

REPUBLIC OF SOUTH AFRICA

CO-OPERATIVES BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Gazette No 27257 of 4 February 2005)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 4—2005]

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BILL

To provide for—

**the formation and registration of co-operatives;
the establishment of a Co-operatives Advisory Board;
the winding up of co-operatives;
the repeal of Act No. 91 of 1981;
and matters connected therewith.**

PREAMBLE

RECOGNISING—

- the co-operative values of self-help, self-reliance, self-responsibility, democracy, equality and social responsibility;
- that a viable, autonomous, self-reliant and self-sustaining co-operative movement can play a major role in the economic and social development of the Republic of South Africa, in particular by creating employment, generating income, facilitating broad-based black economic empowerment and eradicating poverty;
- that the South African economy will benefit from increasing the number and variety of viable and sustainable economic enterprises;
- that government is committed to providing a supportive legal environment to enable co-operatives to develop and flourish; and

IN ORDER TO—

- ensure that international co-operative principles are recognised and implemented in the Republic of South Africa;
- enable co-operatives to register and acquire a legal status separate from their members; and
- facilitate the provision of targeted support for emerging co-operatives, particularly those owned by women and black people;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE 2

35

Laws repealed by section 92.

CHAPTER 1**DEFINITIONS, PURPOSE AND APPLICATION OF ACT****Definitions and interpretation**

1.	(1) In this Act, unless the context indicates otherwise—	40
	“ Advisory Board ” means the Co-operatives Advisory Board established by section 80 of this Act;	
	“ auditor ” means a person registered as such in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and includes a firm as defined in that Act, and, where appropriate, any other person authorised by regulation to conduct an audit of a co-operative;	45

- “**agricultural co-operative**” means a co-operative that produces, processes or markets agricultural products and supplies agricultural inputs and services to its members;
- “**consumer co-operative**” means a co-operative that procures and distributes goods or commodities to its members and non-members and provides services to its members; 5
- “**co-operative**” means an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles; 10
- “**co-operative apex**” means a tertiary co-operative whose objects include representing the interest and welfare of its members at regional, provincial, national and international levels;
- “**co-operative burial society**”, means a co-operative that provides funeral benefits, including funeral insurance and other services to its members and their dependants; 15
- “**co-operative principles**” means the internationally accepted principles of co-operation, exemplified by the principles adopted by the International Co-operative Alliance;
- “**Department**” means the Department of Trade and Industry; 20
- “**Director-General**” means the Director-General of Trade and Industry;
- “**federal co-operative association**” means an association whose members are primary co-operatives and whose object is to provide services to its members, within a sector or region, and may also include secondary co-operatives;
- “**financial services co-operative**” means a primary co-operative whose main objective is to provide financial services to its members or a secondary co-operative that provides financial services to a primary co-operative; 25
- “**general meeting**” means a meeting of the members of a co-operative, and includes, as the context indicates, an annual general meeting, a special general meeting or a regional general meeting; 30
- “**housing co-operative**” means a primary co-operative which provides housing to its members, or a secondary co-operative that provides services to primary housing co-operatives;
- “**marketing and supply co-operative**” means a co-operative that engages in the supply of production inputs to members and markets or processes their products, and also includes an agricultural marketing and supply co-operative; 35
- “**member loan**” means a loan made by a member to a co-operative;
- “**membership share**” means a share issued to a member of a co-operative as a requirement for membership of a co-operative;
- “**Minister**” means the Minister of Trade and Industry; 40
- “**nominal value**” means the value on the face of the share;
- “**ordinary resolution**” means a resolution passed at a general meeting by the majority of the members present;
- “**patronage proportion**” means the proportion which the value of the transactions conducted by a member with a co-operative during a specified period bears to the value of the transactions conducted by all members with a co-operative during the same period; 45
- “**prescribed**” means prescribed by regulation;
- “**primary co-operative**” means a co-operative formed by a minimum of five persons whose object is to provide employment or services to its members; 50
- “**registrar**” means the Registrar of Co-operatives and “**deputy registrar**” has a corresponding meaning;
- “**secondary co-operative**” means a co-operative formed by two or more primary co-operatives to provide services to its members, and may also include federal co-operative associations; 55
- “**services co-operative**” means a co-operative that engages in housing, health care, child care, transportation, communication and other services;
- “**share**” includes membership shares and any additional shares that may be issued by a co-operative;
- “**social co-operative**” is a non-profit co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick; 60

“**special resolution**” means a resolution passed at a general meeting by not less than two thirds of the members present, or such greater majority as may be specified in the constitution of a co-operative;

“**surplus**” means the financial surplus arising from the operations of a co-operative in a financial year; 5

“**supervisory committee**” means a committee of members that may be constituted in terms of the constitution of a primary co-operative to exercise supervision over the board of directors;

“**tertiary co-operative**” means a co-operative whose members are secondary co-operatives, or both primary and secondary co-operatives and whose object is to provide services to its members, and may include sectoral associations or organisations and co-operatives apices; 10

“**this Act**” includes the Schedules and any regulations made in terms of this Act;

“**worker co-operative**” means a primary co-operative whose main objectives are to provide employment to its members, or a secondary co-operative providing services to primary worker co-operatives. 15

(2) This Act must be interpreted to give effect to its purpose and to develop the co-operative principles contemplated in section 3.

Purpose of Act

2. The purpose of this Act is to— 20

- (a) promote the development of sustainable co-operatives that comply with co-operative principles, thereby increasing the number and variety of economic enterprises operating in the formal economy;
- (b) encourage persons and groups who subscribe to values of self-reliance and self-help, and who choose to work together in democratically controlled enterprises, to register co-operatives in terms of this Act; 25
- (c) enable such co-operative enterprises to register and acquire a legal status separate from their members;
- (d) promote equity and greater participation by black persons, especially those in rural areas, women, persons with disability and youth in the formation of, and management of, co-operatives; 30
- (e) establish a legislative framework that preserves a co-operative as a distinct legal entity; and
- (f) facilitate the provision of support programmes that target co-operatives, specifically co-operatives that create employment or benefit disadvantaged groups. 35

Compliance with co-operative principles

3. (1) For the purposes of this Act, a co-operative is deemed to comply with co-operative principles if—

- (a) membership of that co-operative is open to persons who can use the services of that co-operative and who are willing and able to accept the responsibilities of membership; 40
- (b) in the case of a primary co-operative, each member has only one vote;
- (c) to the extent feasible, members provide the capital required by that co-operative; 45
- (d) the return paid on member capital is limited to the maximum percentage fixed in accordance with the constitution of that co-operative;
- (e) any surplus arising from a co-operative’s operations is used—
 - (i) to develop its business;
 - (ii) to provide or improve services to members; 50
 - (iii) to provide for reserves to be set aside in a reserve fund, a part of which must not be divisible amongst the members;
 - (iv) to provide for the payment of interest on member loans or on membership shares;
 - (v) for community welfare or the promotion of co-operative enterprises; or 55
 - (vi) as a distribution amongst its members as a patronage return; and
- (f) it provides education and training to its members and employees in the principles and methods of co-operation and in all fields relevant to the operation of a co-operative.

- (2) Despite subsection 1(a), the constitution of a co-operative may restrict the persons eligible for membership if the restriction—
- (a) reasonably relates to the business of a co-operative set out in its constitution and to the commercial ability of a co-operative to provide services to prospective members; and
 - (b) does not constitute unfair discrimination.
- (3) Despite subsection (1)(b), the constitution of a secondary or tertiary co-operative may provide that the members have more than one vote.

Forms and kinds of co-operatives

4. (1) This Act provides for the registration of the following forms of co-operatives:
- (a) a primary co-operative;
 - (b) a secondary co-operative; and
 - (c) a tertiary co-operative.
- (2) Without limiting the number and variety of different kinds of co-operatives, a co-operative registered in terms of this Act may be, but is not limited to, a—
- (a) housing co-operative;
 - (b) worker co-operative;
 - (c) social co-operative;
 - (d) agricultural co-operative;
 - (e) burial co-operative;
 - (f) financial services co-operative;
 - (g) consumer co-operative;
 - (h) marketing and supply co-operative; and
 - (i) service co-operative.

Application of Act

5. (1) This Act applies to all co-operatives registered in terms of this Act.
- (2) This Act applies to a financial services co-operative that is required to register with the Registrar of Banks in terms of legislation applicable to co-operative banks: Provided that the constitution of such co-operative complies with the provisions of Chapters 1 and 2 of this Act and the co-operative is registered with the Registrar of Banks.
- (3) Schedule 1 to this Act further regulates particular kinds of co-operatives.
- (4) This Act does not apply to a co-operative apex organisation that is not registered as a co-operative, but applies to a tertiary co-operative having the objects of a co-operative apex organisation.

CHAPTER 2

REGISTRATION, CONSTITUTION, POWERS OF CO-OPERATIVE AND REGISTERED OFFICE AND RECORD KEEPING BY CO-OPERATIVE

Part 1

Application to register and name

Application to register co-operative

6. (1) An application to register a co-operative must be made by—
- (a) a minimum of five persons in the case of a primary co-operative;
 - (b) a minimum of two or more primary co-operatives in the case of a secondary co-operative; or
 - (c) a minimum of two or more secondary co-operatives in the case of a tertiary co-operative.
- (2) An application referred to in subsection (1) must be submitted to the registrar in the prescribed form, and must be accompanied by—
- (a) the constitution of the co-operative, signed by the founder members;
 - (b) a list of the founder members;
 - (c) a list of the directors;
 - (d) the prescribed fee or proof of payment thereof.

- (3) Before submitting an application referred to in subsection (1), there must be at least one meeting of interested persons at which—
- (a) a constitution of the proposed co-operative is adopted;
 - (b) an initial plan of operation is presented; and
 - (c) the first directors are elected.

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Registration of co-operative

7. The registrar must register a co-operative and issue a certificate of registration with a registration number, if the registrar is satisfied that—
- (a) the application has been made in accordance with this Act;
 - (b) the constitution complies with this Act and with the co-operative principles in section 3; and
 - (c) the proposed name of that co-operative complies with section 10.

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Effect of registration

8. (1) A co-operative must be incorporated as a legal person with effect from the date on which it is registered, as reflected on its registration certificate.
- (2) A co-operative registered in terms of this Act may qualify for specific support that may be facilitated or provided for to registered co-operatives by the Department.

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Pre-incorporation contract

9. (1) A person who enters into a written contract in the name of, or on behalf of, a co-operative before it is registered is personally bound by the contract, unless that contract expressly provides otherwise.
- (2) A co-operative may, within a month after its registration, ratify the contract referred to in subsection (1) by ordinary resolution at a general meeting.
- (3) If a co-operative ratifies a contract under this section—
- (a) that co-operative is bound by the contract; and
 - (b) a person who originally entered into the contract ceases to be bound by it.
- (4) If a co-operative does not ratify the contract, the person who originally entered into the contract continues to be bound by the contract, unless the contract expressly provides otherwise.

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Name of co-operative

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10. (1) The proposed name of a co-operative must not be—
- (a) the same or so similar to that of an existing co-operative that it may be misleading; or
 - (b) a name that is undesirable, prohibited or calculated to deceive, or otherwise, mislead.
- (2) A co-operative must have the words—
- (a) “co-operative” or “co-op” as part of its name; and
 - (b) the word “limited” or the abbreviation “Ltd” as the last word of its name, unless the constitution of a co-operative does not limit the liability of its members.
- (3) A secondary co-operative must have the words “secondary co-operative” as part of its name and a tertiary co-operative must have the words “tertiary co-operative” as part of its name.
- (4) A co-operative must set out its name in legible characters in all contracts, invoices, negotiable instruments, letters, orders and places of business.
- (5) A secondary co-operative or tertiary co-operative must indicate its status as a secondary co-operative or tertiary co-operative on the documents listed in subsection (4).
- (6) If the name of a secondary or tertiary co-operative indicates a restriction on the business that may be carried on by a co-operative, the constitution of that co-operative may not be amended to remove that restriction unless its name is also amended.

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Directive from registrar to change name

- 11.** (1) The registrar may direct a co-operative to change its name if such name contravenes section 10.
- (2) If a co-operative does not comply with a directive issued in terms of subsection (1) within sixty days of receipt thereof— 5
- (a) the registrar may issue a certificate of amendment revoking the name of the co-operative and assigning a new name; and
 - (b) from the date of the certificate of amendment, the constitution of a co-operative is deemed to be amended to reflect the name assigned to it in the certificate. 10
- (3) On issuing a certificate of amendment in terms of subsection (2), the registrar must publish the change of name in a publication generally available to the public in the area where the majority of the members of the co-operative reside.

Unlawful use of word “co-operative”

- 12.** (1) It is an offence for any entity other than a co-operative registered in terms of this Act to— 15
- (a) hold itself out as carrying on the business of a registered co-operative;
 - (b) use or authorise the use of the words “co-operative”, “co-op”, “co-operative limited”, “co-operative ltd”, or “co-op ltd” as part of its name.

Part 2 20

Constitution and powers of co-operative

Constitution of co-operative

- 13.** (1) A co-operative registered in terms of this Act must adopt a constitution that complies with section 14.
- (2) A co-operative where the members are required to hold shares must adopt a constitution that complies with sections 14 and 15. 25
- (3) Secondary and tertiary co-operatives must adopt a constitution that complies with sections 14 and 16.
- (4) A co-operative may, in addition to the matters listed under section 14(2), adopt any other provision that is not inconsistent with this Act. 30
- (5) The Minister may publish, by notice in the *Gazette*, model constitutions that may be used by co-operatives.

Provisions for all co-operatives

- 14.** (1) The constitution of a co-operative must include—
- (a) the name of the co-operative; 35
 - (b) whether it is a primary co-operative, a secondary co-operative, or a tertiary co-operative;
 - (c) the main objectives of the co-operative;
 - (d) a description of the business of the co-operative, including any restrictions on the business of the co-operative; 40
 - (e) a provision stipulating that each member has one vote in all meetings of the co-operative except in the case of secondary or tertiary co-operatives;
 - (f) the minimum period of notice of general meetings;
 - (g) the place where the registered office of the co-operative is located;
 - (h) the minimum and maximum number of directors; 45
 - (i) the term of office of directors, which may not be more than four years, and whether a director may be re-appointed for a second or further term of office;
 - (j) the powers and restrictions on the directors of the co-operative to manage the business of the co-operative;
 - (k) the requirements for membership of the co-operative, subject to section 3(2); 50
 - (l) the requirements for withdrawal of membership of a co-operative, including any provisions relating to the liability of a member for a specified period after the date of withdrawal, subject to section 23;

- (m) provision for a share of the surplus to be transferred to a reserve fund, the proceeds of which may not be divided amongst the members;
 - (n) provision for the distribution of the assets of the co-operative on its dissolution;
 - (o) the financial year of the co-operative; 5
 - (p) procedures for the application of membership to the co-operative that should be in accordance with co-operative principles;
 - (q) the rights and obligations of members;
 - (r) the withdrawal of membership and the periods for proper notice and repayment of shares; 10
 - (s) the transfer of membership, member loan and membership share;
 - (t) the conditions and processes for the termination of membership;
 - (u) the conditions and processes for the suspension of membership;
 - (v) the structure for decision making whereby members can participate in decision-making processes in a democratic and participatory manner; 15
 - (w) provisions for annual general meetings and special general meetings, including the manner in which such meetings are convened, the necessary periods of notice, the election of a chairperson and provisions for the proposal of resolutions that should ensure democratic decision making;
 - (x) the period of notice for general meetings and must state the conditions and processes to be followed when requesting a general meeting; 20
 - (y) the tabling and adoption of resolutions;
 - (z) the determination of quorums for general meetings and must ensure that the quorum provides for adequate member control and decision making;
 - (aa) voting by show of hands or ballot; 25
 - (bb) the conditions under which a resolution in lieu of a meeting may be held and passed;
 - (cc) the conditions and processes for requesting a general meeting;
 - (dd) the appointment of directors, on condition that only members may be appointed as directors; 30
 - (ee) the conditions for vacation of office by directors and the filling of any vacancies in a manner that ensures democratic accountability to the members;
 - (ff) the conditions and processes for the appointment of the chairperson, vice-chairperson and acting chairperson; and
 - (gg) the conditions under which a board of directors may assign functions to a director or committee or manager. 35
- (2) The constitution of a co-operative may include—
- (a) the further objectives of the co-operative;
 - (b) the amount of business allowed with non-members, subject to the provisions of this Act; 40
 - (c) in the case of a co-operative having members in more than one region, the holding of regional general meetings and a conference of delegates;
 - (d) provision for a member to appoint a proxy to attend and vote at a general meeting in that member's stead, or for postal votes;
 - (e) provision for people who want to provide support to the co-operative without themselves becoming members to be appointed as associate members; 45
 - (f) the establishment of a supervisory committee;
 - (g) the power of the board of directors to delegate to a sub-committee or director, and the limitations on that power;
 - (h) provisions regulating the appointment of a general manager or executive manager by the board of directors; 50
 - (i) provision to make rules consistent with the constitution and this Act concerning the holding of meetings or any other matter of procedure; and
 - (j) provision for the settlement of disputes between members of the co-operative, or between a member of the co-operative and the co-operative itself, by way of arbitration or otherwise. 55

Provisions where members are required to hold shares

- 15.** Where a member is required to hold shares in a co-operative upon application or acceptance as a member, the constitution of a co-operative must provide—
- (a) for the minimum number of membership shares to be issued to each member;
 - (b) for the nominal value of the shares; 5
 - (c) whether the membership shares are to be issued fully paid up or not fully paid up, and the conditions under which shares are to be paid;
 - (d) for the circumstances under which additional shares may be issued to members;
 - (e) for the maximum percentage of the share capital of a co-operative a member 10 may hold, except in the case of a secondary or tertiary co-operative;
 - (f) for the circumstances under which shares issued to a member may be redeemed.

Provisions for secondary and tertiary co-operatives

- 16.** (1) The constitution of a secondary or tertiary co-operative must provide for— 15
- (a) the main objectives of a secondary co-operative which must include the provision of services to the primary co-operatives that are its members, and such services must be specified;
 - (b) the main objectives of a tertiary co-operative which must include the provision of services to the primary or secondary co-operatives that are its 20 members, and such services must be specified;
 - (c) the number of votes a member has in proportion to the number of primary or secondary co-operatives that are its members.
- (2) The constitution of a secondary or tertiary co-operative may provide for—
- (a) the further objectives of a secondary or tertiary co-operative which may 25 include any activity that is not inconsistent with the objectives of any of its members, and which is undertaken for their exclusive benefit;
 - (b) the further objectives of a tertiary co-operative which may include representing the interests of co-operatives within a sector or region, providing assistance for education and training, establishing a guarantee fund to 30 facilitate external financing of its members, and the establishment of an audit fund to assist members to have their operations audited.

Consequences of invalidity

- 17.** The constitution of a co-operative—
- (a) containing a provision which is inconsistent with the provisions of this Act is, 35 despite such provision, valid in so far as the other provisions of the constitution are consistent with this Act;
 - (b) is not invalid by reason only of the fact that it does not provide for a matter which it was supposed to provide for in terms of this Act.

Amendment to constitution 40

- 18.** (1) A co-operative may amend its constitution by a special resolution.
- (2) A notice of general meeting where a proposal to amend the constitution is to be considered must set out the proposed amendment.
- (3) An amendment of a constitution comes into operation— 45
- (a) on the date it is registered by the registrar; or
 - (b) on a date specified in the special resolution.
- (4) The registrar must register an amendment to the constitution, submitted in the prescribed form, if the registrar is satisfied that—
- (a) the amendment complies with this Act and with the co-operative principles set 50 out in section 3; and
 - (b) there has been compliance with the provisions of this section.
- (5) The registrar may refuse to register an amendment if the requirements set out in subsection (4) are not complied with.
- (6) The registrar must advise a co-operative, in writing, of the reasons for refusing to register an amendment. 55
- (7) An amendment to the constitution may not affect—

- (a) an existing cause of action or claim or liability to prosecution in favour of, or against, the co-operative or its directors; or
- (b) any civil, criminal, administrative, investigative or other action or proceedings to which a co-operative or its directors are a party.

Powers of co-operative

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19. (1) A co-operative may do all things necessary to carry out its objectives, subject to limitations imposed by its constitution, this Act and any other law.

(2) If a co-operative performs any act outside its functions, the co-operative and a director of the co-operative who authorised the performance of that act or who performed that act knowing that the co-operative is not empowered to perform that act is guilty of an offence. 10

Part 3

Registered office and record keeping by co-operative

Registered office of co-operative

20. (1) A co-operative must maintain a registered office in the Republic in the place set out in its constitution. 15

(2) A co-operative must, in the prescribed form, notify the registrar of the physical address of its registered office, as well as any electronic address, telephone or telefax numbers.

(3) If there are changes in any of the details contemplated in subsection (2), a co-operative must notify the registrar in the prescribed form within fifteen days of such changes. 20

Record keeping by co-operative

21. (1) A co-operative must keep at its offices the following:

- (a) The constitution of a co-operative and its rules, if any, including any amendments; 25
 - (b) the minutes of general meetings envisaged in section 31, in a minute book;
 - (c) the minutes of meetings of the board of directors envisaged in section 35, in a minute book;
 - (d) a list of its members, setting out— 30
 - (i) the name and address of each member;
 - (ii) the date on which each member became a member;
 - (iii) if applicable, the date on which a person's membership was terminated; and
 - (iv) the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans; 35
 - (e) a register of its directors setting out— 40
 - (i) the name, address and identity number of each director, including former directors;
 - (ii) the date on which such directors became or ceased to be directors; and
 - (iii) the name and address of any other co-operative, company or close corporation where both present and former directors are, or were, directors or members; 40
 - (f) a register of directors' interests in contracts or undertakings, envisaged in section 38; 45
 - (g) adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.
- (2) A co-operative must retain its accounting records—
- (a) for a period of five years after the end of the financial year to which they relate, in the case of a co-operative whose main object involves its members conducting transactions with it; and 50
 - (b) for a period of three years after the end of the financial year to which they relate, for all other co-operatives.

(3) The registrar may issue guidelines to co-operatives regarding the manner in which the records referred to in subsection (1) must be kept, including guidelines allowing a co-operative to keep records in an electronic format.

(4) A co-operative or director who fails to comply with subsection (1) is guilty of an offence.

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Access to information

22. (1) Subject to subsections (2) and (3), members of a co-operative may examine the records referred to in section 21(1) during the normal business hours of the co-operative and may make copies of records, or take extracts from records made, after payment of a fee.

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(2) Despite subsection (1), the board of directors may withhold information relating to any current commercial transaction for a reasonable period of time where they have reason to believe that disclosure may be to the commercial disadvantage of the co-operative.

(3) Where the constitution of a co-operative provides for the establishment of a supervisory board, the supervisory board must determine whether the board of directors is entitled to withhold information in terms of subsection (2).

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CHAPTER 3

MEMBERSHIP OF CO-OPERATIVES

Liability of members

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23. The liability of a member of a co-operative is limited to an amount equal to the nominal value of the shares, for which the member has not paid, that the member holds in the co-operative.

Withdrawal of membership

24. (1) The constitution of a co-operative must include provisions relating to the conditions under which membership may be withdrawn and must include the periods for the notice of withdrawal and the repayment of shares.

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(2) Despite subsection (1), if a co-operative determines that the repayment envisaged in subsection (1) would adversely affect its financial well-being, the co-operative may direct that the repayment be deferred for a period not exceeding two years after the effective date of the notice of withdrawal.

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(3) Unless a co-operative determines otherwise, the withdrawal of a member from the co-operative does not release the member from any debt or obligation to the co-operative or any contract between the member and the co-operative.

Transfer of membership, member loan or membership share

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25. (1) The constitution of a co-operative must include provisions relating to the conditions for the transfer of a member loan or a membership share.

(2) Despite any provisions contained in its constitution, if a co-operative determines that the repayment of the nominal value of a member's shares, all other amounts held to the member's credit including any member loan and any interest accrued on those amounts up to the date of the payment would adversely affect its financial well-being, the co-operative may direct that repayment be deferred for a period not exceeding two years after the date of death of a member of the co-operative.

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Powers of registrar in case of reduced number of members

- 26.** (1) If the membership of a co-operative is reduced to a number less than the number required for registration, and after six months it remains less than that number—
- (a) the co-operative is deemed to be de-registered in terms of this Act;
 - (b) the co-operative must convert into another legal entity, in accordance with the provisions of Chapter 8, or be wound up in accordance with the provisions of Chapter 9; and
 - (c) the members of the co-operative may be held personally liable for any loss or damage which may occur as a result of any subsequent activities of the co-operative.
- (2) In the event of a co-operative converting into another legal entity as contemplated in subsection (1)(b), the registrar must publish the change of status in a publication generally available to the public in the area where the majority of the members of the co-operative live.

CHAPTER 4

GENERAL MEETINGS

Structure for decision making

- 27.** (1) A co-operative's decision-making structure provided for in its constitution must conform with the requirements of this section.
- (2) The highest decision-making structure of a co-operative is a general meeting of members.
- (3) The constitution must include provisions that define the structure for decision making whereby members can participate in decision-making processes in a democratic and participatory manner.
- (4) The board of directors is accountable—
- (a) to the general meeting; and
 - (b) between general meetings, to the supervisory committee if a supervisory committee is provided for in the constitution.

General meetings

- 28.** (1) The constitution must state how annual general meetings and special general meetings are to be convened, including the necessary periods of notice, provide for the election of a chairperson and state provisions for the proposal of resolutions that should ensure democratic decision making.
- (2) Subject to the constitution of a co-operative and this Act, a member of a co-operative may attend a meeting of the co-operative by means of a telephonic, electronic or other communication facility, if this facility permits participants to communicate adequately with each other during the meeting.
- (3) A person participating in a meeting as contemplated in subsection (2) is deemed to be present at the meeting.
- (4) The constitution of a co-operative may permit a member to appoint a proxy to attend and vote at a general meeting on the member's behalf provided that no person may act as a proxy for more than twenty percent of the members entitled to vote at the meeting, or for such lesser percentage of members stipulated in the constitution of the co-operative.

Annual general meetings

- 29.** (1) A co-operative must hold—
- (a) its first annual general meeting within 18 months of its registration;
 - (b) subsequent annual general meetings within six months after the end of the preceding financial year.
- (2) The annual general meeting must—
- (a) appoint an auditor, subject to section 50;
 - (b) approve a report of the board on the affairs of the co-operative for the previous financial year;

- (c) approve the financial statements and auditor's report where applicable for the previous financial year;
- (d) elect directors;
- (e) elect a supervisory committee, if required by the constitution of the co-operative; 5
- (f) decide on the future business of the co-operative;

Representation at meetings

30. A juristic person entitled to vote at a meeting of a co-operative may be represented by any natural person authorised to do so.

Minutes of general meetings

- 31.** (1) The chairperson of the meeting must— 10
 - (a) cause minutes of general meetings to be kept in one of the official languages of the Republic; and
 - (b) keep the minutes at the registered office of the co-operative in accordance with section 21. 15
- (2) Minutes in respect of any general meeting must be—
 - (a) provided to members on request; and
 - (b) presented for approval at the next general meeting.
- (3) The minutes of any general meeting, signed by the chairperson of the meeting, or a resolution adopted in terms of the constitution of the co-operative is, in the absence of evidence to the contrary, proof of the outcome of the vote or the resolution. 20

CHAPTER 5

MANAGEMENT OF CO-OPERATIVES

Board of directors

- 32.** (1) The affairs of a co-operative must be managed by a board of directors consisting of such number of persons as the constitution of the co-operative permits. 25
- (2) The board of directors must exercise the powers and perform the duties of the co-operative subject to this Act and the constitution of the co-operative.
- (3) The board of directors must be elected for such period as may be set out in the constitution of the co-operative, which period may not be more than four years. 30

Persons competent to be directors

- 33.** (1) The constitution of a co-operative must include provisions for the appointment of directors, provided that only members may be appointed as directors.
- (2) The following persons are not competent to be directors: 35
 - (a) a person of unsound mind;
 - (b) an unrehabilitated insolvent;
 - (c) a person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury or any offence involving dishonesty in connection with the formation or management of a co-operative or other corporate entity. 40

Meetings and resolutions of board of directors

- 34.** (1) A meeting of the board of directors of a co-operative must be held at a date, time and place determined by—
 - (a) the board of directors or the chairperson of the board; or
 - (b) by any two of its directors. 45
- (2) Unless the constitution of the co-operative provides otherwise—
 - (a) a majority of all directors constitutes a quorum for any meeting of a board of directors;
 - (b) the decision of the majority of the directors present at a meeting of a board constitutes a resolution of the board; and

- (c) in the event of an equality of votes, the chairperson or the person acting as chairperson, as the case may be, has a casting vote in addition to a deliberative vote.

(3) For the purposes of determining whether there is a quorum in terms of subsection 2(a), directors participating by telephonic, electronic or other communication facility are deemed to be present, unless the constitution of the co-operative provides otherwise. 5

(4) A resolution passed by a board of directors or act performed under the authority of a board of directors is not invalid by reason only of the fact that when the resolution was passed or the act was authorised there was a vacancy on the board or a person not entitled to sit as a director sat as a director, if the resolution was passed or the act was authorised by the requisite majority of the directors entitled to sit as directors who were present at the time. 10

(5) Unless the constitution provides otherwise, a resolution in writing signed by all directors entitled to vote on that resolution at a meeting of the board is valid as if it had been passed at such a meeting. 15

Minutes of meetings of board of directors

35. (1) The board of directors must cause minutes of board meetings to be—

- (a) taken in one of the official languages of the Republic; and
- (b) kept at the registered office of the co-operative in accordance with section 21.

(2) The minutes of a board meeting must indicate which directors were present at the meeting. 20

(3) Minutes in respect of any meeting of a board of directors must be—

- (a) circulated to the directors as soon as possible after the meeting; and
- (b) presented for approval at the next board meeting.

(4) A resolution of a board of directors in the form of a written resolution signed by all directors— 25

- (a) constitutes a decision of the board; and
- (b) must be entered in the minute book referred to in subsection 21(1).

(5) The minutes of any meeting of a board of directors purporting to be signed by the chairperson of the board or a person who acted as such are taken as proof, in any court, of what took place in that meeting. 30

Board of directors may delegate functions to director or committee or manager

36. (1) The constitution of a co-operative must state the conditions under which a board of directors may delegate functions to a director or committee or manager.

(2) A delegation contemplated in subsection (1) does not prevent the performance of the delegated functions by the board of directors. 35

(3) The provisions of section 34 apply, with such changes as the context may require, to a director, committee or manager referred to in subsection (1).

Liability of directors and employees

37. (1) A director, manager, or other employee of a co-operative is not liable to any person for any loss or damage which may occur in or in connection with the performance of their duties, unless the loss or damage is due to— 40

- (a) wilful misconduct, dishonesty, gross negligence or reckless conduct;
- (b) wilfully contravening or refusing to comply with a provision of this Act or the constitution of the co-operative; 45
- (c) conduct intended to defraud any person or for any other fraudulent purpose.

(2) Any director or manager who knowingly acts in any manner contemplated in subsection (1)(a), (b) or (c) is guilty of an offence.

Disclosure of interest

38. (1) A director or manager of a co-operative must, in writing, disclose to the co-operative in accordance with this section— 50

- (a) the nature and extent of any interest that he or she has in a material contract or transaction, or a proposed material contract or transaction, with the co-operative; and
- (b) any material change to such interest. 55

- (2) This section does not require the disclosure of an interest in a contract or transaction that is available to and customarily entered into between the co-operative and its members, if the contract or transaction is on terms generally available to members.
- (3) Any disclosure must be recorded in the minutes of the meetings of directors. 5
- (4) A disclosure in terms of this section, must—
- (a) be made at the first meeting of directors at which the proposed contract or transaction is first considered;
 - (b) if the director or manager did not have an interest in the proposed contract or transaction at the time of the meeting referred to in paragraph (a), be made at the first meeting after the director or manager acquired an interest in it; 10
 - (c) if there is a material change in the interest of the director or manager, be made at the first meeting after the change;
 - (d) if the director or manager acquires an interest in the contract or transaction after it has been concluded, be made at the first meeting after the director or manager acquires that interest; 15
 - (e) if the director or manager had an interest in the contract or transaction before becoming a director or manager, be made at the first meeting after becoming a director or manager; or
 - (f) if the contract or the transaction is one that would in the ordinary course of business not require the approval of directors, be made as soon as the director or manager becomes aware of the contract or transaction. 20
- (5) If the person making the disclosure is not a member of the board of directors, the disclosure must be made in writing for submission to the board.
- (6) The board of directors must, in accordance with section 21, keep a register of directors' and managers' interests in contracts or undertakings containing full particulars of every disclosure of interest made in terms of this section. 25

Acceptance of commission, remuneration or reward prohibited in certain circumstances

- 39.** (1) A director or manager of a co-operative may not accept any commission, remuneration or reward from any person for, or in connection with, any transaction to which the co-operative is a party unless such commission, remuneration or reward is paid or given in the course of the usual business or profession of the director or employee and the director or employee has disclosed his or her interest to the co-operative. 30 35
- (2) A director or employee who contravenes a provision of subsection (1) is guilty of an offence.

Returns relating to directors

- 40.** (1) A co-operative must, in writing, notify the registrar—
- (a) of the full names, address and identity number of each person appointed as a director, within 30 days of such appointment; 40
 - (b) of any change of address of a director, within 30 days of knowledge of such change;
 - (c) after any director has vacated office, within 30 days of such vacation.
- (2) A director must, in writing, inform the co-operative of any change of address, within 30 days of such change. 45
- (3) A co-operative that fails to comply with subsection (1) or a director who fails to comply with subsection (2) is guilty of an offence.

CHAPTER 6

CAPITAL STRUCTURE

Capital of co-operative

- 41.** The capital contributed by members may comprise any of the following:
- (a) Entrance fees; 5
 - (b) membership fees or subscriptions;
 - (c) the consideration for membership shares or additional shares in a co-operative;
 - (d) member loans; and
 - (e) funds of member. 10

Membership shares

- 42.** (1) The constitution of a co-operative may provide for membership shares to be issued to members.
- (2) Each member must at all times hold the minimum number of membership shares prescribed by the constitution. 15
- (3) The constitution may permit additional shares to be issued to members.
- (4) All shares issued must be of the same class and ranking.
- (5) Interest on membership shares is only payable on shares, or that portion of shares, that are paid up.
- (6) A transfer of membership shares is valid only if it complies with section 25 and any restrictions set out in the constitution. 20

Issue of certificates in respect of membership shares or member loans

- 43.** (1) Unless the constitution of a co-operative provides otherwise, a member is entitled to a certificate in respect of—
- (a) membership shares issued to that member; and 25
 - (b) member loans made by that member.
- (2) The face of each certificate issued in terms of subsection (1) must state—
- (a) the name of the co-operative;
 - (b) that the co-operative is subject to this Act;
 - (c) the name of the person to whom it is issued; 30
 - (d) that the certificate represents membership shares in, or member loans to, the co-operative and the number of the membership shares or the amount of the member loans.
- (3) If the constitution of a co-operative does not require the issue of certificates, the co-operative must, on the request of a member, issue a statement of— 35
- (a) the number of membership shares held by the member; and
 - (b) the amount of any member loan made by the member.

Funds of members

- 44.** (1) The constitution of a co-operative may provide for the establishment of one or more funds of members in which the member of a co-operative may be credited with— 40
- (a) contributions made by the member to that fund;
 - (b) any amount set aside for future payment to members including—
 - (i) interest on an amount paid upon the member's shares;
 - (ii) any patronage return allocated to the member;
 - (iii) any amount paid to the member after reducing share capital; 45
 - (c) any other money due to the member, the payment of which is deferred.
- (2) The money standing to the credit of a member in a fund of members—
- (a) may be applied for any purpose permitted in terms of the constitution of a co-operative except for writing off of losses;
 - (b) must be paid to the member in the manner and at the time provided for in the constitution; 50
 - (c) may bear interest at a rate fixed in the constitution;
 - (d) may, on the due date, be set off against a debt owed by the member to the co-operative.

(3) Actions of a co-operative in terms of this section are not deemed to be activities prohibited by the Banks Act, 1990 (Act No. 94 of 1990), by reason only of the fact that the co-operative administers a fund of members.

Patronage proportion

45. (1) A co-operative may allocate and credit or pay to its members that portion of the surplus which is not transferred to an indivisible reserve fund in terms of the constitution, and such portion is allocated in proportion to the business done by the members with the co-operative in that financial year. 5

(2) For the purpose of subsection (1), the board of directors must, when determining the amount of business done by each member with a co-operative in a financial year, take into account— 10

- (a) the quantity, quality, kind and value of things bought, sold, handled, marketed or dealt with by the co-operative;
- (b) the services rendered—
 - (i) by the co-operative on behalf of or to the member; and 15
 - (ii) by the member on behalf of or to the co-operative.

(3) A co-operative may provide in its constitution that the whole, or a part, of the patronage proportion of a member, determined by the board in respect of a financial year, must be applied to purchase membership shares in a co-operative for the member.

(4) If the provisions of subsection (3) apply, the constitution must further provide for— 20

- (a) giving notice to each member of the number of shares purchased or to be purchased for the member;
- (b) the manner of issuing or transferring of shares; and
- (c) if applicable, issuing and forwarding of share certificates to members. 25

Prohibited and permitted loans and security

46. (1) A co-operative may give financial assistance by means of a loan or the provision of security to—

- (a) any person in the ordinary course of business if the lending of money is part of the ordinary business of the co-operative; 30
- (b) any person on account of expenditures incurred or to be incurred on behalf of the co-operative;
- (c) employees of the co-operative or of any of its members—
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation; or 35
 - (ii) in accordance with a plan for shares of the co-operative or any of its members to be held by a trustee;
- (d) members, if the financial assistance is available to all members on substantially the same terms.

(2) A co-operative may not give financial assistance in terms of subsection (1) whether directly or indirectly if there are reasonable grounds to believe that— 40

- (a) the co-operative, after giving the financial assistance, will be unable to pay its liabilities as they become due; or
- (b) the realisable value of the co-operative's assets, after giving the financial assistance, will be less than the aggregate of its liabilities, share capital and reserves. 45

(3) In determining the realisable value of the co-operative's assets contemplated in subsection (2)(b), the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee must be excluded.

CHAPTER 7

AUDIT OF CO-OPERATIVES

Audit

- 47.** (1) An audit of the affairs of a co-operative must be conducted annually in respect of each financial year, in order to— 5
- (a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;
 - (b) verify that the co-operative has maintained adequate records in accordance with the requirements of its constitution and this Act;
 - (c) report generally as to whether the assets and facilities of a co-operative are being properly managed and the operations of a co-operative are being conducted in accordance with co-operative principles; and 10
 - (d) report on any other matter the auditors are required to report on in terms of a co-operative's constitution.
- (2) A co-operative that is not able to afford the costs of an annual audit may apply in writing to the registrar for an exemption in terms of section 55. 15

Approval of auditor's report and financial statements

- 48.** (1) A co-operative may circulate draft financial statements to its members prior to an annual general meeting.
- (2) The annual general meeting must consider approval of the auditor's report and financial statements. 20
- (3) The chairperson of the board, or the person who acted as such in a meeting where the auditor's report and financial statements were approved, must sign the auditor's report and financial statements to confirm their approval.
- (4) A co-operative may not issue, publish or circulate copies of the financial statements unless the statements are— 25
- (a) approved by the annual general meeting and signed in accordance with subsection (2); and
 - (b) accompanied by a report of the auditor.
- (5) The auditor's report and financial statements must be made available for inspection at the registered office of the co-operative for at least twenty-one days after approval of such report and financial statements. 30
- (6) The board of directors must—
- (a) submit a copy of the financial statements and auditors' report to the registrar within fifteen days of its approval; or 35
 - (b) if for any reason the annual general meeting fails to approve the financial statements and auditor's report, notify the registrar within 15 days of the reasons for such failure and of the action the co-operative proposes to take in order to address the situation.

Auditor disqualified from acting 40

- 49.** A person is disqualified from being an auditor of a co-operative—
- (a) if that person has a personal or material interest in a co-operative or in any of its affiliates or in any of its subsidiaries or in the business of any of its directors or senior employees ; or
 - (b) in any other circumstances that are considered to constitute a conflict of interest in terms of accounting practice. 45

Appointment of auditor

- 50.** (1) The members must appoint an auditor—
- (a) at a meeting of interested persons referred to in section 6(3), to hold office until the first annual general meeting; 50
 - (b) at each annual general meeting, to hold office until the close of the next annual general meeting.
- (2) Despite subsection (1), if an auditor is not appointed at any meeting, the incumbent auditor continues in office until a successor is appointed.

(3) If a co-operative fails to appoint an auditor in accordance with subsections (1) and (2), the registrar may approve the person nominated by the board of the co-operative to audit its books for one financial year.

(4) The fees payable to the auditor appointed in terms of subsection (3) must be approved by the registrar. 5

(5) An auditor of a co-operative ceases to hold office when the auditor dies, resigns or is removed in terms of section 51 or is struck off from the roll of auditors in terms of the laws of the Republic.

(6) A resignation of an auditor becomes effective on the date on which a written resignation is received by a co-operative, or on the date specified in the resignation, whichever is later. 10

Removal of auditor

51. (1) The members may by ordinary resolution remove an auditor from office.

(2) A vacancy created by the removal of an auditor must—

- (a) be filled at the meeting at which the auditor is removed; or 15
- (b) if not filled at the meeting, be filled within 30 days of the creation of a vacancy, by the board of directors, subject to the registrar's approval.

(3) An auditor appointed in terms of subsection (2) holds office for the unexpired term of his or her predecessor.

Attendance of meeting by auditor 20

52. (1) The auditor of a co-operative is entitled—

- (a) to be given notice of any general meeting at which a report of the auditor is to be discussed;
- (b) to attend such a meeting, at the expense of the co-operative;
- (c) to address the meeting on matters relating to the auditor's duties. 25

(2) A director or member of a co-operative may require the auditor or former auditor to attend a general meeting at the expense of the co-operative and answer questions relating to the auditor's duties: Provided that the auditor or former auditor of the co-operative is given written notice of 10 days of such meeting.

(3) A director or member who sends a notice referred to in subsection (2) must send a copy of the notice to the co-operative at the same time. 30

Right to information

53. (1) At the request of the auditor the members, directors, employees, agents or mandataries of a co-operative must provide any information, explanations, and access to any documents of the co-operative or any of its subsidiaries that are, in the opinion of the auditor, necessary for the purposes of the audit. 35

(2) At the request of the auditor the directors must obtain from any present or former directors, employees, agents or mandataries of the co-operative the information and explanations that such persons are reasonably able to provide and that are, in the auditor's opinion, necessary for the purposes of the audit. 40

Notice of error

54. (1) A director or employee who becomes aware of any error or misstatement in a financial statement that the auditor or former auditor has reported on, must notify the auditor without delay.

(2) An auditor or former auditor of a co-operative who is notified of, or in any other manner becomes aware of, a material error or misstatement in a financial statement on which they have reported, must inform the board of directors accordingly. 45

(3) When the auditor or former auditor informs the board of directors of an error or misstatement in a financial statement in terms of subsection (2), the directors must—

- (a) prepare and issue revised financial statements; or 50
- (b) inform the members and the registrar of the error or misstatement.

Exemptions

- 55.** (1) Upon application in terms of section 47(2) and subject to the requirements of subsections (2) and (3), the registrar may exempt a co-operative from full compliance with the requirements of this Chapter if satisfied that—
- (a) the costs of an annual audit would materially affect the financial sustainability of the co-operative; 5
 - (b) the co-operative has maintained adequate financial records, and is able to prepare annual financial statements;
 - (c) having regard to the size and kind of co-operative, the interests of members are adequately protected. 10
- (2) When exempting a co-operative in terms of subsection (1), the registrar must either require such co-operative to be audited—
- (a) at a period of longer than one year but not exceeding three years; or
 - (b) by a suitably qualified person other than an auditor.
- (3) The board of directors of a co-operative that is exempted in terms of subsection (1) is nevertheless required to prepare annual financial statements for submission to an annual general meeting, and to submit a copy to the registrar within fifteen days of the annual general meeting approving such financial statements. 15
- (4) In the event that an annual general meeting fails to approve the financial statements referred to in subsection (3), the board of directors is required to comply with the provisions of section 48(6)(b) in the same manner as would apply to audited financial statements. 20
- (5) The provisions of section 49 apply to any person appointed in terms of subsection (2).
- (6) The registrar may stipulate conditions to an exemption granted in terms of this section, if the registrar considers that it will serve the purpose of this Act to do so. 25

CHAPTER 8

AMALGAMATION, DIVISION, CONVERSION AND TRANSFER

Amalgamation

- 56.** (1) Two or more co-operatives may agree in writing to amalgamate, on condition that the co-operative to be constituted by the amalgamation will comply with the requirements for a co-operative to be registered in terms of this Act. 30
- (2) An agreement to amalgamate referred to in subsection (1) must set out the terms of the amalgamation, and the means by which such amalgamation will be effected, including the following— 35
- (a) the constitution of the amalgamated co-operative;
 - (b) the manner in which the shares of each amalgamating co-operative are to be converted into membership shares of the amalgamated co-operative or, if applicable, other securities of the amalgamated co-operative;
 - (c) if any membership share of an amalgamating co-operative is not to be converted into shares or other securities of the amalgamated co-operative, the amount of money that the holders of those shares are to receive in addition to or instead of shares of the amalgamated co-operative; 40
 - (d) the continuation of the members' respective interests in a fund of members of the amalgamated co-operative; 45
 - (e) the application of any surplus or loss which may have resulted from the operations of the amalgamating co-operatives; and
 - (f) the name and address of each proposed director of the amalgamated co-operative.

Approval of amalgamation 50

- 57.** (1) The board of directors of each amalgamating co-operative must submit the proposed agreement to amalgamate to a general meeting of each amalgamating co-operative.
- (2) A copy or summary of the proposed amalgamation agreement must accompany the notice of such meeting. 55

(3) An amalgamation agreement must be approved by special resolutions of each amalgamating co-operative.

(4) After approval of an amalgamation agreement, the constitution of the amalgamated co-operative must be submitted to the registrar for approval, together with a notice of its registered office, a notice of the directors of the amalgamated co-operative and the prescribed fee. 5

(5) A declaration by the directors of each amalgamating co-operative must be attached to the constitution submitted in terms of subsection (4), establishing that the relevant provisions of their constitutions have been complied with in approving the amalgamation, and that there are reasonable grounds to believe that— 10

(a) the amalgamated co-operative will be able to pay its liabilities as they become due;

(b) the realisable value of the amalgamated co-operative's assets will not be less than the total of its liabilities, share capital and reserves;

(c) the interests of creditors will be protected in compliance with section 64. 15

(6) The registrar must issue a certificate of registration in the name of the amalgamated co-operative if satisfied that—

(a) the amalgamating co-operatives have complied with all the relevant provisions of their constitutions and this Act;

(b) the name and constitution of the amalgamated co-operative comply with this Act. 20

(7) For the purposes of subsection (6), the registrar may rely on the constitution and the declarations contemplated in subsection (5).

Effect of registration of amalgamated co-operative

58. As from the date stated on the certificate of registration— 25

(a) the amalgamation of the amalgamating co-operatives and their continuance as one co-operative become effective,

(b) the registration of the amalgamating co-operatives is cancelled;

(c) members of the amalgamating co-operatives become members of the amalgamated co-operative; 30

(d) the assets, rights, liabilities and obligations of the amalgamating co-operatives become the assets, rights, liabilities and obligations of the amalgamated co-operative.

Division of co-operatives

59. (1) A co-operative may decide to divide into two or more co-operatives, on condition that each co-operative will comply with the requirements for a co-operative to be registered in terms of this Act. 35

(2) An agreement to divide a co-operative referred to in subsection (1) must set out the terms of the division and the means by which it will be effected including the following:

(a) The provisions of the constitutions of each of the co-operatives to be constituted by the proposed division; 40

(b) the members of the co-operative will become members of the co-operatives to be constituted by the division;

(c) the manner in which the assets, rights, liabilities and obligations of the co-operative are to be divided between the co-operatives to be constituted by the division; 45

(d) the business of each of the co-operatives constituted by the division and the area or sector in which they are to operate;

(e) the name and address of the proposed directors of the co-operatives to be constituted. 50

Approval of division

60. (1) The board of directors must submit a proposed agreement to divide a co-operative to a general meeting.

(2) A copy or summary of the proposed agreement referred to in subsection (1) must accompany the notice of such meeting. 55

(3) An agreement to divide a co-operative must be adopted by a special resolution.

- (4) After the members of the co-operative have approved the division, the constitutions of the co-operatives to be constituted must be submitted to the registrar for approval together with a notice of their registered offices and a notice of the directors of the co-operatives in question.
- (5) The following must also be submitted to the registrar: 5
- (a) A declaration by the directors of the co-operative being divided, establishing that the relevant provisions of its constitution have been complied with in approving the division;
 - (b) a declaration by the directors of each co-operative constituted by the division, establishing that there are reasonable grounds to believe that— 10
 - (i) the co-operatives to be constituted will be able to pay their liabilities as they become due;
 - (ii) the realisable value of the assets of the co-operatives to be constituted will not be less than the total liabilities, share capital and reserves;
 - (iii) the interests of creditors will be protected in compliance with section 64. 15
- (6) The registrar must issue a certificate of registration in the name of the co-operatives to be constituted if satisfied that—
- (a) the co-operative has complied with all the relevant provisions of its constitution and this Act in approving the division;
 - (b) the constitutions of the co-operatives to be constituted comply with this Act. 20

Effect of registration of co-operatives constituted in terms of division

- 61.** As from the date of the last registration of a co-operative constituted in terms of a division—
- (a) the registration of the co-operative being divided is cancelled;
 - (b) the members of the co-operative being divided become the members of the co-operatives constituted in terms of the division, in accordance with the agreement to divide; 25
 - (c) the assets, rights, liabilities and obligations of the co-operative being divided become the assets, rights, liabilities and obligations of the co-operatives constituted by the division in accordance with the agreement to divide. 30

Conversion of co-operative to any other form of juristic person

- 62.** (1) A co-operative may apply to—
- (a) convert into any other form of corporate or unincorporated body in accordance with the applicable legislation; and
 - (b) cancel its registration as a co-operative. 35
- (2) An application in terms of subsection (1) may only be made if the board of directors has submitted a proposal to a general meeting, detailing the reasons for and the terms of the proposed conversion.
- (3) A copy of the proposal referred to in subsection (2) must be attached to the notice of the general meeting, and must be adopted by special resolution. 40
- (4) A declaration by the board of directors of the co-operative must be attached to an application in terms of subsection (1), establishing—
- (a) compliance with the relevant provisions of this Act and the constitution of the co-operative;
 - (b) that the interests of creditors will be protected in accordance with section 64. 45
- (5) The registrar may require the board of directors to submit such proof as the registrar may require in respect of any matter contained in a declaration referred to in subsection (4).
- (6) If the registrar is satisfied that there has been compliance with the provisions of this Act, the registrar must— 50
- (a) cancel the registration of the co-operative; and
 - (b) remove its name from the register of co-operatives.
- (7) As from the date on which the registration of a co-operative is cancelled—
- (a) the co-operative ceases to exist;
 - (b) all assets, rights, liabilities and obligations of the co-operative vest in the corporate body or unincorporated association of persons into which the co-operative has been converted, if it is by virtue of its constitution capable of owning property separate from its members; 55

- (c) if the co-operative is converted into a company, all members of the co-operative become shareholders of that company.

Transfers

63. (1) A co-operative may apply to transfer its assets, rights, liabilities and obligations by mutual agreement to any other co-operative. 5

(2) If a transfer in terms of subsection (1) is contemplated, a copy or summary of the proposed agreement to transfer, and the reasons for the transfer, must be sent to the members of the co-operatives in question together with the notice of the general meeting at which the transfer is to be considered.

(3) A transfer in terms of subsection (1) must be approved by a special resolution of each of the co-operatives in question. 10

(4) A declaration by the board of directors of each co-operative must be attached to an application in terms of subsection (1), establishing that—

- (a) there has been compliance with the relevant provisions of this Act and the constitution of each of the co-operatives; 15
- (b) the interests of creditors will be protected in accordance with section 64.

(5) The registrar may require the board of directors to submit such proof as the registrar may require in respect of any matter contained in a declaration referred to in subsection (4).

(6) The registrar must approve the application if satisfied that there has been compliance with the relevant provisions of this Act and the constitutions of the co-operatives in question. 20

Protection of creditors

64. The registrar may not register any amalgamation, division, conversion or transfer in terms of this Chapter unless the registrar is satisfied that— 25

- (a) written notice of at least three months of the proposal has been given to each known creditor who has a claim exceeding one thousand rand or such other amount as the Minister may from time to time prescribe;
- (b) any creditors who have demanded payment of any amount due to them have been paid in full or will be paid before the amalgamation, division, conversion or transfer is effected; 30
- (c) no creditor will be prejudiced by the amalgamation, division, conversion or transfer.

Registration of property upon amalgamation, division, conversion or transfer

65. (1) Any property or right which vests in a co-operative or a corporate body by virtue of any provision of this Chapter must be transferred to the co-operative or corporate body, as the case may be, without payment of transfer duty, stamp duty or any other fee or charge. 35

(2) On submission of a certificate of amalgamation, division, conversion or transfer, as the case may be, the registrar of deeds must endorse and make entries in the relevant register, title deed or other document in his or her office or laid before him or her, to register the property or right in the name of the co-operative or corporate body concerned. 40

CHAPTER 9

WINDING-UP OR DE-REGISTRATION OF CO-OPERATIVES 45

Modes of winding-up

66. (1) A co-operative may be wound up voluntarily by a special resolution of at least 75 per cent of its members.

(2) A co-operative must be wound up, if ordered to do so by—

- (a) a court, in terms of section 67; or 50
- (b) the Minister, in terms of section 68.

Winding-up by order of court

- 67.** (1) A court may, on application by any interested person, order that a co-operative be wound up, if—
- (a) the co-operative is unable to pay its debts;
 - (b) there is no reasonable probability that it will be able to pay its debts or become a viable co-operative; and 5
 - (c) it appears just and equitable to do so.
- (2) The court considering an application in terms of subsection (1) may—
- (a) adjourn the hearing thereof conditionally or unconditionally; or
 - (b) prior to granting or refusing the application, make any provisional or other order it may deem fit. 10

Winding-up or de-registration by order of Minister

- 68.** (1) The Minister may, on the recommendation of the registrar, order that a co-operative be wound up or de-registered if the Minister has reason to believe that the co-operative— 15
- (a) obtained registration through fraud;
 - (b) was formed for a particular period or until the occurrence of a particular event and that period has expired or that event has occurred;
 - (c) has not transacted business during a continuous period of two years;
 - (d) is not operating in accordance with its constitution or in accordance with this Act. 20
- (2) Before making an order in terms of subsection (1), the Minister must give the relevant co-operative a right to be heard.

Admission and proving of claims against co-operative being wound up

- 69.** (1) Any person who has a claim, other than a claim against a fund of members, against a co-operative that is being wound up must lodge an affidavit with the liquidator— 25
- (a) specifying the amount of the claim together with any supporting documents;
 - (b) containing any prescribed particulars relating to the claim.
- (2) A claim referred to subsection (1) must be lodged— 30
- (a) within 90 days of the publication of the notice of appointment of the liquidator; and
 - (b) with the consent of the registrar, within a further period of 30 days.
- (3) The liquidator may— 35
- (a) admit or refuse the liability of a co-operative for the amount of a claim referred to in subsection (1); or
 - (b) admit the liability of a co-operative for any portion of such amount.
- (4) (a) Any person aggrieved by a decision of a liquidator under subsection (3) may, within 30 days after being notified of that decision, appeal to the registrar against such decision. 40
- (b) The registrar may, after consideration of the grounds of the appeal and the liquidator's reasons for his or her decision, confirm the decision or set aside the decision and order the liquidator to admit the claim or to admit the claim to the extent determined by the registrar.
- (5) A member who does not want his or her claim against a fund of members to proceed must inform the liquidator in writing. 45
- (6) The provisions of this section do not prevent a creditor from proving a claim in any court.

Distribution account

- 70.** (1) A distribution account must provide for any residue remaining after the payment of any claims that are secured in law or that are proved according to the provisions of this section. 50
- (2) The residue referred to in subsection (1) must first be applied in paying back the paid-up share capital of the co-operative to its members.

- (3) If the residue is less than the paid-up share capital, the amount to be paid to a member out of the residue must bear the same ratio to the amount of the residue as the paid-up value of the shares of members bear to the paid-up share capital.
- (4) If the residue exceeds the paid-up share capital, the balance remaining after the paid-up share capital has been paid must, subject to subsection (7), be allocated to the members of the co-operative— 5
- (a) in accordance with the patronage proportion, in the case of a co-operative whose main object involves its members conducting transactions with it;
 - (b) in accordance with the constitution of the co-operative, in the case of any other co-operative. 10
- (5) The patronage proportion referred to in subsection (4)(a) must be determined with reference to the shorter of—
- (a) the period specified in the constitution of the co-operative, which must be at least five years; or
 - (b) the period that the co-operative has existed. 15
- (6) For the purposes of subsections (4) and (5)—
- (a) the value of the transactions conducted by a former member of a co-operative during the period referred to in subsection (5) may be added to the value of the transactions of a member who is entitled to an allocation under subsection (4) if— 20
 - (i) the former member or the executor or representative of a deceased member has consented in writing to that effect to the co-operative within 90 days after the former member ceased to be a member of the co-operative; and
 - (ii) the constitution of the co-operative so provides; 25
 - (b) a co-operative registered in consequence of a division of a co-operative in terms of this Act is deemed to have existed from the date of registration of the co-operative that was divided;
 - (c) a co-operative by virtue of an amalgamation of two or more co-operatives in terms of this Act is deemed to have existed from the date of registration of the last amalgamating co-operative; 30
 - (d) the value of the transactions conducted by a member through any co-operative contemplated in subparagraphs (b) and (c) during the appropriate period must be taken into account in determining a member's allocation.
- (7) If the constitution of a co-operative provides that an amount must be paid to any particular person or for any particular purpose in the event of the co-operative being wound up, the balance referred to in subsection (4) must first be applied for the payment of such amount. 35

Contribution account

- 71.** (1) A contribution account must provide for the recovery of contributions from persons liable for the payment thereof. 40
- (2) A contribution account must, in respect of each contributory, indicate—
- (a) the ground on which he or she is liable for the payment of contributions;
 - (b) the amount for which he or she is liable; and
 - (c) the contribution to be paid by him or her in terms of the contribution account and, in the case of a second or later contribution account, the contribution recovered from him or her in terms of a previous contribution account. 45

CHAPTER 10

JUDICIAL MANAGEMENT

Circumstances in which co-operatives may be placed under judicial management 50

- 72.** (1) A court may grant a judicial management order in respect of a co-operative—
- (a) when that co-operative by reason of mismanagement or for any other cause is unable to pay its debts or is probably unable to meet its obligations;
 - (b) when that co-operative by reason of mismanagement or for any other cause has not become or is prevented from becoming a viable co-operative; 55

- (c) if there is a reasonable probability that, if it is placed under judicial management, it will be able to pay its debts or to meet its obligations and become a viable co-operative; and
 - (d) if it appears just and equitable to do so.
- (2) An application to court for a judicial management order in respect of a co-operative may be made—
- (a) by the co-operative voluntarily after a special resolution to that effect;
 - (b) by any interested person; or
 - (c) by the Minister on the recommendation of the registrar.
- (3) When an application for the winding-up of a co-operative is made to a court and it appears to the court that if the co-operative is placed under judicial management the grounds for its winding-up may be removed and it will become a viable co-operative, and that the granting of a judicial management order would be just and equitable, the court may grant such an order in respect of that co-operative.

CHAPTER 11

15

ADMINISTRATION OF ACT

Registrar of Co-operatives

- 73.** (1) The Minister—
- (a) must appoint an officer in the public service as the Registrar of Co-operatives, with the authority to exercise the powers and perform the functions conferred on the registrar by or in terms of this Act;
 - (b) may appoint as many persons as the Minister deems necessary as deputy registrars of co-operatives, to assist the registrar in the performance of his or her functions and to exercise such powers as may be delegated to the deputy registrar concerned; and
 - (c) may from time to time designate such other officers in the Department as may be necessary to assist the registrar.
- (2) The registrar may, from time to time, delegate any power conferred on him or her by or under this Act to any officer in the public service.
- (3) A delegation under subsection (2) does not prevent the exercise of the delegated power by the registrar.

Seal and official stamp of registrar

- 74.** (1) The Minister must determine a seal of office for the registrar, which must be placed on the registration certificate of co-operatives and in so far as it may be required in terms of any provision of this Act or otherwise as prescribed, on any other document issued by the registrar in terms of this Act.
- (2) The placing of the seal of office of the registrar will be judicially noticed in evidence.

Register of co-operatives to be kept by registrar

- 75.** (1) The registrar must keep a register of co-operatives in the prescribed manner, in which particulars of all registered co-operatives are entered.
- (2) The register of co-operatives or any extract or copy thereof signed by the registrar is, on the face of it, proof of the particulars contained in the register.
- (3) If the registrar has reason to believe that either of the circumstances set out in section 68(1)(b) and (c) prevail, the registrar may send such co-operative a written notice requiring it to provide a written statement, signed by at least two of its directors, indicating that the co-operative is still operational.
- (4) If the statement contemplated in subsection (3) is not received within 30 days of receipt of such notice, the registrar may remove such co-operative from the register.
- (5) The registrar must publish the name of any co-operative that is deemed to be de-registered by virtue of section 26(1)(a), or that is removed from the register in terms of subsection (4), in a publication generally available to the public in the area where the majority of the members of the co-operative live.

Submission to registrar

76. Any documentation or information that a co-operative is required to submit to the registrar must be submitted in such form and manner as may from time to time be prescribed.

Inspection of documents 5

77. (1) A person may, in writing, upon payment of a prescribed fee, apply to the registrar to examine any document that a co-operative has sent to the registrar in terms of this Act, except a report relating to transactions between a co-operative and its members, and to make copies of, or take extracts from such document.

(2) The registrar must, on receipt of the application referred to in subsection (1), provide such person with copies of the requested documents, except a report relating to transactions between a co-operative and its members. 10

Form of records kept may be prescribed

78. The registrar must keep records in such form, system or device as may from time to time be prescribed. 15

Investigation by registrar

79. (1) The registrar may order an investigation into or inspection of the business of a co-operative if the registrar has reason to believe that the co-operative is not conducting its affairs in accordance with co-operative principles or is contravening a provision of this Act. 20

(2) The registrar may make any recommendation he or she considers appropriate following an investigation or inspection in terms of subsection (1), including a recommendation to—

- (a) the co-operative;
- (b) the Minister in terms of section 68; and 25
- (c) the relevant prosecuting authority.

CHAPTER 12**CO-OPERATIVES ADVISORY BOARD****Establishment of Co-operatives Advisory Board**

80. The Co-operatives Advisory Board is hereby established. 30

Functions of Advisory Board

81. (1) The functions of the Advisory Board are to advise the Minister generally, and to make recommendations, with regard to—

- (a) policy for the development of co-operatives in the Republic;
- (b) the application of any of the provisions of this Act or any other law on matters affecting co-operatives; 35
- (c) the publication of any regulations in terms of this Act that may be necessary;
- (d) the provision of support programmes targeting co-operatives that create employment, benefit disadvantaged groups or lead to greater participation in the economy by women and black people; 40
- (e) the establishment of guidelines for audits of co-operatives;
- (f) any matter referred to the Advisory Board by a co-operative, proposed co-operative or member of a co-operative that relates to promoting the development of co-operatives; and
- (g) at the request of the Minister, any decision the Minister is required to take in terms of this Act. 45

(2) Subject to the laws governing the public service, the Minister may provide the Advisory Board with the office space and the support that the Minister considers necessary for the performance of its functions.

(3) The services of the Advisory Board will be rendered on a voluntary basis through an ad hoc structure. 50

(4) The co-operative sector will be represented in the Small Business Advisory Council and the Black Economic Empowerment Advisory Council.

Members of Advisory Board

82. (1) The Minister must appoint as members of the Advisory Board at least five but no more than 10 persons capable of representing the interests of co-operatives in the Republic. 5

(2) When appointing members in terms of subsection (1), the Minister must have regard to the need for the Advisory Board—

- (a) to have appropriate expertise;
- (b) to represent different relevant constituencies including trade unions, business, co-operative organisations and academics. 10

(3) The Minister may nominate two additional members, one from the National Empowerment Fund and one from the Enterprise Development Agency, to serve on the Advisory Board and, advise the Minister on broad financial and non-financial support needs for the co-operative sector. 15

(4) The Minister must designate one of the members of the Advisory Board as chairperson.

Term of office and conditions of service of members of Advisory Board

83. (1) The Minister must determine—

- (a) the period of existence of the ad hoc structure referred to in section 81(3) when fully represented in the other advisory council bodies; 20
- (b) the term of office of members of the Advisory Board, which may not be more than three years;
- (c) any other conditions of appointment not provided for in this section.

(2) A member of the Advisory Board whose period of office has expired is eligible for reappointment. 25

(3) Members of the Advisory Board may resign in writing.

(4) Members of the Advisory Board will not be remunerated for their services, but may be reimbursed for expenses incurred by them in carrying out their duties, as determined by the Minister, with the concurrence of the Minister of Finance. 30

(5) The Minister may remove a member of the Advisory Board from office for—

- (a) serious misconduct;
- (b) permanent incapacity; or
- (c) engaging in any activity that may undermine the integrity of the Advisory Board. 35

Meetings of Advisory Board

84. (1) The Advisory Board may make rules in relation to the holding of and the procedure at meetings of the Advisory Board and those rules are subject to the approval of the Minister.

(2) Meetings of the Advisory Board must be held at such time and place as may be determined by the chairperson of the Advisory Board in accordance with its rules. 40

Public hearings

85. The Advisory Board may hold public hearings at which co-operatives or interested parties may make oral representations on any matter it is considering in terms of this Chapter. 45

CHAPTER 13

MISCELLANEOUS PROVISIONS

Offences

86. (1) Subject to the provisions of the Promotion of Access to Information Act, 2000, a person commits an offence by disclosing the information that he or she obtained in the performance of any function contemplated in this Act unless— 50

- (a) the disclosure is necessary for the administration of this Act;

- (b) the disclosure is necessary for the purposes of the administration of justice;
- (c) the registrar or any other person is entitled to the information.

(2) Any person who knowingly makes or assists in making a report, return, notice or other document to be sent to the registrar or any other person, as required by this Act, that contains an untrue statement of a material fact or a material omission is guilty of an offence. 5

(3) Any person convicted of an offence under this Act is liable to imprisonment for a period not exceeding 24 months or to a fine or to both imprisonment and a fine.

Appeal to Minister

87. (1) A person may appeal to the Minister on any decision of the registrar. 10

(2) An appeal in terms of this section must be delivered to the Minister within 30 days of receipt of the registrar's decision.

Exclusion

88. The provisions of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), do not apply to co-operatives in respect of their activities in so far as they relate to a scheme or arrangement in terms of the constitution of the co-operative under which the amount of the benefits afforded by such scheme or arrangement is not guaranteed and the liability to the amount standing to the credit of a fund is specially maintained in respect of such claim. 15

Regulations 20

89. (1) The Minister may make regulations relating to—

- (a) the prescription of fees or the determination of fees that may be charged in respect of the filing, verification or copying of a document in terms of this Act, or in respect of any services rendered by the registrar;
- (b) the payment of any prescribed fees, including the time when and the manner in which the fees are to be paid, the additional fees that may be charged or payable for the late payment thereof and the circumstances in which any fees previously paid may be refunded; 25
- (c) the prescription of criteria in respect of exemptions permitted by this Act;
- (d) the prescription of standards of accounting to be followed for the purposes of Chapter 7 by a co-operative; 30
- (e) the categorisation of specific forms and kinds of co-operatives;
- (f) the operation or administration of specific forms and kinds of co-operatives;
- (g) a threshold based on a number of members or annual turnover of a co-operative, where required by this Act, and different thresholds may be prescribed for different purposes; 35
- (h) matters arising from, or consequential to, the transitional provisions set out in section 91; and
- (i) generally, any matter that is necessary or expedient to prescribe for the proper implementation of this Act. 40

(2) The Minister may, after consulting any other relevant Minister and the Advisory Board, make regulations regarding any matter relating to the operation or administration of particular forms and kinds of co-operatives.

Delegation by Minister

90. (1) The Minister may delegate any power conferred upon him or her under this Act to the registrar or any officer in the Public Service, except the power to make regulations. 45

(2) A delegation under subsection (1) does not prevent the exercise of the delegated power by the Minister.

Transitional provisions

91. (1) Subject to this section and despite the repeal of the Co-operatives Act, 1981 (Act No. 91 of 1981), a co-operative registered in terms of that Act may continue to operate as if that Act had not been repealed, except that any reference in that Act to— 50

- (a) the Registrar of Co-operatives must be read as a reference to the registrar appointed in terms of section 73 of this Act;
 - (b) the Minister of Agriculture must be read as a reference to the Minister of Trade and Industry in this Act.
- (2) A co-operative referred to in subsection (1) must, within three years of this Act coming into effect— 5
- (a) amend its constitution to the extent necessary in order to comply with the requirements of this Act; and
 - (b) submit its constitution, to the registrar for registration in terms of section 6(2), read with the changes required by the context. 10
- (3) On receipt of an application in terms of subsection (2)(b) the registrar must—
- (a) issue the co-operative with a certificate stating that its constitution complies with this Act; or
 - (b) issue a directive to the co-operative specifying in what respect the constitution of the co-operative fails to comply with the provisions of this Act. 15
- (4) A directive issued in terms of subsection (3)(b) may stipulate a time within which the co-operative must comply with the directive.
- (5) The registrar may require a co-operative that fails to comply with a directive issued in terms of subsection (3)(b), or that fails to comply with subsection (2)—
- (a) to convert into another legal entity, in accordance with the provisions of Chapter 8; or 20
 - (b) if the co-operative does not convert, to be wound up in terms of the provisions of Chapter 9.
- (6) This Act applies, in respect of a co-operative registered prior to the commencement of this Act— 25
- (a) from the date of issue of the certificate referred to in subsection 3(a);
 - (b) after the expiry of a period of three years from the date of commencement of this Act.

Repeal of laws and savings

- 92.** (1) Subject to subsection (2) the laws specified in Schedule 2 are repealed by this Act. 30
- (2) Anything which could have been done under the laws repealed by subsection (1) and which may be done under the provisions of this Act, is deemed to have been done under this Act.

Short title and commencement 35

- 93.** This Act is called the Co-operatives Act, 2005, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

SPECIAL PROVISIONS RELATING TO CERTAIN KINDS OF CO-OPERATIVES

Part 1

Housing co-operatives 5

Application of Schedule

1. This Part applies to housing co-operatives which must—
 - (a) comply with the requirements of this Part;
 - (b) comply with all other relevant provisions of this Act.

Name 10

2. The name of a housing co-operative must include the following words:
 - (a) “housing co-operative” or “housing co-op;” and
 - (b) “limited” or “Ltd.”.

Constitution of housing co-operative

3. In addition to the other requirements of this Act, the constitution of a housing co-operative must include the following provisions:
 - (a) In respect of a primary housing co-operative—
 - (i) that its main objective is to provide housing for its members;
 - (ii) that, in accordance with a use agreement and subject to the provisions of its constitution, its members have the right to occupy housing units allocated to them by the co-operative for as long as they remain members of the co-operative;
 - (iii) that the right of a member to occupy a housing unit owned by the co-operative terminates once membership is terminated, in accordance with its constitution and this Part;
 - (b) in respect of a secondary housing co-operative, that its main objective is to provide services to primary housing co-operatives and to undertake housing developments on behalf of existing or proposed housing co-operatives;
 - (c) in respect of all housing co-operatives, that provision must be made for the establishment of adequate reserves and the maintenance of adequate insurance to protect the co-operative from loss.

Use agreements

4. (1) A use agreement must be concluded between a primary housing co-operative and each of its members.
- (2) A use agreement must set out the terms and conditions on which the member occupies a housing unit.

Termination of membership

5. Despite any other provisions of this Act, the membership of a member of a primary housing co-operative may be terminated without a special resolution of the members, in accordance with the following provisions:
 - (a) If a member is in arrears with payments due in terms of a use agreement and is served with a written notice to pay those arrears by a date specified in the notice, the member’s membership will terminate automatically upon failure to effect payment by the date specified;
 - (b) a person whose membership is terminated in terms of paragraph (a)—
 - (i) does not have a right to appeal the termination;
 - (ii) may only be re-admitted to membership if such person pays the arrears that were due at the date when his or her membership was terminated, as well as any other payments due by virtue of that person’s continued occupancy after that date, if applicable;

- (c) the board of directors may terminate the membership of a member in circumstances other than those set out in paragraph (a) if there is good and sufficient reason to do so: Provided that—
 - (i) the board of directors gives the member concerned reasonable notice that termination is contemplated for reasons stated in that notice; and 5
 - (ii) the member is afforded the right to be heard before a decision is taken;
- (d) a member whose membership is terminated in terms of paragraph (c) may appeal to a general meeting, within a time limit set out in the constitution;
- (e) a decision of the board of directors to terminate the membership of a member is confirmed if the members, at a duly called general meeting, do not reverse 10 the decision by the board of directors;
- (f) if a general meeting is called to consider the appeal of a member whose membership is terminated and a quorum of members is not present, the decision of the board of directors is confirmed;
- (g) a member has the right to occupy the unit allocated to him or her until the 15 termination is confirmed by the members: Provided that the member—
 - (i) has lodged the appeal to the members within the time limit set out in the constitution;
 - (ii) is not in arrears with any payments;
- (h) once a person no longer has a right to occupy a housing unit, the co-operative 20 may regain possession by consent or by obtaining an order of court from a magistrate's court to evict that person;
- (i) nothing in this section precludes the board of directors of a primary co-operative from entering into an agreement with a secondary housing co-operative that the secondary housing co-operative will manage on behalf 25 of the primary co-operative the following:
 - (i) The collection of payments from members;
 - (ii) the service of any notice such as envisaged in paragraph (a) above; and
 - (iii) the institution of any proceedings to evict a person.

Exclusion 30

6. The provisions of the Share Block Control Act, 1980 (Act No. 59 of 1980), shall not apply to a housing co-operative registered in terms of this Act.

Part 2

Worker co-operatives

Application of this Part 35

1. This Part applies to worker co-operatives which must—
 - (a) comply with the requirements of this Part;
 - (b) comply with all other relevant provisions of this Act.

Name

2. The name of a worker co-operative must include the following words: 40
 - (a) “worker co-operative” or “worker co-op”; and
 - (b) “limited” or “Ltd”.

Requirements of constitution

3. (1) In addition to the other requirements of this Act, the constitution of a worker co-operative must provide— 45
 - (a) whether membership is restricted to natural persons who work for the co-operative;
 - (b) whether the maximum amount a member is required to contribute during the first year of membership, whether by way of entrance fees, payments in respect of shares or in respect of a member loan, may not exceed half the 50 person's expected annual remuneration;
 - (c) whether the co-operative is entitled to provide employment to persons who are not members and, if so, a limitation on the number of persons that are

- non-members that may be employed, expressed as a percentage of the number of members, which percentage should not exceed twenty five per cent;
- (d) whether the period of probation to an application for membership, which may not exceed a period of two years is applicable;
 - (e) for the procedure for allocating, crediting or distributing any surplus earned, including a provision that not less than fifty per cent of such surplus must be paid on the basis of the remuneration earned by the members from the co-operative or the labour contributed by the members to the co-operative; 5
 - (f) whether the manner in which the membership of a member may be terminated is in accordance with item 4 of this Part. 10
- (2) The constitution of a worker co-operative may provide—
- (a) how work is to be allocated between members;
 - (b) for laying off or suspending of members when there is a lack of work, and for the recall to work of members who have been laid off;
 - (c) for a procedure for disciplining members. 15

Termination of membership

4. (1) Despite any other provisions of this Act, the constitution of a worker co-operative may give the board of directors the power to terminate the membership of a member if there is good reason to do so.
- (2) Before terminating the membership of a member, the board of directors must give such member— 20
- (a) notice that termination is contemplated;
 - (b) reasons for the proposed termination which, in the case of a member that has served a period of probation, must relate to the conduct or capacity of the member to carry out his or her duties, or to the operational requirements of the co-operative; and 25
 - (c) a right to be heard.
- (3) A member whose membership is terminated by the board of directors has a right to appeal to a general meeting within the time limit set out in the constitution.
- (4) A termination of the membership of a member by the board of directors is confirmed on appeal if the members, at a duly called general meeting, do not reverse the decision of the board of directors. 30
- (5) If a general meeting is called to consider the appeal of a member whose membership is terminated and a quorum of members is not present, the decision of the board of directors is confirmed. 35

Laid-off member

5. (1) A temporary lay-off of a member does not result in termination of that member's membership.
- (2) If a member is laid off and two years have elapsed since the date of the lay-off without the member having resumed employment with the co-operative, the board of directors may, in accordance with the constitution, terminate the membership of the member. 40
- (3) The provisions of item 4(2) to (5) apply to the termination of a member's membership in terms of this item.

Application of labour legislation 45

6. (1) A member of a worker co-operative is not an employee as defined in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).
- (2) Despite subsection (1), for the purposes of the Acts listed in this subsection, a worker co-operative is deemed to be the employer of its members who work for the co-operative— 50
- (a) the Skills Development Act, 1998 (Act No. 97 of 1998);
 - (b) the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
 - (c) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
 - (d) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); 55
 - (e) the Unemployment Insurance Act, 2001 (Act No. 63 of 2001); and

(f) the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002).

Part 3

Financial services co-operatives

Application of this Part

1. (1) This Part applies to financial services co-operatives which must— 5
 (a) comply with the requirements of this Part;
 (b) comply with all other relevant provisions of this Act.
 (2) A financial services co-operative is a co-operative whose main objective is to provide financial services to its members, and includes a credit union, co-operative bank, savings and credit co-operative or other financial services. 10

Requirements of constitution

2. (1) In addition to the other requirements of this Act, the constitution of a financial services co-operative must specify the precise nature of the financial service the co-operative aims to provide to its members, which may include the following: 15
 (a) To receive and deposit money from its members;
 (b) to loan money to its members;
 (c) to invest money on behalf of its members, subject to such limitations regarding the nature of such investments as may be provided for in the constitution or from time to time prescribed;
 (d) to stand surety on behalf of its members to any person including a body 20
 corporate to the extent of the member's deposit in the co-operative;
 (e) to provide insurance cover to its members, whether of a long-term or short-term nature;
 (f) to provide medical insurance cover to its members;
 (g) to provide funeral services to its members, including funeral insurance; 25
 (h) to render any other banking or financial service.

Banks Act

3. A financial services co-operative to which legislation governing co-operative banks applies is required to register in terms of the Banks Act, 1990 (Act No. 94 of 1990), despite its registration in terms of this Act. 30

Insurance legislation

4. A financial services co-operative providing long-term or short-term insurance to its members is required to register in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or Short-term Insurance Act, 1998 (Act No. 53 of 1998), despite its registration in terms of this Act. 35

Medical Schemes Act

5. A financial services co-operative providing a medical benefit to its members is required to register in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

Friendly Societies Act

6. A financial services co-operative providing funeral benefits to its members is not required to register in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956). 40

Establishment of self-regulatory body for financial services co-operatives

7. (1) The registrar may, in consultation with the Registrar of Banks, or Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as the case may be, direct that all co-operatives to whom this part applies, or any category of co-operative to whom this part applies, belong to a secondary co-operative that will act as a self-regulatory body, in compliance with any requirement for exemption from any 45

provision of the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or Short-term Insurance Act, 1998 (Act No. 53 of 1998), or the Medical Schemes Act (Act No. 131 of 1998).

(2) The registrar has the power to de-register any co-operative to whom this Part applies that refuses or fails, within a reasonable period of time, to become a member of a secondary co-operative that meets the requirement of the Registrar of Banks to be a self-regulatory body. 5

Regulations

8. The Minister may, in consultation with the Registrar of Banks, or the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as the case may be, make regulations regarding any matter relating to the operation or administration of financial services co-operatives or any category of financial services co-operatives. 10

Definitions

9. For the purposes of this Part “financial service” means any financial or banking service a co-operative may provide to its members, and includes the provision of long-term and short-term insurance, as envisaged in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the business of a medical scheme, as envisaged in terms of the Medical Schemes Act (Act No. 131 of 1998), and funeral services. 15
20

Part 4

Agricultural co-operatives

Application of this Part

1. This Part applies to agricultural co-operatives which must— 25
- (a) comply with the requirements of this Part;
 - (b) comply with all other relevant provisions of this Act.

Name

2. The name of an agricultural co-operative must include the following words: 30
- (a) “agricultural co-operative”, or “agricultural co-op;” and
 - (b) “limited” or “Ltd.”

Objectives of agricultural co-operative

3. (1) The main objectives of a primary agricultural co-operative are one or more of the following:
- (a) To undertake the marketing of any agricultural product or anything that is derived from an agricultural product; 35
 - (b) to acquire, or to acquire control over, any agricultural product or anything derived from an agricultural product, for the purposes referred to in paragraph (i), and to dispose of it;
 - (c) to process an agricultural product or anything derived from it, manufacture it and dispose of the end product or of the agricultural product and anything derived from it; 40
 - (d) to hire, buy, produce, manufacture, let, sell or supply services or things required for purposes of farming;
 - (e) to hire, buy, acquire, produce, manufacture, let, sell or supply any article for consumption; 45
 - (f) to hire, establish, erect, use or make facilities available for use in connection with farming;
 - (g) to render services which are necessary and useful in farming;
 - (h) to render any other services, including services which relate to buying, selling and hiring of fixed agricultural property; 50

- (i) to farm and dispose of farming products, process products or manufacture articles and dispose of them;
 - (j) to undertake insurance business which relates to farming risks for farmers.
- (2) The main objectives of a secondary agricultural co-operative are to—
- (a) provide services to primary co-operatives; 5
 - (b) engage in insurance business in respect of all risks;
 - (c) establish and administer pension funds, provident funds and medical aid schemes.

Security for production credit and loans

4. (1) A co-operative retains ownership in respect of any debt owed to it by a farmer or member if the debt arises from any transactions related to farming or agricultural purposes, including the provision of the following: 10
- fuel, spare parts, fertilisers, plants materials, agricultural remedies, packing materials, livestock, feeding stuff, fumigating, spraying or cleansing operations or repair services, electricity, or money advanced for purposes of production. 15
- (2) If a co-operative gives assistance to a farmer or member—
- (a) the products produced or acquired by the farmer or member are deemed to be pledged to the co-operative as if they were delivered to the co-operative, under the principles applicable in the law of pledge in the Republic;
 - (b) the farmer or member is prohibited from selling the products referred to in paragraph (a) or using them as security to a third party without the written consent of the co-operative. 20
- (3) A farmer or member of the co-operative referred to in subitem (2) is required by a co-operative to indicate the following:
- (a) the agricultural products deemed to be pledged; 25
 - (b) the land on which the products deemed to be pledged are being produced;
 - (c) the exact location of the livestock which is the subject of the deemed pledge;
 - (d) whether the products and livestock referred to in paragraphs (b) and (c) are pledged;
 - (e) names of other co-operatives of which the member or farmer is a member; 30
 - (f) the extent of the debt of the member or farmer to other co-operatives and other third parties.
- (4) If products cannot be found on inspection by the co-operative or its representative, the farmer or member will be required to explain the whereabouts of the products.
- (5) If products or livestock of the member or farmer are pledged to more than one co-operative— 35
- (a) the products or livestock is deemed to be pledged to the co-operatives jointly to the extent of the indebtedness of the farmer or member;
 - (b) the co-operatives must share the proceeds of the products or livestock proportionate to their claims irrespective of which co-operative has possession of them; 40
 - (c) an affected co-operative must send notice to the other affected co-operatives disclosing its interest and proof of its claim.
- (6) If a farmer or member requests finance for the purposes of farming operations from a third party— 45
- (a) the third party and the farmer or member must ask a co-operative which has a deemed pledge over the products of the member or farmer to waive its rights; and
 - (b) a co-operative may not refuse the request unless the estimated value of the products on the farm are insufficient to cover its debts and those of the third party. 50
- (7) If a co-operative agrees to waive its rights in terms of subitem (6), the third party may only sell in execution, pursuant to a court order, agricultural products or livestock with the written consent of the co-operative and thereafter pay to the co-operative what is due to it. 55
- (8) A co-operative may refuse to give permission for a sale in execution referred to in subitem (7) if it is of the view that the sale in execution will prejudice its claim for the debt owing and secured by the deemed pledge.
- (9) If there is a dispute regarding the estimated value of products— 60
- (a) the insurer of products must be requested to evaluate;

- (b) the value given by the insurer will be final and binding to all parties as an expert;
- (c) the request and valuation must be completed within seven working days.
- (10) A farmer or member may use the products referred to in this item for his or her consumption with his or her workers and family in an appropriate manner. 5
- (11) Anyone who contravenes subitems (2)(b) or (3) is guilty of an offence.

Definitions

5. For the purposes of this Part—
- “**agricultural product**” means any article derived from farming operations and any product derived from the processing or manufacturing of that article, and declared to be an agricultural product from time to time by the Minister responsible for agriculture by notice in the *Gazette*. 10

SCHEDULE 2

LAWS REPEALED BY SECTION 92

- Co-operatives Act, 1981 (Act No. 91 of 1981). 15

MEMORANDUM ON THE OBJECTS OF THE CO-OPERATIVES BILL, 2005

1. BACKGROUND

- 1.1 In 1966 the International Labour Organisation (ILO) adopted Recommendation number 127. This was the first international instrument to acknowledge the role of co-operatives in the economic and social development of developing countries.
- 1.2 The International Co-operative Alliance (ICA) has defined a co-operative as “an autonomous association of persons united voluntarily to meet their economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise”. It has also developed seven international principles of the co-operative movement, based on the co-operative values of self-help, self-responsibility, democracy, equality, equity and solidarity. These seven principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; and concern for the community.
- 1.3 In 2002 the ILO adopted the text of a recommendation of which the objective is to promote the development of co-operatives in member countries, irrespective of their level of development. The recommendation adopts the ICA’s definition of a co-operative. It also advocates promoting and strengthening the identity of co-operatives on the basis of co-operative values and the co-operative principles developed by the international co-operative movement.
- 1.4 The history of co-operatives in South Africa dates back to the early part of the last century. Co-operatives have been successfully utilised by sections of the population, particularly in rural areas, to empower themselves economically. The first national legislation for co-operatives was introduced in South Africa in 1922 (Act No. 28 of 1922). Undoubtedly the fact that there was legislation providing for the registration of co-operatives, and that also gave co-operatives juristic personality, contributed to their development and success. Since then entirely new legislation regulating co-operatives has been introduced on three occasions.
- 1.5 There has unfortunately also been a history of misuse, or abuse, of co-operatives. Well-intentioned people have established co-operatives that have failed, because insufficient attention was given to ensuring their economic viability, or for other reasons. Others have established bodies that are co-operatives in name only, but that do not in fact subscribe to co-operative principles. There are recent allegations of such co-operatives being established in order to win government contracts, or quotas allocated by government, on the basis that their members comprise historically disadvantaged persons, whereas in reality such persons have no meaningful say in their running.
- 1.6 The government is committed to support the development of co-operatives in terms of the agreement reached at the Growth and Development Summit in 2003. However, before government is able to target co-operatives for support measures, it needs to be sure that the co-operatives concerned are genuine co-operatives that in fact subscribe to co-operative principles.
- 1.7 The Co-operatives Act, 1981 (Act No. 91 of 1981) (hereinafter referred to as the current Act), has been amended on at least eight occasions since it was adopted. It is not considered a suitable vehicle for development of co-operatives in the present era, for a variety of reasons. These are, amongst others:

- 1.7.1 The definition of a co-operative is not adequate. Co-operatives registered in terms of the current Act are also not explicitly required to conform with co-operative principles.
 - 1.7.2 The current Act presupposes that the state play a highly interventionist or paternalistic role in relation to co-operatives.
 - 1.7.3 The focus of the current Act is primarily on agricultural co-operatives, with all other co-operatives categorised as trading co-operatives.
 - 1.7.4 The requirements to register a co-operative are relatively onerous.
 - 1.7.5 The provisions that protect the interests of the members of the co-operative, particularly *vis à vis* the board of directors, are weakly articulated.
 - 1.7.6 The language of the current Act is complex and difficult to understand, and is considered inaccessible to the average member.
- 1.8 The need for a new Act has long been apparent. The process whereby the current Bill was drafted commenced with the publication of a draft Bill in 2000 for comment. This draft Bill was prepared by the National Department of Agriculture (“DOA”), where the office of the registrar of co-operatives at that time was located. After an extensive process of comment a further draft was prepared by the Department of Agriculture. However, at this juncture it was decided that the administration of co-operatives should be transferred to the Department of Trade and Industry (hereinafter referred to as the DTI). After a comparative study conducted under the auspices of the DTI, in collaboration with the ILO, a further revised draft was prepared and published for comment in November 2003.
- 1.9 In the interim, the DTI commenced a participatory process to formulate a comprehensive policy on co-operative development. This policy recognises that a section of the co-operative movement comprises established co-operatives (comprising for the most part co-operatives that benefited from the support measures provided by the previous regime). However, the focus of this policy is on the emergent co-operatives established in the 1990s and subsequently, and on new forms of co-operation.
- 1.10 The Bill has been revised following comments received from a wide range of organisations, interest groups and individuals.

2. OBJECTS OF BILL

The Bill is drafted in line with the Co-operatives Development Policy and seeks to:

- (a) Promote the development of sustainable co-operatives, thereby increasing the number and variety of economic enterprises;
- (b) encourage persons who subscribe to co-operatives principles to register as legal entities;
- (c) enable the new types of co-operatives to acquire a legal status;
- (d) promote equity and greater participation of black people, especially those in rural areas, women, youth and persons with disabilities;
- (e) facilitate the provision of support programmes for co-operatives, specifically those that create employment and benefit disadvantaged groups.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

A fully-fledged Co-operatives Development Unit has been established within the DTI to perform all the duties related to the Co-operatives Development mandate.

The office of the Registrar of Co-operatives (currently at DOA) will be relocated to the Company and Intellectual Property Regulation Office (“CIPRO”).

4. FINANCIAL IMPLICATIONS FOR STATE

The Registrar of Co-operatives Business Unit team will move from DOA with its budget to CIPRO.

5. COMMUNICATION IMPLICATIONS

The DTI's Marketing Division will develop an appropriate communication strategy.

6. CONSTITUTIONAL IMPLICATIONS

None.

7. OTHER DEPARTMENTS/COMMITTEES/BODIES CONSULTED

All national and provincial departments of Finance and Economic Affairs and Agriculture, social partners and economic organisations were consulted. The Bill was also published in the *Gazette* for general public comment.

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

8.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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