

Amendment of section 16 of Act 14 of 2005

15. Section 16 of the principal Act is hereby amended—

- (a) by the deletion of subsection (1); and
- (b) by the substitution for the expression "tertiary co-operative" in subsection (2) of the expression "national apex co-operative".

Insertion of section 16A in Act 14 of 2005

16. The following section is hereby inserted in the principal Act after section 16:

"National apex co-operatives

16A. (1) (a) Two or more operational secondary co-operatives may form a national apex co-operative.

(b) The functions of a national apex co-operative must include advocacy and engaging organs of state, the private sector and stakeholders on behalf of its members.

(c) The other functions of a national apex co-operative must be determined by its members and must be included in the constitution of the national apex co-operative.

(d) The Minister may publish guidelines for the functions of national apex co-operatives by notice in the Gazette."

Amendment of section 19 of Act 14 of 2005

17. Section 19 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Functions] Restrictions on functions of co-operative";

(b) by the substitution for subsection (2) of the following subsection:

"(2) A co-operative must not carry out an objective or perform an action not authorised by its constitution."; and

(c) by the addition of the following subsections:

"(3) Subject to subsections (1) and (2), a co-operative must indicate all business transactions concluded with members and non-members in the co-operative's annual financial statements.

(4) Any co-operative or director of a co-operative which contravenes the provisions of subsection (1), (2) and (3) is—

(a) guilty of an offence; and

(b) on conviction liable to a fine not exceeding one million rand."

Amendment of section 21 of Act 14 of 2005

18. Section 21 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) of the following paragraph after paragraph

(c):

"(cA) the minutes of meetings of the supervisory committee in a minute book;"

(b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) a register of directors' and managers' interests in contracts or undertakings, envisaged in section ~~[38]~~ 37;" and

(c) by the substitution for subsection (2) of the following subsection:

"(2) Every co-operative must retain its accounting records and financial statements for a period of –
(a) five years after the end of the financial year to which they relate;
or
(b) such longer period as may be prescribed by the Minister by notice in the Gazette,
after which period such records must be archived for historical purposes as prescribed by the Minister by notice in the Gazette."

Amendment of section 22 of Act 14 of 2005

19. Section 22 of the principal Act is hereby amended by the addition of the following subsection:

"(4) (a) An inspector appointed by the registrar or the Tribunal as contemplated in this Act may, in accordance with this Act and national legislation that regulates access to information, examine the records of a co-operative during the normal business hours of that co-operative.
(b) Members of the Board of a co-operative who fail to disclose information or provide access to the records of the co-operative, to

the inspector referred to in paragraph (a), is guilty of an offence and on conviction liable to a fine not exceeding one million rand."

Amendment of section 23 of Act 14 of 2005

20. Section 23 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) In instances where members do not hold shares, members are only liable for the amount of money owed to the co-operative in terms of the membership agreement."

Amendment of section 24 of Act 14 of 2005

21. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to other legislation a co-operative should stipulate the maximum period in which membership shares should be repaid if a co-operative determines that the repayment of membership shares within two years would adversely affect its financial well-being."

Substitution of section 25 of Act 14 of 2005

22. The following section is hereby substituted for section 25 of the principal Act:

"~~[Transfer]~~ Repayment of membership, member loan or membership share

25. Despite any provisions contained in its constitution, if a co-operative determines that the repayment of the nominal value of **[a member's]**—

- (a) membership shares[,];
- (b) all other amounts held to the member's credit including any member loan; and
- (c) 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, after the death of a member of the co-operative, may be deferred for a period not exceeding **[two years after the date of death of a member of the co-operative]** the period determined in the constitution of the co-operative."

Insertion of section 26A in Act 14 of 2005

23. The following section is hereby inserted in the principal Act after section 26:

"Annual submission to Registrar

- 26A.** The Minister must, by notice in the *Gazette*, determine the—
- (a) form, manner and time period for the annual submission of information to the Registrar regarding the—
- (i) membership of the co-operative;
- (ii) members of the co-operative; and
- (iii) nature and value of the contribution made by each member to the co-operative; and
- (b) annual fees payable to the Registrar by co-operatives based on the categories of co-operatives."

Amendment of section 27 of Act 14 of 2005

24. Section 27 of the principal Act is hereby amended by the addition of the following subsections:

- "(4) The supervisory committee—
- (a) must be elected at the meeting contemplated in section 29(1)(a), when the Board are elected;
- (b) must consist of members who are not directors; and
- (c) may be established for every co-operative if the constitution of the co-operative concerned provides for such committee.
- (5) The supervisory committee—
- (a) is responsible for supervising the Board by representing the interest of its members;

(b) must, if there is fair and reasonable information that any act or omission by the Board may impact negatively on the co-operative or a member or members thereof, call a special meeting of all its members to discuss such act or omission; and

(c) must, within seven days after a special meeting contemplated in paragraph (b), in writing inform the—

(i) Tribunal of the outcome of such meeting; and

(ii) Board and the member or members affected or concerned of its decision and reasons for the decision.

(6) If the supervisory committee has not complied with subsection (5)(c), a member of the co-operative may report the matter to the Tribunal."

Amendment of section 28 of Act 14 of 2005

25. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

"(3) If provided for in the constitution of the co-operative, a member of a co-operative may at any time appoint another member of the co-operative as a proxy to participate in and vote at, a general or special meeting on behalf of the member concerned: Provided that the member may not appoint more than one proxy to exercise voting rights.

(4) A proxy appointment—

(a) must be in writing, dated and signed by the member;

(b) must clearly set out the details of the vote to be cast on behalf of the member in respect of each decision on the agenda;

(c) remains valid for the period expressly set out in the appointment, unless it is revoked in writing by the member concerned.

(5) The number of votes by proxy during any general or special meeting may not exceed 25 per cent of the total membership of the cooperative concerned: Provided that—

(a) the number of proxies that a member of a cooperative with 20 members or more, may carry on behalf of another member or other members as contemplated in subsection (3), may not exceed five per cent of the total membership of the co-operative concerned; and

(b) a member of a cooperative with less than 20 members may carry only one proxy on behalf of another member as contemplated in subsection (3)."

Amendment of section 29 of Act 14 of 2005

26. Section 29 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) subject to section 50, appoint an auditor as determined by the Minister by notice in the Gazette, [subject to section 50] depending on the category and level of co-operative;"

(b) by the insertion in subsection (2) of the following paragraph after paragraph

(a):

"(aA) appoint an independent accounting officer as determined by the Minister by notice in the Gazette, depending on the category and level of the co-operative;"

- (c) by the insertion of the word "and" at the end of paragraph (f) and the addition of the following paragraph:

"(g) consider the activity plan presented by the Board."

- (d) by the addition of the following subsection:

(2) For purposes of this section 'activity plan' means a document that summarises the operational and financial objectives of the co-operative and –

(a) sets clear business goals for the next financial year with reasons why these goals are believed to be attainable; and

(b) determines how funds in the co-operative will be utilised.

Substitution of heading to Chapter 5 of Act 14 of 2005

27. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

"[MANAGEMENT] GOVERNANCE OF CO-OPERATIVES".

Amendment of section 32 of Act 14 of 2005

28. Section 32 of the principal Act is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:

"(3) The Board must be elected at the annual general meeting for such period as **[may be]** set out in the constitution of the co-operative[, **which period may not be more than four years**]."; and

(b) by the addition of the following subsections:

"(4) The Board may in the event of a vacancy by way of a resolution appoint a director for the remainder of the period referred to in subsection (3), according to the prescripts set out in the constitution of the co-operative: Provided that such resolution must be ratified at the next general meeting held by the co-operative.

(5) Other issues relating to the board which are not provided for in this Act, may be provided for in the constitution of the co-operative.

(6) The members of a co-operative may by resolution of two thirds of the members present at the special meeting—
(a) convened by the supervisory committee; or
(b) called by at least 25 per cent of members where such co-operative does not have a supervisory committee,
dissolve the Board if such members find justifiably good reason that the board is dysfunctional or has acted contrary to any law."

Substitution of section 38 of Act 14 of 2005

29. The following section is hereby substituted for section 38 of the principal Act:

"Acceptance of commission, remuneration or reward prohibited in certain circumstances

38. (1) A director **[or]**, manager or employee 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].**

(2) A director, manager or employee who contravenes **[a provision of]** subsection (1) is guilty of an offence."

Amendment of section 39 of Act 14 of 2005

30. Section 39 of the principal Act is hereby amended by the addition of the following subsection:

"(4) The Minister must, by notice in the *Gazette*, determine the form, manner and time period for the submission of information regarding—
(a) the Board; and
(b) all individual directors of a co-operative."

Amendment of section 41 of Act 14 of 2005

31. Section 41 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) The constitution may permit additional membership shares to be issued to members.

(4) All membership shares issued must be of the same class and ranking.

(5) Interest on membership shares is only payable on membership shares, or that portion of membership shares, that are paid up."

Amendment of section 44 of Act 14 of 2005

32. Section 44 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(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]** the co-operative for the member."; and

(b) by the addition of the following subsection:

"(5) The surplus that is –
(a) not set aside in a reserve that is not divisible amongst members in terms of section (3)(1)(e);
(b) not disbursed to its members in terms of section (44)(1); or

(c) not reinvested in the co-operative in terms of section (44)(3), may be placed in a fund or funds, the purpose of which must be provided for in the constitution of the co-operative and agreed to by members."

Substitution of section 46 of Act 14 of 2005

33. The following section is hereby substituted for section 46 of the principal Act:

"Reserves for co-operatives

46. (1) During each financial year a co-operative must set aside reserves that are indivisible amongst its members.

(2) Every co-operative must retain the percentage of the surplus, as determined in its constitution, for each financial year in its indivisible reserve, unless such reserves are equivalent to five per cent or more of its net assets.

(3) The Minister must, by notice in the Gazette, provide guidelines for—

(a) the manner in which records in respect of the reserves and the reserve fund must be kept;

(b) the purposes for which any of the reserves may be used; and

(c) the manner in which a co-operative must report on the purposes for which the reserves have been used."

Substitution of heading to Chapter 7 of Act 14 of 2005

34. The following heading is hereby substituted for the heading to Chapter 7 of the principal Act:

"AUDIT REPORTS AND INDEPENDENT REVIEWED REPORTS OF CO-OPERATIVES"

Substitution of section 47 of Act 14 of 2005

35. The following section is hereby substituted for section 47 of the principal Act:

"Audited report

47. (1) The following co-operatives must produce an audited report to the Registrar in respect of each financial year:

(a) Category C primary co-operatives;

(b) secondary co-operatives; and

(c) national apex co-operatives.

(2) Category B primary co-operatives must produce an independent reviewed report to the Registrar in respect of each financial year.

(3) Category A primary co-operatives must produce an annual report which report does not have to be audited or independently reviewed, to the Registrar in respect of each financial year signed by the directors of the co-operative.

(4) The Minister must, within three months after the commencement of this Act, by notice in the Gazette publish a co-operative reporting system framework."

Substitution of section 48 of Act 14 of 2005

36. The following section is hereby substituted for section 48 of the principal Act:

"Consideration of audited or independent reviewed reports

48. (1) Every co-operative must circulate the audited report or the independent reviewed report or the annual report to all its members at least two weeks prior to an annual general meeting.

(2) The annual general meeting must consider and discuss the audited report or the independent reviewed report or the annual report in order to take resolutions on the future conduct of the business of the co-operative.

(3) The chairperson of the Board or the person who acted as chairperson at the annual general meeting where the audited report or the independent reviewed report or the annual report was discussed and considered, must—

(a) accept the audited report or the independent reviewed report or the annual report; and

(b) sign acceptance of and implement the resolution taken at the annual general meeting on the future conduct of the business of the co-operative.

(4) A co-operative may not issue, publish or circulate copies of the audited report or the independent reviewed report or the annual report for public information unless the report has been discussed and considered by the annual general meeting in accordance with subsections (2) and (3).

(5) The audited report or the independent reviewed report or the annual report must be made available for inspection to any member of the co-operative at the registered office of the co-operative for at least 21 days after consideration of such report.

(6) The Board—

(a) must submit a copy of the audited report or the independent reviewed report or the annual report and the outcome of its discussion and consideration thereof to the Registrar within 15 days of the resolution of the annual general meeting; or

(b) if for reasons relating to the resolution taken at the annual general meeting wherein the meeting resolved to delay submitting the audited report or the independent reviewed report or the annual report to the Registrar, must, through the chairperson at the annual general meeting, notify the Registrar within 15 days of the reasons for such failure and of the action the co-operative intends to take in order to address the situation.

(7) After receipt of the audited report or the independent reviewed report or the annual report and the views expressed by the annual

general meeting on the manner in which the co-operatives' business was conducted the Registrar may take appropriate steps."

Substitution of section 49 of Act 14 of 2005

37. The following section is hereby substituted for section 49 of the principal Act:

"Auditor and independent reviewer disqualified from acting

49. (1) A person is disqualified from being an **[auditor of a cooperative]**—
- (a) auditor or independent reviewer of a co-operative if that person—
- (i) 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]**
 - (ii) is not registered with the South African Institute for Chartered Accountants or does not satisfy the requirements for registration as an auditor as contemplated in Chapter III of the Auditing Profession Act; or
 - (iii) does not act in accordance with the code of conduct pertaining to their registered professional body; or
- (b) auditor or independent reviewer of a co-operative in any other circumstances that are considered to constitute a conflict of interest in

terms of the code of professional conduct applicable to the relevant auditor or independent reviewer."

Amendment of section 50 of Act 14 of 2005

38. Section 50 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Appointment and termination of auditor or independent reviewer";

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The members must appoint an auditor or independent reviewer—";

(c) by the substitution for subsection (2) of the following subsection:

"(2) Despite subsection (1), if an auditor or an independent reviewer is not appointed at any meeting, the incumbent auditor or independent reviewer continues in office until a successor is appointed.";

(d) by the insertion after subsection (2) of the following subsection:

"(2A) The Board must within thirty days of the appointment of an auditor or independent reviewer, notify the Registrar of such appointment in the prescribed manner.";

(e) by substitution for subsection (3) of the following subsection:

"(3) If a co-operative fails to appoint either an auditor or an independent reviewer 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] members of the Board will be subject to a fine imposed by the Registrar, and such fine must not exceed the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).”;

- (f) by the deletion of subsection (4);
- (g) by the substitution for subsections (5) and (6) of the following subsections, respectively:

"(5) An auditor or independent reviewer of a co-operative ceases to hold office when the auditor or independent reviewer 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 or is prohibited from registration with an accredited professional body.

(6) A resignation of an auditor or independent reviewer 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.

(7) A vacancy created in terms of sections (5) or (6) must be filled for the remainder of the relevant period, within thirty days of the date of the post becoming vacant by the board, by way of a resolution according to the prescripts set out in the constitution of the co-operative: Provided that such resolution must be ratified at the next general meeting held by the cooperative.

(8) Nothing in this section shall prohibit a co-operative who did not appoint an auditor or an independent reviewer, for

whatsoever reason, from appointing an auditor or an independent reviewer at a general meeting."