liability shall forthwith cease.

Liability of estate of deceased member.

40. The provisions of the two last preceding sections shall not apply to a member of a registered society which is registered with limited liability or which, before it was registered under the provisions of the Co-operative Societies (Registration) Ordinance, 1931, or before it was converted into a registered company under the provisions of this Ordinance, was a company limited by shares or by guarantee.

Liability of members of a company.

No. 24 of 1931.

41. (1) On the death of a member a registered society may transfer the share or interest of the deceased member to the legal personal representative of the deceased member or pay to such legal personal representative a sum representing the value of such member's share or interest as ascertained in accordance with the Rules or regulations:

Transfer of interest on death of member.

Provided that—

- (a) in the case of a society with unlimited liability, such legal personal representative may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid; or
- (b) in the case of a society with limited liability the society shall transfer the share or interest of the deceased member to such legal personal representative, being qualified in accordance with the Rules and regulations for membership of the society or, on the application of such legal personal representative within three months after the death of the deceased member, or any person specified in the application who is so qualified.

(2) A registered society may pay all other moneys due to the deceased member from the society to the legal personal representative of such deceased member.

(3) Notwithstanding anything contained in this section, where the share or interest of a deceased member does not exceed in value one hundred pounds, or where the amount of any other moneys due to the deceased member from the society does not exceed one hundred pounds, this section shall be read as if the words "person nominated in accordance with Rules made in this behalf" were substituted for the words "legal personal representative".

(4) All transfers and payments made by a registered society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.

Proof of entries in society's books.

42. A copy of any entry in a book of a registered society regularly kept in the course of business, shall, if certified in such manner as may be prescribed, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

Restriction on the production of societies' books.

43. In the case of such registered societies as the Governor by general or special order may direct, 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 society's books, the contents of which can be proved under section 42 of this Ordinance, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court or a judge made for special cause.

Power to exempt from duty or tax.

44. The Governor may, by notice in the Gazette, in the case of any registered society or class of registered societies reduce or remit—

- (d) the duty or tax which, under any law for the time being in force, may be payable in respect of the accumulated funds of the society or of the dividends or other payments received by the members of the society on account of accumulated funds;

- (b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a registered society or by an officer or member and relating to the business of such society or any class of such instruments, are respectively chargeable;
- (c) any fee payable under the law of registration for the time being in force.

PROPERTY AND FUNDS OF REGISTERED SOCIETIES.

45. (1) A registered society shall not make a loan to any person other than a member: Restrictions on loans.

Provided that, with the general or special sanction of the Registrar, a registered society may make loans to another registered society.

(2) Save with the sanction of the Registrar a society with unlimited liability shall not lend money on the security of movable property.

(3) The Governor may by general or special order prohibit or restrict the lending of money on a charge of immovable property or any kind thereof by any registered society or class of registered society.

46. A registered society shall receive deposits and loans from persons who are not members only to such extent and under such conditions as may be prescribed by the Rules or regulations. Restrictions on borrowing.

47. Save as provided in sections 45 and 46 of this Ordinance the transactions of a registered society with persons other than members shall be subject to such prohibitions and restrictions, if any, as may be prescribed by Rules. Restrictions on other transactions with non-members.

48. A registered society may invest or deposit its funds— Investment of funds.

- (a) in the Post Office Savings Bank;
- (b) in any Government securities approved by the Registrar;
- (c) in the shares of any other registered society;
- (d) with any bank or person carrying on the business of banking, approved for this purpose by the Registrar; or
- (e) in any other mode prescribed by Rules.

Compulsion to sell produce through a registered society in certain cases.

49. (1) Upon application by any registered society which can show that its membership in the whole Colony or in any province, district or other area comprises 75 per cent of all the producers of any kind of commodity mentioned in section 30, producing 75 per cent of the total output of such commodity in that province, district or area, the Governor may by notice in the Gazette declare that each producer of that commodity, in the whole Colony or in the province, district or other area named in the notice, shall sell such commodity produced by him to or through the society, whether he be a member thereof or not.

(2) Each such producer who is not a member of the society shall be subject to all such conditions and obligations to which he would have been subject as a member, and the society may deduct from any funds received or held on his account a part or the whole of a share subscription sufficient to qualify him for membership, and shall admit him to membership on the complete payment of such subscription.

Dividends and bonus.

50. (1) No society shall pay a dividend or bonus or distribute any part of its accumulated funds before the balance sheet has been certified by the Registrar or by an auditor approved by the Registrar.

(2) No society shall pay a dividend to its members exceeding the maximum rate prescribed by Rules made under section 60 (2) of this Ordinance, which rate shall not in any case exceed 10 per centum per annum.

(3) No society with unlimited liability, which advances money or goods to any member in excess of money or goods deposited by him, shall pay a dividend before ten years from the date of its registration.

Reserve fund.

51. (1) Every society which does or can derive a profit from its transactions shall maintain a reserve fund.

(2) A society with unlimited liability, which advances money or goods to any member in excess of money or goods deposited by him, shall carry one-fourth of the net profit in each year to the reserve fund.

(3) All societies other than societies referred to in subsection (2) of this section shall carry to the reserve fund such portion of the net profit in each year as may be prescribed by the Rules or regulations.

52. Subject to sections 50 and 51 of this Ordinance, the net balance of each year, with any sum available for distribution from previous years, may be distributed as may be prescribed by Rules and regulations.

Distribution of net balance.

53. Any society may, with the previous sanction of the Registrar, after such allocation has been made to the reserve fund as the Rules and regulations require, contribute an amount not exceeding 10 per centum of the remaining net balance to any charitable or educational purpose.

Contribution to charitable and educational purposes.

INSPECTION OF AFFAIRS.

54. (1) The Registrar may, of his own motion, and shall, on the request of the district officer or on the application of a majority of the committee, or of not less than one-third of the members, hold an inquiry or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.

Inquiry by Registrar.

(2) All officers and members of the society shall produce such cash, accounts, books, documents and securities of the society and furnish such information in regard to the affairs of the society, as the Registrar or the person authorized by the Registrar may require.

55. (1) The Registrar shall, on the application of a creditor of a registered society, inspect or direct some person authorized by him by order in writing in this behalf to inspect the books of the society :

Inspection of books of indebted society.

Provided that—

(a) the applicant satisfies the Registrar that the debt is a sum then due, and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) the applicant deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar shall communicate the results of any such inspection to the creditor.

Costs of inquiry.

56. Where an inquiry is held under section 54 or an inspection is made under section 55 of this Ordinance the Registrar may by a certificate under his hand and seal make an award apportioning the costs, or such part of the costs as he may think right, between the society, the members or creditor demanding an inquiry or inspection, and the officers or former officers of the society.

Recovery of costs.

57. Any sum awarded by way of costs under section 56 of this Ordinance may be recovered, on production of the certificate referred to in that section, to the court having jurisdiction over the person from whom the money is claimable, by attachment and sale of any movable property belonging to such person within the limits of the jurisdiction of such court, notwithstanding that the sum awarded may be in excess of the ordinary jurisdiction of such court, and the necessary jurisdiction is hereby conferred upon such court.

DISSOLUTION OF SOCIETY.

Dissolution.

58. (1) If the Registrar, after an inquiry has been held under section 54 or after an inspection has been made under section 55 of this Ordinance or on receipt of an application made by three-fourths of the members of a registered society, is of opinion that the society ought to be dissolved, he may cancel the registration of the society.

(2) Any member of a society may, within two months after the date of an order made under sub-section (1) of this section, appeal from such order to the Governor.

(3) Where no appeal is presented within two months after the making of an order cancelling the registration of a society, the order shall take effect on the expiry of that period.

(4) Where an appeal is presented within two months the order shall not take effect until it is confirmed by the Governor.

(5) Where the Registrar cancels the registration of a society under sub-section (1) of this section he may make such order as he may deem fit respecting the custody of the books and documents and the protection of the assets of the society until the order cancelling the registration of the society takes effect.

Cancellation by registration of society.

59. Where it is a condition of the registration of a society that it should consist of at least ten members the Registrar may, by order in writing, cancel the registration of the society if at any time it is proved to his satisfaction that the number of the members has been reduced to less than ten.

60. Where the registration of a society is cancelled the society shall cease to exist as a corporate body—

Effect of cancellation of registration.

- (a) in the case of cancellation in accordance with the provisions of section 58 of this Ordinance from the date on which the order of cancellation takes effect;
- (b) in the case of cancellation in accordance with the provisions of section 59 of this Ordinance from the date of the order.

61. (1) Where the registration of a society is cancelled under section 58 or under section 59 of this Ordinance, the Registrar may appoint a competent person to be liquidator of the society and all the property of such society shall vest in such liquidator with effect from the date on which the order of cancellation takes effect or from the date of the order, as the case may be.

Winding-up.

(2) A liquidator appointed under sub-section (1) of this section shall have power—

- (a) to institute and defend suits and other legal proceedings by and on behalf of the society by his name or office and to appear in court as a litigant in person on behalf of the society;
- (b) to refer disputes to arbitration;
- (c) to determine the contribution to be made by the members and past members and by the estates of deceased members of the society respectively to the assets of the society;
- (d) to investigate all claims against the society, and, subject to the provisions of this Ordinance, to decide questions of priority arising between claimants;
- (e) to determine from time to time by what persons and in what proportion the costs of the liquidation are to be borne;
- (f) to take possession of the books, documents and assets of the society; and
- (g) to give such directions in regard to the collection and distribution of the assets of the society and the disposal of the books and documents of the society as may appear to him to be necessary for winding up the affairs of the society.

(3) Subject to any Rules, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purpose of this section, have power to summon and

enforce the attendance of witnesses and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a court under the Civil Procedure Ordinance, 1924, or any law amending or replacing the same.

(4) The Rules may provide for an appeal to a subordinate court of the first class having jurisdiction over the area in which the headquarters of the society are situate from any order made by a liquidator under this section.

(5) Orders made under this section may be enforced as follows—

- (a) when made by a liquidator, by any court having jurisdiction, in the same manner as the decree of such court;
- (b) when made by a subordinate court on appeal, in the matter of any such appeal as aforesaid in the same manner as a decree of such court in any suit pending therein.

Power of Registrar to assess damage against delinquent promoters, etc.

62. (1) Where, in the case of 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 chairman, secretary, member of the committee or officer of the society has misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of such person and make an order requiring him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retainer, misfeasance or breach of trust as the Registrar thinks just, and any sum of money specified in such order may be recoverable as a civil debt at the suit of the liquidator.

(2) Save in so far as is hereinbefore expressly provided, no civil court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society.

MISCELLANEOUS.

63. (1) No person other than a registered society shall trade or carry on business under any name or title of which the word "co-operative" is part without the sanction of the Governor in Council.

Prohibition of the use of the word "co-operative".

(2) Nothing in the preceding sub-section shall apply to the use by any person or his successor in interest of any name or title under which he traded or carried on business before the eighth day of September, 1931.

(3) Any person who contravenes the provisions of this section shall be liable to a fine not exceeding fifty pounds and in the case of a continuing offence to a further fine not exceeding five pounds for each day on which the offence is continued after conviction therefor.

64. (1) It shall be an offence under this Ordinance if—

Offences.

- (a) a society or an officer or a member thereof wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Ordinance by the Registrar or other person duly authorized by him in writing in this behalf; or
- (b) a society or an officer or member thereof wilfully makes a false return or furnishes false information; or
- (c) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of this Ordinance or does not furnish any information lawfully required from him by a person authorized to do so under the provisions of this Ordinance.

Wilful neglect or default by a society, etc.

Wilful furnishing of false information.

Disobedience of summons, requisition or order.

(2) Every society, officer or member of a society or other person guilty of an offence under this section shall be liable to a fine not exceeding twenty-five pounds.

65. Any person, firm or company having knowledge or notice of the existence of a contract described in section 30 of this Ordinance or of an obligation upon producers as in section 49 of this Ordinance, who solicits or persuades any person to sell or deliver produce in violation of that contract or obligation shall be liable on conviction to a fine not exceeding twenty-five pounds for each offence, and shall in addition be ordered to pay to the society concerned such damages as to the court may seem fit.

Penalty for soliciting violation of contracts.

Power to exempt societies from conditions as to registration.

66. Notwithstanding anything contained in this Ordinance the Governor may, by special order in each case and subject to such conditions, if any, as he may impose, exempt any society from any of the requirements of this Ordinance as to registration.

Power to exempt registered societies from provisions of the Ordinance.

67. The Governor may, by general or special order, exempt any registered society from any of the provisions of this Ordinance or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

Saving.
No. 28 of 1933
Cap. 130.
Cap. 92.

68. The provisions of the Companies Ordinance, 1933, the Credit Trade with Natives Ordinance, and the Registration of Business Names Ordinance shall not apply to societies registered under this Ordinance.

Rules.

69. (1) The Governor in Council may, for any registered society or class of such societies, make Rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such Rules may—

- (a) subject to the provisions of section 5 of this Ordinance prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;
- (b) prescribe the forms to be used and the conditions to be complied with in the making of applications for the registration of a society and the procedure in the matter of such applications;
- (c) prescribe the matters in respect of which a society may or shall make regulations and for the procedure to be followed in making, altering and abrogating regulations, and the conditions to be satisfied prior to such making, alteration, or abrogation;
- (d) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and admission of members, and the payment to be made and the interests to be acquired before the exercise of the right of membership;
- (e) regulate the manner in which funds may be raised by means of shares or debentures or otherwise and the form in which any application for financial assistance from the Government shall be made;

- (f) provide for general meetings of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (g) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee and for the powers to be exercised and the duties to be performed by the committee and other officers;
- (h) provide for audit of the accounts and books to be kept by a society and the charges, if any, to be made for such audit;
- (i) provide for the periodical publication of a balance sheet showing the assets and liabilities of a society;
- (j) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;
- (k) provide for the inspection of documents and registers at the Registrar's office and the fees to be paid therefor and for the issue of copies of such documents or registers;
- (l) provide for the formation and maintenance of a register of members and, where the liability of members is limited by shares, of the register of shares;
- (m) provide that any dispute touching the business of a society between the members or past members of the society or persons claiming through a member or past member or between a member or past member or persons so claiming and the committee or any officer shall be referred to the Registrar for decision or, if he so directs, to arbitration under the Arbitration Ordinance; Cap. 18.
- (n) provide for the withdrawal and expulsion of members and for the payments, if any, to be made to members who withdraw or are expelled and for the liabilities of past members;
- (o) provide for the mode in which the value of a deceased member's interest shall be ascertained and, subject to the provisions of section 41 of this Ordinance, for the nomination of a person to whom such interest may be paid or transferred;

- (p) provide for the mode in which the value of the interest of a member who has become of unsound mind and incapable of managing himself or his affairs shall be ascertained and for the nomination of any person to whom such interest may be paid or transferred;
 - (q) prescribe the payments to be made and the conditions to be complied with by members applying for loans, the period for which loans may be made and the amount which may be lent to an individual member;
 - (r) provide for the formation and maintenance of reserve funds, and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;
 - (s) prescribe the extent to which a society may limit the number of its members;
 - (t) prescribe the conditions under which accumulated funds may be distributed to the members of a society with unlimited liability, and, subject to the provisions of sub-section (2) of section 50 of this Ordinance prescribe the maximum rate of dividend which may be paid by societies;
 - (u) subject to the provisions of section 58 of this Ordinance determine in what cases an appeal shall lie from the order of the Registrar and prescribe the procedure to be followed in presenting and disposing of such appeals; and
 - (v) prescribe the procedure to be followed by a liquidator appointed under section 61 of this Ordinance and the cases in which an appeal shall lie from the order of such liquidator.
- (3) In any cases where the Registrar is satisfied that a substantial number of members of any society are unacquainted with the English language, he shall cause such Rules to be translated into a language with which such members are acquainted, and additionally to be made known in such manner as is customary for the community concerned.

70. The Registrar may prescribe—

- (a) the accounts and books to be kept by a society;
- (b) the returns to be submitted by a society to the Registrar and the persons by whom and the form in which such returns shall be submitted;
- (c) the maximum loan which may be made by a society to any of the members thereof without the prior consent of the Registrar.

Power of Registrar to prescribe.

71. The Co-operative Societies (Registration) Ordinance, 1931, as amended by the Co-operative Societies (Registration) (Amendment) Ordinance, 1932, is hereby repealed: Provided that every co-operative society registered under the provisions of that Ordinance shall be deemed to have been registered under this Ordinance and that the regulations of such society shall be deemed to be regulations for the purposes of this Ordinance.

Repeal.
No. 24 of 1931.
No. 7 of 1932.