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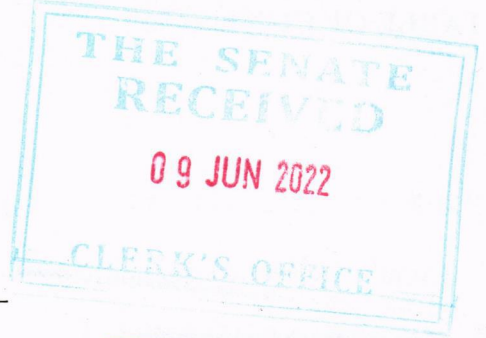
~~REPUBLIC OF KENYA~~



*Rt. Hon Speaker
You may approve
for tabling
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09/06/22*

PARLIAMENT

THE SENATE



STANDING COMMITTEE ON TOURISM, TRADE AND
INDUSTRIALIZATION

TWELFTH PARLIAMENT- SIXTH SESSION

DRAFT REPORT ON THE SACCO SOCIETIES (AMENDMENT) BILL,
(NATIONAL ASSEMBLY BILLS NO. 55 OF 2021)

CLERK'S CHAMBERS
THE SENATE
PARLIAMENT OF KENYA
NAIROBI

JUNE, 2022

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PREFACE

I wish to Table the Report of the Standing Committee on Tourism, Trade and Industrialization on the consideration of the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021).

The Bill among others;

- 1) This Bill from the National Assembly has therefore been republished in compliance with the judgment of the Court of Appeal to allow for consideration by both Houses in terms of Article 109(4) of the Constitution;
- 2) Seeks to align the Sacco Societies Act, 2012 with the devolved system of governance;
- 3) concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7 (e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of the county governments.
- 4) Section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefore a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution;

The specific objects which the Bill seeks to achieve include the following proposals- **That-**

- a) Clause 2 of the Bill amends the Act to align the definition of the term *Minister* with the Constitution.
- b) Clause 3 of the Bill amends section 6 (4) of the Act to provide that a person shall not be qualified for appointment as a member of the Board of the Sacco Societies Regulatory Authority if the person is a Member of Parliament or a County Assembly or is one who does not meet the requirements of Chapter Six of the Constitution.
- c) Clause 4 of the Bill amends section 20 of the Act to provide that the Sacco Societies Regulatory Authority shall submit its statement of income, expenditure, assets and liabilities to the Auditor-General and not the Controller of Budget in line with the Constitution. The amendment also seeks to make reference to the correct citation of the Public Audit Act.
- d) Clause 5 of the Bill seeks to amend section 24 of the Act to require an application made by a Sacco Society intending to transact the deposit-taking business to be accompanied by

evidence that the Sacco Society meets the minimum capital requirements prescribed in regulations.

- e) Clause 6 of the Bill amends section 27 of the Act to among other things provide that the registration of a Sacco Society, the license of which is revoked under the provisions of the Act shall be cancelled in accordance with section 62 of the Co-operative Societies Act.
- f) Clause 7 of the Bill amends section 45 of the Act to make reference to the correct citation of the Companies Act.
- g) Clause 8 of the Bill proposes to amend section 51 of the Act to provide that where the Sacco societies Regulatory Authority determines that a Sacco Society conducts its business in a manner contrary to the provisions of the Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall impose financial penalties on the society or any officer, director, committee member, employee or agent of the Society in such amounts as may be prescribed through regulations.
- h) Clause 9 of the Bill amends the Act by inserting a new section to provide that the Authority may establish and operate an electronic filing system for the purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority under the Act or any other written law.

Committee Mandate

The Standing Committee on Tourism, Trade and Industrialization is established pursuant to Standing Order 218(3) of the Senate. The Committee was constituted in December, 2017 during the First Session of the Twelfth Parliament pursuant to the provisions of the Senate standing order 187.

As set out in the Second Schedule, the Committee is mandated to consider *all matters relating trade, industrialization, tourism, cooperatives, investment and divestiture policies.*

In undertaking its mandate, the Committee oversees the Ministry of Industrialization, Trade and Enterprise Development, Ministry of Agriculture, Livestock, Fisheries and Cooperatives and the Ministry of Tourism and Wildlife. Specifically, the Committee oversees the following state departments-

- 1) State Department for Industrialization;
- 2) State Department for Trade;

- 3) State department for Cooperatives; and
- 4) The State Department for Tourism

Committee Membership

The Standing Committee on Tourism, Trade and Industrialization is comprised of the following Members:-

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS, MP - Chairperson
- 2) Sen. (Dr.) Gertrude Musuruve Inimah, MP - Vice Chairperson
- 3) Sen. (CPA) Farhiya Haji, MP - Member
- 4) Sen. (Prof.) Kithure Kindiki, EGH, MP - Member
- 5) Sen. (Dr.) Agnes Zani, CBS MP - Member
- 6) Sen. Wario Golich Juma, MP - Member
- 7) Sen. Mercy Chebeni, MP - Member
- 8) Sen. Mohamed Faki, MP - Member
- 9) Sen. Philip Mpaayei, MP - Member

Consideration of the Bill

The Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) is a Bill sponsored by the Leader of Majority Party and was read a first time. The Bill seeks to amend the Sacco Societies Act (2008) by among others, align the Sacco Act of 2008 with the constitution and provide for the usage of ICT in collecting and receiving statutory reports.

The principal object of the Bill is to amend the Sacco Societies Act No. 14 of 2008 by providing for the usage of ICT in collecting and receiving of statutory reports. This is aimed at reducing the regulatory reporting burden on SACCOs and ensuring of a faster, efficient and accurate reporting, monitoring and analysis of SACCOs financial status at any time, being the cornerstone of Risk-Based Supervision (RBS).

The Bill also seeks to realign the definition and roles of Minister to Cabinet Secretary and also the responsibility and office of the Controller of Budget as reflected in the Act, to be in line with the Constitution.

The recommendations arising from the deliberations are included in the report.

Public Memoranda and Views

Guided by Article 118 of the Constitution of Kenya (2010) and in compliance with Standing Order No. 140 (5), the Committee invited written submissions from the public and held a stakeholder forum on Thursday, 31st March, 2022. However, the Committee did not receive any submissions from the stakeholders. Further, no amendments were proposed for the Bill.

Committee observations and Recommendations

The Committee considered the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) and observed Inter alia; That;

- 1) The Bill from the National Assembly has therefore been republished in compliance with the judgment of the Court of Appeal to allow for consideration by both Houses in terms of Article 109(4) of the Constitution;
- 2) Seeks to align the Sacco Societies Act, 2012 with the devolved system of governance;
- 3) concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7 (e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of the county governments.
- 4) Section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefore a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution;
- 5) The enactment of this Bill shall not occasion additional expenditure of public funds.

Committee Recommendation

From the deliberations on the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) the Committee recommends that the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) be passed without amendment.

ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report. The Committee also wishes to recognize the commitment and dedication of the staff of the committee that made the work of the Committee and the production of this report possible.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Standing Order 143 (1), to present and lay on the table of the House the report of the Committee on Tourism, Trade and Industrialization on the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) for consideration by the House.

SIGNATURE: 

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

CHAPTER 1

INTRODUCTION AND BACKGROUND INFORMATION

Purpose of the Bill

The Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) is a Bill sponsored by the Leader of Majority Party and was read a first time. The Bill seeks to amend the Sacco Societies Act (2008) by among others, align the Sacco Act of 2008 with the constitution and provide for the usage of ICT in collecting and receiving statutory reports.

The principal object of the Bill is to amend the Sacco Societies Act No. 14 of 2008 by providing for the usage of ICT in collecting and receiving of statutory reports. This is aimed at reducing the regulatory reporting burden on SACCOs and ensuring of a faster, efficient and accurate reporting, monitoring and analysis of SACCOs financial status at any time, being the cornerstone of Risk-Based Supervision (RBS).

The Bill also seeks to realign the definition and roles of Minister to Cabinet Secretary and also the responsibility and office of the Controller of Budget as reflected in the Act, to be in line with the Constitution.

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7(e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of county governments. Also, section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefor a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution.

This is one of the Acts of Parliament that were nullified by the Court of Appeal in *Civil Appeal No. E084 of 2021* for want of participation by the Senate. The National Assembly has therefore republished the Bill in compliance with the judgment of the court to allow for consideration by both Houses in terms of Article 109(4) of the Constitution.

Salient provisions of the Bill

The Bill has a total of nine clauses which make the following proposals- **That**

- (a) Clause 2 of the Bill amends the Act to align the definition of the term Minister with the Constitution.
- (b) Clause 3 of the Bill amends section 6 (4) of the Act to provide that a person shall not be qualified for appointment as a member of the Board of the Sacco Societies Regulatory Authority if the person is a Member of Parliament or a County Assembly or is one who does not meet the requirements of Chapter Six of the Constitution.
- (c) Clause 4 of the Bill amends section 20 of the Act to provide that the Sacco Societies Regulatory Authority shall submit its statement of income, expenditure, assets and liabilities to the Auditor-General and not the Controller of Budget in line with the Constitution. The amendment also seeks to make reference to the correct citation of the Public Audit Act.
- (d) Clause 5 of the Bill seeks to amend section 24 of the Act to require an application made by a Sacco Society intending to transact the deposit-taking business to be accompanied by evidence that the Sacco Society meets the minimum capital requirements prescribed in regulations.
- (e) Clause 6 of the Bill amends section 27 of the Act to among other things provide that the registration of a Sacco Society, the license of which is revoked under the provisions of the Act shall be cancelled in accordance with section 62 of the Co-operative Societies Act.
- (f) Clause 7 of the Bill amends section 45 of the Act to make reference to the correct citation of the Companies Act.
- (g) Clause 8 of the Bill proposes to amend section 51 of the Act to provide that where the Sacco societies Regulatory Authority determines that a Sacco Society conducts its business in a manner contrary to the provisions of the Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall impose financial penalties on the society or any officer, director, committee member, employee or agent of the Society in such amounts as may be prescribed through regulations.
- (h) Clause 9 of the Bill amends the Act by inserting a new section to provide that the Authority may establish and operate an electronic filing system for the purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority under the Act or any other written law.

THE BILL

Statement of objects and reasons

The principal object of the Bill is to amend the Sacco Societies Act No. 14 of 2008 by providing for the usage of ICT in collecting and receiving of statutory reports. This is aimed at reducing the regulatory reporting burden on SACCOs and ensuring of a faster, efficient and accurate reporting, monitoring and analysis of SACCOs financial status at any time, being the cornerstone of Risk-Based Supervision (RBS). The Bill also seeks to realign the definition and roles of Minister to Cabinet Secretary and also the responsibility and office of the Controller of Budget as reflected in the Act, to be in line with the Constitution.

This Bill has been republished following the Court of Appeal judgment in *Civil Appeal No. E084 of 2021* which nullified the Sacco Societies (Amendment) Bill, No. 16 of 2018 for want of participation by the Senate.

The Bill by the National Assembly has therefore been republished in compliance with the judgment of the Court of Appeal to allow for consideration by both Houses in terms of Article 109(4) of the Constitution.

The Bill has a total of nine clauses which provide as follows—

Clause 1 of the Bill is the short title.

Clause 2 of the Bill amends the Act to align the definition of the term Minister with the Constitution.

Clause 3 of the Bill amends section 4 of the Act to provide that a person shall not be qualified for appointment as a member of the Board of the Sacco Societies Regulatory Authority if the person is a Member of Parliament or a County Assembly or is one who does not meet the requirements of Chapter Six of the Constitution.

Clause 4 of the Bill amends section 20 of the Act to provide that the Sacco Societies Regulatory Authority shall submit its statement of income, expenditure, assets and liabilities to the Auditor-General and not the Controller of Budget in line with the Constitution. The amendment also seeks to make reference to the correct citation of the Public Audit Act.

Clause 5 of the Bill amends section 24 of the Act to require an application made by a Sacco Society intending to transact the deposit-taking business to be accompanied by evidence that the Sacco Society meets the minimum capital requirements prescribed in regulations.

Clause 6 of the Bill amends section 27 of the Act to among other things provide that the registration of a Sacco Society, the license of which, is revoked under the provisions of the Act shall be cancelled in accordance with section 62 of the Co-operative Societies Act.

Clause 7 of the Bill amends section 45 of the Act to make reference to the correct citation of the Companies Act.

Clause 8 of the Bill amends section 51 of the Act to provide that where the Sacco Societies Regulatory Authority determines that a Sacco society conducts its business in a manner contrary to the provisions of the Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall -impose financial penalties on the society or any officer, director, committee member, employee or agent of the Society in such amounts as may be prescribed through regulations.

Clause 9 of the Bill amends the Act by inserting a new section to provide that the Authority may establish and operate an electronic filing system for the purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority under the Act or any other written law.

The sections amended by the Bill

The Bill proposes to amend Section 6 of No. 14 of 2008 as indicated hereunder;

6. Board of the Authority

(1) The oversight function and management of the Authority shall vest in a Board of the Authority which shall comprise—

- (a) the chairman to be appointed by the Minister from amongst the members appointed under paragraph (e);
- (b) the Permanent Secretary to the Treasury or his representative;
- (c) the Commissioner or his representative;
- (d) the Governor of the Central Bank or his representative;

(e) four members, not being public officers, appointed by the Minister by virtue of their knowledge, and possession of a minimum of ten years experience, in co-operative practice and management, law, finance or economics; and

(f) the chief executive officer appointed under section 12.

(2) A member of the Board appointed under subsection (1)(e) shall hold office for a term of three years and shall be eligible for re-appointment for one more term of up to three years.

(3) The members of the Board appointed under subsection (1)(e) shall be appointed at different times so that the respective expiry dates of their terms shall fall at different times.

(4) A person shall not be qualified for appointment as a member of the Board, if that person is—

(a) a member of the National Assembly or of a local authority;

(b) a director or employee of a Sacco society or of a co-operative society;

(c) auditor of a Sacco society or of a co-operative society; and

(d) a person who is prohibited from being a director or to take part in the management of a cooperative or financial institution by the Commissioner under the Co-operative Societies Act (Cap. 490) or by the Central Bank of Kenya respectively.

(5) A member of the Board appointed under subsection (1)(e) may be removed from office by the Minister, if that member—

(a) accepts any office the holding of which, if he were not a member of the Board, would make him ineligible for appointment to the office of a member of the Board;

(b) fails to discharge the functions of his office whether arising from infirmity of body or mind or any other cause;

(c) conducts himself in a manner not befitting a member of the Board; and

(d) becomes subject to any disqualification set out in subsection (4)(d).

(6) A member of the Board appointed under subsection (1)(e) may resign office by giving a fourteen days' notice to the Minister.

Section 20 of No. 14 of 2008 which it is proposed to amend

20. Accounts and audit

(1) The Authority shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

(2) The Authority shall within three months of the closure of the financial year submit to the Controller and Auditor-General—

(a) a statement of income and expenditure during that period;

(b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003. (No.12 of 2003)

Section 24 of No. 14 of 2008 which it is proposed to amend

24. Application for licence

(1) A Sacco society intending to transact the deposit-taking business in Kenya shall, before commencing such business, apply in writing, to the Authority for a licence, in the prescribed form.

(2) An application under subsection (1) shall be accompanied by—

(a) a copy of the certificate of registration and the by-laws of the Sacco society;

(b) evidence that the Sacco society meets the minimum capital requirements prescribed in the Second Schedule;

(c) information relating to the place of business, indicating that of the head office, and branches, if any;

(d) the prescribed fees;

(e) a report by the Sacco society, covering the following—

(i) objectives of the deposit-taking Sacco society business;

(ii) membership and share capital;

(iii) economic and financial environment;

(iv) organizational structure and management; and

(v) financial and risk analysis;

(f) such other requirements as the Authority may prescribe.

(3) A Sacco society may appeal to the Minister in reference to refusal to grant a licence within thirty days after receipt of notification of refusal.

(4) The Minister may reverse the decision of the Authority only if—

(a) the Authority failed to follow required procedures in making its decision;

(b) the Authority's decision was contrary to the Act and the regulations;

(c) there was no factual basis for the Authority's decision; or

(d) based on a review of the record the Authority committed a manifest error in its assessment of facts, or abused its discretion in taking its decision.

(5) The Authority shall, in consultation with the Minister make regulations providing for further requirements to be fulfilled before the grant of licence to a Sacco society.

Section 27 of No. 14 of 2008 which it is proposed to amend

27. Revocation of licence

(1) The Authority may, by notice in writing to a Sacco society, revoke the licence if the Sacco society—

(a) ceases to carry on deposit-taking business in Kenya or goes into liquidation or is wound up or is otherwise dissolved or deregistered under the Co-operative Societies Act (Cap. 490);

(b) fails to comply with this Act, or any rules, regulations, orders or directions issued under the Act or any condition of the licence;

(c) fails to pay the annual licence fee as required under section 25(3);

(d) does not hold at least fifty percent of the capital requirements prescribed in section 30 and the Second Schedule; or

(e) has knowingly engaged in serious criminal or fraudulent acts that are likely to cause insolvency, substantial dissipation of assets or earnings or may otherwise weaken the deposit-taking Sacco society's condition or seriously prejudice the interests of the deposit-taking Sacco society's members.

(2) The Authority shall, before revoking a licence, give to the Sacco society not less than fourteen days' notice in writing of its intention, and shall consider any representations made to it in writing by the Sacco society within that period before revoking the licence.

(3) The Authority shall cause the name of every Sacco society whose licence is revoked under this section to be published forthwith in the *Gazette* and at least one newspaper of national circulation.

(4) Where the licence of a Sacco society is revoked or cancelled, the Sacco society shall not be entitled to any refund of the licence fee in respect of any unexpired period of the licence.

(5) An aggrieved Sacco society may appeal to the Minister in respect of a revocation of its licence within thirty days after being notified of the revocation.

(6) An appeal shall not have the effect of suspending the actions of the Authority while the appeal is being pursued.

(7) The Tribunal may reverse the decision of the Authority only if—

(a) the Authority failed to follow required procedures in making its decision;

(b) the Authority's decision was contrary to this Act and the regulations;

(c) there was no factual basis for the Authority's decision; or

(d) based on a review of the record, the Authority committed a manifest error in its assessment of facts, or abused its discretion in taking its decision.

Section 45 of No. 14 of 2008 which it is proposed to amend

45. Qualifications of external auditors

A person shall be qualified for appointment as an external auditor of a Sacco society if that person—

(a) is qualified as an auditor under the Companies Act (Cap. 486);

(b) is among the list of auditors approved and duly registered by the Authority; and

(c) is not—

(i) an officer of a Sacco society;

(ii) a partner of a director of a Sacco society;

(iii) an employer or employee of an officer of a Sacco society;

(iv) an officer or employee of an associate of a Sacco society;

- (v) a partner or an employer of a person who regularly performs the duties of secretary or book-keeper for a Sacco society; or
- (vi) a firm or member of a firm of auditors of which any partner or employee falls within the categories enumerated in this section.

Section 51 of No. 14 of 2008 which it is proposed to amend

51. Supervisory enforcement actions

Where the Authority determines that a Sacco society conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall—

- (a) restrict, suspend or prohibit the payment of dividends by the society;
- (b) prohibit the conversion of any profits of the society into capital;
- (c) direct the suspension or removal of any officer involved in such conduct from the service of society;
- (d) require the society to reconstitute its board of directors;
- (e) withhold branch or other corporate approval with respect to such society;
- (f) undertake regular inspections of that society;
- (g) order the society to submit to the Authority within forty-five days a capital restoration plan to restore the society to capital adequacy as prescribed in section 29 or in the case of issues unrelated to capital such as violations of law, a plan to resolve all deficiencies to the satisfaction of the Authority;
- (h) prohibit the society from awarding any bonuses, or increments in salary, emoluments and other benefits of all directors and officers of the society;
- (i) appoint a person suitably qualified and competent in the opinion of the Authority to advise and assist the society in designing and implementing the capital restoration plan or other corrective action plan and the person appointed shall regularly report to the Authority on the progress of the plan;
- (j) impose restrictions on growth of assets or liabilities of the society as it deems fit;

- (k) restrict the rate of interest on deposits payable by the society to such rates as the Authority shall determine;
- (l) order the society to do any or take such other action that the Authority may deem necessary to rectify a capital deficiency or other weakness;
- (m) impose financial penalties on the society;
- (n) issue an order placing the society under statutory management;
- (o) restrict the withdrawal of deposits from the society;
- (p) institute legal proceedings against any officer, director, committee member, employee or agent of the society; and
- (q) issue such administrative directives as the Authority may deem necessary.

Section 53. of the (No. 14 of 2008) which it is proposed to amend

53. Collection and furnishing of information to the Authority, etc.

(1) The Authority or any person officially authorized in that behalf by the Authority may, by notice in writing, require any person to furnish to the Authority or to the authorized person, within such period as is specified in the notice, all such returns or information as specified in such notice.

(2) The Authority shall collect such data and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of Sacco societies and the protection of their members funds and, for this purpose, may require any Sacco society to submit statistical and other returns on a periodic basis in addition to any other returns required by law or as prescribed by the Authority.

(3) The Authority may require any institution to furnish to the Authority, at such time and in such manner as the Authority may direct, such information as the Authority may reasonably require for the proper discharge of its functions under this Act.

(4) The information required to be furnished under this section may include information relating to any person which is an associate of the Sacco society required to furnish information under that subsection.

(5) The Minister may require the Authority or a deposit-taking Sacco society to furnish to him, at such time and in such manner as he may direct, such information as the Minister may require.

(6) Where the Authority or person is required to furnish information under this Part, the Authority, institution or person shall furnish that information and any supplemental material that may be required as a result of that information within the period specified under this Part or within such reasonable period thereafter as may be agreed or directed.

CHAPTER 2

COMMITTEE OBSERVATIONS AND RECOMMENDATION

COMMITTEE OBSERVATION

Following the consideration of the Bill, the Committee made the following observations- **That;**

- 1) The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7 (e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of the county governments.
- 2) Section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefore a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution.
- 3) This Bill was republished by the National Assembly following the Court of Appeal judgment in *Civil Appeal No. E084 of 2021* which nullified the Sacco Societies (Amendment) Bill, No. 16 of 2018 for want of participation by the Senate.
- 4) This Bill from the National Assembly has therefore been republished in compliance with the judgment of the Court of Appeal to allow for consideration by both Houses in terms of Article 109(4) of the Constitution;
- 5) the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) seeks to align the Sacco Societies Act, 2012 with the devolved system of governance;
- 6) Section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefore a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution;

COMMITTEE RECOMMENDATION

The Committee recommends that the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 Bill, 2021) be passed without amendment.

**MINUTES OF THE 132ND SITTING OF THE STANDING COMMITTEE ON TOURISM,
TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY, 8TH JUNE, 2022 AT 11.00
A.M VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdulahi Ibrahim Ali, CBS-Chairperson
- 2) Sen. (Dr.) Gertrude Musuruve, MP- Vice- Chairperson
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP
- 5) Sen. Mercy Chebeni,MP

ABSENT

- 1) Sen. Wario Golich, MP
- 2) Sen. Philip Mpaayei, MP
- 3) Sen. (Prof.) Kithure Kindiki, EGH, MP
- 4) Sen. Agnes Zani, MP

SECRETARIAT

- 1) Mr. Peter Mulesi - Clerk Assistant
- 2) Mr. Crispus Njogu- Clerk Assistant
- 3) Ms. Lucy Radoli- Legal Counsel
- 4) Ms. Millicent Ratemo- Audio Officer

MIN. NO. 509/2022 : PRELIMINARIES

The Chairperson called the meeting to order at 11.10 am and there followed a word of Prayer.

MIN. NO. 510/2022 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. (CPA) Farhiya Haji, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

- i. Prayer*
 1. Adoption of Agenda
 2. Confirmation of the Previous Minutes of the 131st Sitting held on Thursday, 2nd June, 2022.
 3. Consideration of the Draft Report on the Sacco Societies (Amendment) Bill (National Assembly Bills No. 55 of 2021)
 4. Consideration of the Draft Report on the Petition on compensation of victims of Human- Wildlife Conflict in Lamu County
 5. Any other Business.

MIN. NO. 511/2022: CONFIRMATION OF MINUTES OF THE 131ST SITTING HELD ON THURSDAY, 2ND JUNE, 2022

Minutes of the 131st Sitting of the Committee that were held on Thursday, 2nd June, 2022 at 11.00 am via zoom were considered and confirmed after having been proposed by Sen. (CPA) Farhiya Haji, MP and Seconded by Sen. (Dr.) Gertrude Musuruve,, MP as true copy of the deliberations.

There were no matters arising.

MIN. NO. 512/2022: ADOPTION OF THE REPORT ON THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 55 OF 2021)

The Chairperson explained that the Committee had elaborately considered the Bill and made its observations and recommendations. He then invited Members to adopt the report of the Committee on the matter for Tabling in the Senate.

The Committee report on the Sacco Societies (Amendment) Bill (National Assembly Bills No.55 of 2021 was unanimously adopted without amendment after having been proposed by Sen, Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP.

It was resolved that the adopted report be prioritized for listing on the Order Paper for Tabling in the Senate.

MIN. NO. 513/2022: ADOPTION OF THE REPORT ON THE COMPENSATION OF HUMAN-WILDLIFE CONFLICT IN LAMU COUNTY.

The Chairperson thanked the Committee for considering the Petition on compensation of victims of human- wildlife Conflict in Lamu County and thanked Sen. Anuar Oloiptip, MP for bringing the petition to the Senate.

It was however observed that the petition had taken long in the Committee because some of the prayers by the petitioners were beyond the mandate of the Committee and require elaborate consultation with other stakeholders besides the Ministry of Tourism and Wildlife.

He then invited Members to adopt the report of the Committee on the matter for Tabling in the Senate.

The Committee report on the Petition on compensation of victims of human- wildlife conflict in Lamu county was unanimously adopted after having been proposed by Sen, (CPA) Farhiya Haji, MP and seconded by Sen. Mercy Chebeni, MP.

It was resolved that the adopted report be prioritized for listing on the Order Paper for Tabling in the Senate.

MIN. NO. 514/2022: ANY OTHER BUSINESS

- 1) Sen. (Dr.) Gertrude Musuruve, MP thanked the Committee leadership and the Members who supported the committee in considering the legislative business before it.
- 2) Sen. Mohamed Faki, MP sought information on whether or not the Committee had prepared its legacy report. The Member was informed that the compilation of legacy reports for Committees was being processed at the Directorate level and that all the committee activities would be updated.
- 3) The Chairperson inquired on the status of the Street Vendors Bill and why it had not been listed for Division in the Senate. The Secretariat was requested to follow-up on the matter.
- 4) The Chairperson thanked the members for their cooperation and the secretariat for facilitating the business of the committee.

MIN. NO. 515 /2022: ADJOURNMENT AND THE DATE FOR THE NEXT MEETING

There being no other business, the meeting adjourned at 11.12 am and the next meeting would be on notice.



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP

**MINUTES OF THE 130TH SITTING OF THE STANDING COMMITTEE ON TOURISM,
TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY, 18TH MAY, 2022 AT 11.
00 A.M VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdulahi Ibrahim Ali, CBS-Chairperson
- 2) Sen. (Dr.) Gertrude Musuruve, MP- Vice- Chairperson
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP

ABSENT

- 1) Sen. Wario Golich, MP
- 2) Sen. Mercy Chebeni, MP
- 3) Sen. Philip Mpaayei, MP
- 4) Sen. (Prof.) Kithure Kindiki, EGH, MP
- 5) Sen. Agnes Zani, MP

SECRETARIAT

- 1) Mr. Peter Mulesi - Clerk Assistant
- 2) Mr. Crispus Njogu- Clerk Assistant
- 3) Ms. Lucy Radoli - Legal Counsel
- 4) Ms. Millicent Ratemo- Audio Officer

MIN. NO. 499/2022 : PRELIMINARIES

The Chairperson called the meeting to order at 11.11 am and there followed a word of Prayer.

MIN. NO. 500/2022 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. (Dr.) Gertrude Musuruve, MP and seconded by Sen. Mohamed Faki, MP as follows-

1. Preliminaries
 - i. *Prayer*
2. Adoption of Agenda
3. Confirmation of the Previous Minutes of the 129th Sitting held on Wednesday, 11th May, 2022.
4. Updates on the Sacco Societies (Amendment) Bill (National Assembly Bills No.55 of 2021)
5. Any other Business.

**MIN. NO. 501/2022: CONFIRMATION OF MINUTES OF THE 129TH SITTING
HELD ON WEDNESDAY, 11TH MAY, 2022**

Minutes of the 129th Sitting of the Committee that were held on Wednesday, 11th May, 2022 at 11.00 am via zoom were considered and confirmed after having been proposed by Sen. (Dr.) Gertrude Musuruve, MP and Seconded by Sen. Mohamed Faki, MP as true copy of the deliberations.

Matters arising

On Ex. Min. NO. 496/2022 regarding **the Chairperson's Quarterly Report for the period January to April, 2022**, the Chairperson reported that the statement had been read in the Senate within the provisions of Standing Order 51(1)b.

MIN. NO. 501/2022: UPDATES ON THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO.55 OF 2021)

The secretariat reported that the Sacco Societies (Amendment) Bill (National Assembly Bills No.55 of 2021) had been advertised for the submission of memoranda by the public. However, the Senate had not received any submissions.

The Committee made the following observations

- 1) This Bill from the National Assembly has therefore been republished in compliance with the judgment of the Court of Appeal to allow for consideration by both Houses in terms of Article 109(4) of the Constitution;
- 2) Seeks to align the Sacco Societies Act, 2012 with the devolved system of governance;
- 3) The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7 (e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of the county governments.
- 4) Section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefore a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution;

It was recommended that the Bill be adopted and passed without amendment

MIN. NO. 502/2022: ANY OTHER BUSINESS

Final Retreat for the Committee for adoption of pending Report

The Secretariat reported that due to unavailability of resources to meet the committee budget for the retreat, the Committee was advised to hold the event within the Nairobi Metropolitan area and not Mombasa County as had been previously planned.

During the said retreat, the Committee would consider and adopt a report on the petition by Sen. Anuar Oloitip, MP on the compensation of victims of human -wildlife conflict in Lamu County and the Sacco Societies (Amendment) Bill (National Assembly Bills No.55 of 2021).

The secretariat was requested to circulate the possible dates for Members input.

MIN. NO. 503/2022: ADJOURNMENT AND THE DATE FOR THE NEXT MEETING

There being no other business, the meeting adjourned at 11.39 am and the next meeting was scheduled Thursday 26th May, 2022 at 11.00am via zoom



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP

MINUTES OF THE 126TH SITTING OF THE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION HELD ON THURSDAY, 17TH MARCH, 2022 AT 11. 00 A.M VIA ZOOM

PRESENT

- 1) Sen. (Dr.) Ibrahim Abdulahi Ali, CBS-Chairperson
- 2) Sen. (Dr.) Gertrude Musuruve, MP- Vice- Chairperson
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP
- 5) Sen. Mercy Chebeni,MP

ABSENT WITH APOLOGY

- 1) Sen. Wario Golich, MP
- 2) Sen. Philip Mpaayei, MP
- 3) Sen. (Prof.) Kithure Kindiki, EGH, MP
- 4) Sen. Agnes Zani, MP

SECRETARIAT

- 1) Mr. Peter Mulesi - Clerk Assistant
- 2) Mr. Crispus Njogu- Clerk Assistant
- 3) Ms. Lucy Radoli - Legal Counsel
- 4) Ms. Sande Marale- Principal Research Officer
- 5) Ms. Njeri Manga- Media Relations Officer

MIN. NO. 474/2022 : PRELIMINARIES

The Chairperson called the meeting to order at 11.14 am and there followed a word of Prayer.

MIN. NO. 475/2022 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

1. Preliminaries
 - i. Prayer
2. Adoption of Agenda
3. Confirmation of Minutes of the 125th Sitting held on Thursday, 10th March, 2022
4. Consideration of the Bill Digest on the Sacco Societies (Amendment) Bill, 2021
5. Any other Business

MIN. NO. 476/2022: CONFIRMATION OF MINUTES OF THE 125TH SITTING HELD ON THURSDAY, 10TH MARCH, 2022

Minutes of the 125th Sitting of the Committee that were held on Thursday, 10th March, 2022 at 11.00 am via zoom were considered and confirmed after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as true copy of the deliberations.

Matters arising

Ex. Min. NO. 472/2022: *UPDATES ON LEGISLATIVE BUSINESS COMMITTED TO THE COMMITTEE*

a) Statement on the status of Murang'a County Creameries

It was observed that the Committee could not proceed with the processing of the statement that was requested by Sen. Irungu Kang'ata MP, on the status of Muranga County. It was resolved that the matter be held in abeyance awaiting the court ruling on the orders that had been sought by stakeholders in the County.

b) Statement on the status of Mama Ngina Waterfront in Mombasa County

The Committee reviewed the previously proposed visit to Mombasa County to follow-up on the matter and observed that instead the committee seeks for more clarification from the National Treasury and Ministry of Planning on the circumstances under which the facility was transferred to and from between the Ministry of Tourism and Wildlife and the Ministry of Planning and National Treasury. The secretariat was requested to facilitate the request for additional information from the National Treasury.

c) Petition on compensation of Human- Wildlife conflict for residents in Lamu County:

The Committee was noted that even though the petition on compensation of Human-Wildlife conflict for residents in Lamu County was not within the mandate of the Committee, the petition had been processed and the Senator for Lamu had been received submissions from the Ministry of Tourism and Wildlife to which he raised no additional concerns.

To this end, the Committee requested the secretariat to proceed and write the report on the petition and close up on the matter.

MIN. NO. 477/2022: CONSIDERATION OF THE BILL DIGEST ON THE SACCO SOCIETIES AMENDMENT BILL, 2021

The Legal Counsel, Ms. Lucy Radoli informed the Committee that the Sacco Societies (Amendment) Bill (National Assembly Bill No. 55 of 2021) had been introduced in the Senate by way of First Reading and thereafter stood committed to the Committee for processing.

The Committee was informed as follows;

Purpose of the Bill

The Sacco Societies (Amendment) Bill, 2021 is a Bill sponsored by the Leader of Majority Party. The Bill seeks to amend the Sacco Societies Act (2008) by providing for the usage of ICT in collecting and receiving statutory reports. This is aimed at reducing the regulatory reporting burden on SACCOs and ensuring of a faster, efficient and accurate reporting, monitoring and analysis of SACCOs financial status at any time, being the cornerstone of Risk-Based Supervision (RBS). The Bill also seeks to realign the definition and roles of Minister to Cabinet Secretary and also the responsibility and office of the Controller of Budget as reflected in the Act, to be in line with the Constitution.

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution and affects the functions and powers of county governments as set out in Part 2, Paragraph 7(e) of the Fourth Schedule to the Constitution which provides that trade development and regulation, including cooperative societies is a function of county governments. Also, section 2 of the SACCO Societies Act defines a Sacco as a savings and credit co-operative society registered under the Co-operative Societies Act. A Sacco is therefor a co-operative society regulated under Part 2 of the Fourth Schedule to the Constitution.

This is one of the Acts of Parliament that were nullified by the Court of Appeal in *Civil Appeal No. E084 of 2021* for want of participation by the Senate. The National Assembly has therefore republished the Bill in compliance with the judgment of the court to allow for consideration by both Houses in terms of Article 109(4) of the Constitution.

Salient provisions of the Bill

The Bill makes the following proposals-

- (a) Clause 2 of the Bill amends the Act to align the definition of the term Minister with the Constitution.
- (b) Clause 3 of the Bill amends section 6 (4) of the Act to provide that a person shall not be qualified for appointment as a member of the Board of the Sacco Societies Regulatory Authority if the person is a Member of Parliament or a County Assembly or is one who does not meet the requirements of Chapter Six of the Constitution.
- (c) Clause 4 of the Bill amends section 20 of the Act to provide that the Sacco Societies Regulatory Authority shall submit its statement of income, expenditure, assets and liabilities to the Auditor-General and not the Controller of Budget in line with the Constitution. The amendment also seeks to make reference to the correct citation of the Public Audit Act.
- (d) Clause 5 of the Bill seeks to amend section 24 of the Act to require an application made by a Sacco Society intending to transact the deposit-taking business to be accompanied by evidence that the Sacco Society meets the minimum capital requirements prescribed in regulations.
- (e) Clause 6 of the Bill amends section 27 of the Act to among other things provide that the registration of a Sacco Society, the license of which is revoked under the provisions of the Act shall be cancelled in accordance with section 62 of the Co-operative Societies Act.
- (f) Clause 7 of the Bill amends section 45 of the Act to make reference to the correct citation of the Companies Act.
- (g) Clause 8 of the Bill proposes to amend section 51 of the Act to provide that where the Sacco societies Regulatory Authority determines that a Sacco Society conducts its

business in a manner contrary to the provisions of the Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall impose financial penalties on the society or any officer, director, committee member, employee or agent of the Society in such amounts as may be prescribed through regulations.

- (h) Clause 9 of the Bill amends the Act by inserting a new section to provide that the Authority may establish and operate an electronic filing system for the purposes of electronic filing of the statutory returns and documents or other information required to be furnished to the Authority under the Act or any other written law.

Consequences of the Bill

The overarching objective of the Bill is to amend the Sacco Societies Act, 2008.

Way Forward

Pursuant to standing order 140(5) of the Senate Standing Orders, the Standing on Finance and Budget shall facilitate public participation and shall take into account the views and recommendations of the public when the committee submits its report to the Senate.

Further, pursuant to standing order 143(1) of the Senate Standing Orders, the Committee is required to submit its report to the Senate within thirty (30) calendar days of the committal of the Bill to the Committee

MIN. NO. 478/2022: ANY OTHER BUSINESS

Sen. Farhiya Haji, MP, thanked the Committee Members for their commitment to prosecute Committee business at a time when other committees were affected by lack of quorum owing to the electioneering period.

A member observed that the business of the Committee had been over-loaded to be effectively transacted in one day's sitting. It was recommended that the agenda be spread across the two meeting- days per week. This would allow Members to effectively transact the set agenda and also attend to other committees.

MIN. NO. 479/2022: ADJOURNMENT AND THE DATE FOR THE NEXT MEETING

There being no other business, the meeting adjourned at 12.08 pm and the next meeting was scheduled for the subsequent week.



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)