REPUBLIC OF KENYA

NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - FOURTH SESSION

In the Matter of consideration by the National Assembly - The Sacco Societies (Amendment) Bill, 2016

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "*Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*" Standing Order 127(3) states that, "*the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House*".

The Sacco Societies (Amendment) Bill, 2016, has undergone First Reading pursuant to Standing Order 127(3) and is now committed to the **Departmental Committee on Agriculture, Livestock and Cooperatives** for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the public to submit any representations they may have on the said Bill. The representations may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to **clerk@parliament.go.ke**; **to be received on or before Tuesday 9th August, 2016 at 5.00 pm.**

MICHAEL R. SIALAI, EBS
FOR: CLERK OF NATIONAL ASSEMBLY

SPECIAL ISSUE

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2016

NAIROBI, 24th June, 2016

CONTENT

Bill for Introduction into the National Assembly—

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THE SACCO SOCIETIES (AMENDMENT) BILL, 2016

A Bill for

AN ACT of Parliament to amend the Sacco Societies Act, 2008

ENACTED by Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Sacco Societies (Amendment) Act, 2016.

Insertion sections 27A and 27B in No. 14 of 2008.

2. The Sacco Societies Act, 2008, in this Act, referred to as the "principal Act" is amended by inserting the following new sections immediately after section 27—

Use of the words "Deposit-Taking Sacco", "DT-SACCO", "DTS", etc.

27A. (1) A Sacco Society licensed under this Act to undertake deposit-taking business shall incorporate, as part of its business name and use at all times, the words "Deposit-Taking Sacco", "DTS" , "DT-SACCO" or any of its derivatives.

(2) A person shall not use—

(a) the words "Deposit-Taking Sacco", "DTS", "DT-SACCO" or any of its derivatives; or

(b) any words indicating the transaction word of a deposit-taking Sacco business or its equivalent,

in the name, description or title under which that person transacts business in Kenya or make any representation that the person transacts deposit-taking Sacco business unless that person is licensed under this Act.

(3) Every deposit-taking Sacco society existing before the commencement of this section shall, within twelve months, comply with the provisions of subsection (1).

(4) A deposit-taking Sacco society licensed under this Act shall not amend its registered by-laws or any provisions thereof

without the prior written approval of the Authority.

Registration and licensing of a deposit-taking Sacco society.

27B. (1) A co-operative society shall not be registered or incorporated as a deposit-taking savings and credit co-operative society or deposit-taking Sacco society, without the written approval of the Authority.

(2) A co-operative society that has been registered or incorporated as a deposit-taking savings and credit co-operative society or Sacco society shall, within one year of registration, obtain a licence from the Authority to operate as a deposit-taking savings and credit co-operative society or a Sacco society.

(3) A co-operative society which fails to obtain a licence within one year of registration in accordance with subsection (2) shall stop using the words "Deposit-Taking Sacco", "DTS", "DT-SACCO" or any of its derivatives in its name.

(4) A person who continues to use the words "Deposit-Taking Sacco", "DTS", "DT-SACCO" or any of its derivatives in contravention of sub-section (3), commits an offence.

3. The principal Act is amended by inserting the following new section immediately after section 48— Insertion of section 48A in No. 14 of 2008.

Determination of suitability.

48A. (1) The Authority shall determine the suitability and propriety of every person seeking to serve as a director or other officer of a Sacco society, and may bar or prohibit a person from serving in a Sacco society as a director or an officer based on its determination.

(2) The Authority shall, in determining if a person is suitable and proper to serve as a director or an officer of a Sacco society, consider the following—

(a) the financial status or solvency of the person;

(b) the academic or other qualifications or experience of the person, having regard to the nature of the functions which the person shall perform;

(c) the status of any other licence or approval granted to the person by any financial sector regulator;

(d) the ability of the person to carry on the regulated activity competently, honestly and fairly;

(e) the reputation, character, financial integrity and reliability of the person; or

(f) any other material information that the Authority may consider necessary.

(3) Without prejudice to the generality of subsection (2), the Authority may, when determining whether a person is suitable and proper—

(a) take into account whether that person—

(i) has contravened provisions of any law for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons engaged in dealing in marketable securities;

(ii) has been convicted or is being investigated in respect of an offence involving financial impropriety, fraud, corruption or economic crimes;

(iii) was a director of a Sacco society which was liquidated, is under liquidation or has been placed under statutory management;

(iv) has participated in any business practice which, in the opinion of the Authority, was fraudulent, prejudicial to the market or public interest, was otherwise improper or would otherwise discredit the person's methods of conducting Sacco society business;

(v) has participated in or has been associated with any business practice which casts doubt on the person's competence or soundness of judgment; or

(vi) has acted in such a manner as to cast doubt on the person's competence and soundness of judgment; and

(b) take into account any information in the possession of the Authority, whether provided by that person or from other available sources.

(4) Before determining that a person is not suitable or proper to serve as a director or officer of a Sacco society, the Authority shall give that person an opportunity to be heard.

Amendment of section 50 of No. 14 of 2008.

4. Section 50 of the principal Act is amended by deleting subsection (8) and substituting therefor the following new subsection—

(8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed, including mandatory continuous or minimum professional development courses, trainings and certification which every director or an officer of a Sacco society must undertake or attain before serving or seeking to serve as a director or officer of a Sacco society.

5. Section 54 of the principal Act is amended— Amendment of section 54 of No. 14 of 2008.

(a) by deleting subsection (5) and substituting therefor the following new subsection—

(5) Notwithstanding, the provisions of this section, Sacco societies may, in the ordinary course of business and in such manner and to such extent as may be prescribed under the Banking Act, exchange such information on performing and non-performing loans as may be specified by the Authority from time to time.

Cap. 488.

(b) in subsection (6), by inserting a new paragraph immediately after paragraph (b) as follows —

(c) an institution licensed under the Banking Act, Microfinance Act or any other entity as may be provided for under any other written law;

(c) by inserting the following new subsection immediately after subsection (6)—

(7) For the purposes of this section, "credit reference bureau" means a credit reference bureau established and operated pursuant to the provisions of section 31 of the Banking Act or section 34 of the Microfinance Act, 2006. Cap. 488. No. 19 of 2006.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

This Bill has been submitted by the Cabinet Secretary for the National Treasury in line with the proposals announced in the Budget for 2016/2017. The object of this Bill is to amend the Sacco Societies Act, 2008, to provide for the registration and licensing of Sacco societies as deposit-taking savings and credit co-operatives.

The Bill further expands the current credit information sharing mechanism to include Sacco societies with other licensed financial institutions. This is intended the Act with the banking Act, the Microfinance Act, 2008, thus bringing credit information sharing under a single regulatory framework.

Statement of the delegation of legislative powers and the limitation of fundamental rights and freedoms.

The Bill does not delegate any legislative power nor limit any fundamental right or freedom.

Statement of how the Bill concerns county governments.

The Bill does not concern county governments in terms of Article 109(4) of the Constitution as it does not contain provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution.

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the 9th June, 2016.

ADEN DUALE,
Leader of the Majority Party, National Assembly.

Section 50 of Act No. 14 of 2008 which it is intended to amend—

50. (8) The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed.

Section 54 of Act No. 14 of 2008 which it is intended to amend—

54. (5) Notwithstanding the provisions of this section—

(a) the Authority may disclose any information received by it under this Act to any financial regulatory authority, tax authority, fraud investigations authority or pursuant to a court order, within or outside Kenya, where such information is reasonably required for the proper discharge of the functions of the Authority or the requesting financial regulatory authority, tax authority, investigation authority or court;

(b) Sacco societies shall, in the ordinary course of business and in such manner and to such extent as the Minister may, by regulation prescribe, exchange such information on non-performing loans as may, from time to time, be specified by the Authority;

(c) the Authority and any Sacco society may, in the ordinary course of business in such manner and to such extent as the Minister may, by regulation prescribe, exchange such information as is reasonably required for the proper discharge of their functions.