

- (b) the court, on an application in terms of paragraph (a), may approve the compromise as set out in the adopted proposal if it considers it just and equitable to do so, having regard to—
- (i) the number of creditors of any affected class of creditors who were present or represented at the meeting and who voted in favour of the proposal; and
- (ii) in the case of a compromise in respect of a co-operative being wound up, the report as contemplated in Schedule 1A.
- (8) A copy of an order of the court approving a compromise—
- (a) must be filed with the registrar by the co-operative within five working days;
- (b) must be attached to each copy of the co-operative's constitution that is kept at its registered office; and
- (c) is final and binding on all the co-operative's creditors or all the members of the relevant class of creditors, as the case may be, as of the date on which it is filed."

**Insertion of Chapter 12C in Act 14 of 2005**

67. The following Chapter is hereby inserted in the principal Act after Chapter 12B:

**"CHAPTER 12C  
INTERGOVERNMENTAL RELATIONS**

**Applicability of intergovernmental relations framework policies and legislation**

91CC. Intergovernmental relations between the three spheres of government and specifically—

- (a) the Department;
- (b) provincial government departments responsible for economic development;
- (c) municipalities;
- (d) provincial public entities;
- (e) municipal public entities;
- (f) the Agency;
- (g) the Tribunal;
- (h) the Commission;
- (i) structures established in accordance with this Act;
- (j) structures established in accordance with any other national law; and
- (k) structures established in accordance with provincial law.

must be interpreted in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies, and other legislation regulating intergovernmental relations.

## **Intergovernmental structures**

91DD. (1) All intergovernmental structures contemplated in this section—

(a) functioning at the commencement of the Co-operatives Amendment Act, 2012; or

(b) established or recognised as contemplated in national or provincial legislation,

will continue to function as contemplated in the relevant enabling legislation.

(2) The following intergovernmental local government structures are recognised for purposes of this Act:

(a) Intergovernmental local government structures as provided for in national legislation; and

(b) any other intergovernmental local government structure established by the Minister after consultation with the Minister responsible for co-operative governance and traditional affairs as contemplated in—

(i) this Act; and

(ii) any other national legislation.

(3) The Minister, after consultation with the Minister responsible for co-operative governance and traditional affairs, may, by notice in the *Gazette*, declare provisions of this Act applicable to any structure contemplated in this chapter.

(4) Intergovernmental structures established as contemplated in this Act must, in addition to their functions contemplated in this Act, comply with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations.

### **Functions of intergovernmental structures**

91EE. An intergovernmental structure established as contemplated in this Act must—

- (a) promote co-operative governance;
- (b) ensure co-ordination on planning, budgeting, provisioning of services and support to and monitoring and evaluation in respect of, co-operatives;
- (c) advise the Minister and the members of the Executive Council responsible for economic development on any matter related to co-operatives;
- (d) submit copies of the approved minutes of all meetings to the Minister, members of the Executive Council responsible for economic development and the entities contemplated in section 91CC, represented in such structure;
- (e) perform any functions and duties in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act

No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations; and  
(f) perform any functions and duties as may be determined by the Minister by notice in the Gazette.

### **Administrative and procedural arrangements**

91FF. Every structure's administrative and procedural arrangements must comply with the framework for intergovernmental relations contemplated in section 91JJ.

### **Establishment, composition and functions of Inter-Provincial Coordination Committee on Co-operatives**

91GG. (1) The Inter-Provincial Co-ordination Committee on Co-operatives is hereby established.

(2) The Inter-Provincial Co-ordination Committee on Co-operatives consists of the following members appointed by the Minister:

(a) one person to represent the Minister;

(b) one person in the full-time employment of each of—

(i) the Department;

(ii) the national department responsible for co-operative governance;

and

(iii) such other national departments of state identified by the Minister;

(c) two representatives from the National Interdepartmental Co-ordination Committee on Co-operatives; and

(d) one person from each provincial government, in the full-time employ of such government.

(3) The Minister must appoint from among the members of the Inter-Provincial Co-ordination Committee on Co-operatives a chairperson and a deputy chairperson.

(4) The deputy chairperson must act as chairperson when the chairperson is not available.

(5) A member of the Inter-Provincial Co-ordination Committee on Co-operatives may designate an alternate to attend a meeting of the Inter-Provincial Co-ordination Committee on Co-operatives in his or her place.

(6) The Inter-Provincial Co-ordination Committee on Co-operatives must co-ordinate all co-operatives development programmes developed at provincial level.

(7) The National Interdepartmental Co-ordination Committee on Co-operatives and the Inter-Provincial Co-ordination Committee on Co-operatives must meet on at least a quarterly basis to discuss matters of mutual interest.

## **Establishment of Provincial Interdepartmental and Municipal Coordinating Structure**

91HH. (1) A Provincial Interdepartmental and Municipal Co-ordinating Structure must be established in every province by the provincial department responsible for economic development concerned, which must also outline the role of local government in the establishment of the Municipal Co-ordinating Structure.

(2) The Provincial Interdepartmental and Municipal Co-ordinating Structure must—

- (a) develop provincial co-operatives strategies in consultation with all relevant stakeholders: Provided that the strategies must be guided by this Act, the national co-operative policy, the national co-operative strategy and the provincial growth and development strategy;
- (b) co-ordinate the co-operative development and support activities for all provincial government departments dealing with co-operatives;
- (c) co-ordinate the provision of support of co-operatives across departments aligned with provincial priorities and the priorities of the Department;
- (d) report to the Provincial Legislature concerned and the Department;
- (e) report to the Department on activities relating to co-operatives of the provincial departments responsible for economic development;
- (f) support the provincial structures of the Agency; and

(g) collaborate and co-ordinate with all municipalities as regards the promotion of, and the provision of support for, co-operatives and submit reports as prescribed.

### **Dispute and conflict resolution**

91II. Any dispute or conflict in respect of the exercise, performance and carrying out by an entity contemplated in section 91DD of its powers and functions as contemplated in this Act or any other law, must be resolved in accordance with the framework contemplated in section 91JJ.

### **Framework for intergovernmental relations**

91JJ. (1) The Minister must, subject to the principles of co-operative governance referred to in section 41(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005)—

- (a) and after consultation with the Members of the Executive Council responsible for economic development and the entities contemplated in section 91DD, develop a framework for intergovernmental relations; and
- (b) publish the framework contemplated in paragraph (a) by notice in the Gazette within six months after commencement of the Co-operatives Amendment Act, 2012.



(2) Every intergovernmental structure recognised or established in accordance with this Act must comply with the framework contemplated in subsection (1) in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations."

#### **Amendment of section 92 of Act 14 of 2005**

68. Section 92 of the principal Act is hereby amended—

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

"(3) Any person who contravenes or who fails to comply with the provisions of sections 12, 19, 21, 22, 38, [and] 39, 50, 53, 64(2), 84(3), 91W(2), 92(1) or item 12 of Schedule 1A, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months, or to both [a] such fine and such imprisonment."  
and

(b) by the addition of the following subsection:

"(4) Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty contemplated in subsection (3)."

**Insertion of sections 94A and 94B in Act 14 of 2005**

69. The following sections are hereby inserted in the principal Act after section 94:

**"Reporting, monitoring, evaluation and assessment**

94A. The Minister must, by notice in the *Gazette* and within six months after the commencement of this Act, taking into account national and relevant provincial norms and standards, publish a framework—

(a) providing for minimum norms and standards in respect of procedures for and the frequency of monitoring, evaluation and assessment of—

(i) all structures established or recognised in accordance with this Act;

(ii) the status of the co-operative movement;

(iii) the various categories of co-operatives contemplated in this Act;

and

(vi) the levels of primary co-operatives; and

(b) establishing the necessary mechanisms, processes, procedures and

Indicators required for the effective implementation thereof,

to report on, monitor, evaluate, assess and determine the impact of the exercise

of powers, the performance of functions, the execution of duties and the

operational efficiency of such structures and co-operatives.

### **Chief Directorate: Co-operatives**

94B. (1) The entity within the Department responsible for co-operatives, known as the Chief Directorate: Co-operatives must, in respect of co-operatives—

(a) formulate, implement and update—

- (i) a policy framework;
- (ii) a regulatory framework; and
- (iii) an administrative framework;

(b) implement the framework for monitoring and evaluation as contemplated in section 94A;

(c) provide information at the request of the Advisory Council and Tribunal on any matter that should be considered by the Advisory Council or Tribunal;

(d) establish the structures contemplated in this Act and provide the Advisory Council and Tribunal with the financial, personnel, technical, training, infrastructural and other support that is necessary for its effective functioning; and

(e) administer the provisions of this Act, including the appointment of support staff for the Advisory Council and the Tribunal.

(2) The Chief Directorate: Co-operatives—

(a) must advise the Minister in respect of the Tribunal and the Agency;

(b) has a monitoring role in respect of intergovernmental structures; and

(c) must advise the Minister on—

- (i) the status and functioning of the entities referred to in paragraph (a);
- (ii) the status and functioning of intergovernmental structures established in accordance with Chapter 12A;
- (iii) the status of the co-operative movement; and
- (iv) mechanisms that would promote the co-operative movement."

**Amendment of section 97 of Act 14 of 2005**

**70.** Section 97 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) for the following subsection:

"(2) The provisions of this Act—

(a) apply to a co-operative referred to in subsection (1); and

(b) are transitional for a period of two years from the date of

commencement of the Co-operatives Amendment Act, 2012, for co-

operatives to update their constitutions in accordance with the

provisions of this Act, and in case of non-compliance after the two-

year transitional period, a co-operative will be deemed to be

deregistered."

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

" (3) On receipt of **[an application in terms of subsection (2) (b)]** the constitution of a co-operative, the registrar must—";

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) issue a directive to the co-operative specifying:

(i) the non-compliance of the constitution with the Act;

(ii) the period allowed for the rectification of the constitution; and

(iii) the consequences of non-compliance in terms of section 2(b).";

(d) by the addition of the following subsections:

"(7) The Minister must, by notice in the Gazette, within three months after the commencement of the Co-operatives Amendment Act, 2012, publish—

(a) model constitutions, model business plans and a framework for process planning; and

(b) such other forms that he or she may consider necessary, for use by co-operatives.

(8) An entity contemplated in section 62(1)(a) of this Act must publish a notice of its conversion within 30 days after receipt of the notification of approval from the registrar.

(9) The Minister must, before the commencement of the Co-operatives Amendment Act, 2012, appoint the chairperson and other members of the Tribunal as contemplated in section 91N."

**Amendment of item 2 of Part 1 of Schedule 1 to Act 14 of 2005**

71. Item 2 of Part 1 of Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) ~~["limited"]~~ "Limited" or "Ltd."

**Substitution of item 6 of Part 1 of Schedule 1 to Act 14 of 2005**

72. The following item is hereby substituted for item 6 of Part 1 of Schedule 1 to the principal Act:

**"[Exclusion] Application of other legislation**

6. (1) The provisions of the Share ~~[Block]~~ Blocks Control Act, 1980 (Act No. 59 of 1980) do not apply [.]—

(a) to a housing co-operative registered in terms of this Act in respect of every individual unit owned by the housing co-operative concerned that is used by a member in terms of a rental agreement; and

(b) to a housing co-operative registered in terms of this Act in respect of every individual unit of the housing co-operative concerned that has been transferred in ownership to a member.

**Amendment of item 2 of Part 2 of Schedule 1 to Act 14 of 2005**

73. Item 2 of Part 2 of Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) ~~["limited"]~~ "Limited" or "Ltd."

**Substitution of item 6 of Part 2 of Schedule 1 to Act 14 of 2005**

74. The following item is hereby substituted for item 6 of Part 2 of Schedule 1 to the principal Act:

**"Application of labour legislation**

(1) An employee of a worker co-operative is defined as a member or non-member of a co-operative who satisfies the definition of 'employee' as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995).

(2) All worker co-operatives must comply with labour legislation.

(3) Despite subsection (1), a co-operative may apply to a bargaining council with jurisdiction over the sector within which the co-operative operates or, where there is no such bargaining council, to the Minister of Labour for full or partial exemption from the need to comply with applicable labour legislation in respect of employees of the co-operative.

(4) The bargaining council or the Minister of Labour, as the case may be, may only grant an exemption in terms of sub-section (3) if reasonably satisfied that there are good grounds for doing so.

(5) The Minister must, in consultation with the Minister of Labour, within six months from the date of commencement of the Co-operatives Amendment Act, 2012, and thereafter from time to time, make regulations determining what constitutes good grounds for the purposes of subsection (4)."

**Amendment of Part 3 of Schedule 1 to Act 14 of 2005**

**Insertion of item 1A in Part 3 of Schedule 1 to Act 14 of 2005**

75. The following item is hereby inserted in Part 3 of Schedule 1 to the principal Act after item 1:

**"Name of co-operative**

1A. The name of a financial co-operative must comply with the provisions of section 10 of this Act, except where otherwise required by other legislation."

**Substitution of item 6 of Part 3 of Schedule to Act 14 of 2005**

76. The following item is hereby substituted for item 6 of Part 3 of Schedule 1 to the principal Act:



**"Exemption**

6A. The registrar may, in consultation with the registrar of Banks, the registrars of Long-term Insurance 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, other than a co-operative bank, must provide a recommendation letter from the regulator as contemplated in the Banks Act, 1990 (Act No. 94 of 1990), in compliance with any requirement for exemption from any provision of the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the Short-term Insurance Act, 1998 (Act No. 53 of 1998), or the Medical Schemes Act, 1998 (Act No. 131 of 1998)."

**Substitution of item 8 of Part 3 of Schedule 1 to Act 14 of 2005**

77. The following item is hereby substituted for item 8 of Part 3 of Schedule 1 to the principal Act:

**"Definitions**

8. 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, 1998 (Act No. 131 of 1998), or funeral services, as envisaged in the Friendly Societies Act, 1956 (Act No. 25 of 1956).".

**Substitution of item 2 of Part 4 of Schedule 1 to Act 14 of 2005**

78. The following item is hereby substituted for item 2 of Part 4 of Schedule 1 to the principal Act:

**"Name**

2. (1) The name of an agricultural co-operative must comply with the provisions of section 10.

(2) The name of an agricultural co-operative must include the word "Limited" or "Ltd".".

**Addition of Part 5 to Schedule 1 of Act 14 of 2005**

79. The following part is hereby added in the principal Act after Part 4 of Schedule 1:

**"Part 5**

**Social co-operatives**

**Application of this Part**

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

**Name**

2. The name of a social co-operative must comply with the requirements of section 10 of this Act.

**Requirements of constitution**

3. In addition to any other requirements of this Act, the constitution of a social co-operative must specify the nature of the social service the co-operative aims to provide its members.

**Surplus**

4. A social co-operative may—

- (a) set aside 100 per cent of its surplus to an indivisible reserve; and
- (b) capitalise all donations and grants, in order to enjoy the benefits of public benefit organisations.

**Termination of membership**

5. (1) Despite any other provisions of this Act, the constitution of a social co-operative may give the Board of the social co-operative 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 must give such member—

- (a) written notice that termination is contemplated;
- (b) written reasons for the proposed termination which, in the case of a member who 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
- (c) a right to be heard.

(3) A member whose membership is terminated by the Board 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 is confirmed on appeal if the members, at a duly called general meeting, do not reverse the decision of the Board.

(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 cannot be confirmed.

### **Definitions**

6. For the purposes of this part 'social co-operative' means a co-operative whose main objective is to provide social services to its members."

### **Substitution of long title of Act 14 of 2005**

80. The following long title is hereby substituted for the long title of the principal Act:

**"To provide for the categories, application and registration of co-operatives; to provide for the constitution and functions of co-operatives; to provide for the registered offices of co-operatives, as well as the record-keeping by co-operatives; to provide for membership and general meetings of members, and governance of co-operatives; to provide for the capital structures and the financial reporting and the independent audit or review**

of co-operatives; to provide for the board of directors; to provide for the management of co-operatives through their board of directors; to provide for the capital structure of co-operatives; to provide for the amalgamation, division, conversion and transfer of co-operatives to any other form of juristic person; to provide for the winding-up and deregistration of co-operatives; to provide for judicial management of co-operatives; to provide for the administration of the Act; to establish the Co-operatives Advisory Council; to provide for the membership and functions of the Council; to establish the Co-operatives Development Agency; to provide for the governance of the Agency; to provide for the legal status, functions and powers of the Agency; to establish the Board of the Agency; to provide for the governance of the Agency; to provide for the funding and financial management of the Agency; to establish the Co-operatives Tribunal; to provide for the functions and composition of the Tribunal; to provide for special provisions relating to certain kinds of co-operatives; to provide for co-operation between governmental agencies in for the promotion and support of co-operatives; and to provide for matters connected therewith."

**Substitution of Preamble to Act 14 of 2005**

81. The following Preamble is hereby substituted for the Preamble to the principal Act:

**"PREAMBLE**

**WHEREAS** the Republic of South Africa acknowledges the need for the registration of co-operatives, in accordance with—

\* the Constitution;

\* international conventions and treaties; and

\* national, provincial and local government transversal policy and statutory-regulatory frameworks,

as well as the need for the development of a viable, autonomous, self-reliant and self-sustaining co-operative movement to promote community development and entrepreneurship, create employment and successful enterprises, eradicate poverty and improve the socio-economic well-being of the members of co-operatives;

**AND WHEREAS** the Constitution and national legislation enjoins government to play a fundamental role in promoting the development of co-operatives:

\* in accordance with the co-operative international principles recognised and implemented in South Africa;

\* in accordance with the Millennium Development Goals, including sustainable social and economic development;

\* through the establishment of public private partnerships;

\* through support, and participation in, government initiatives relating to rural development, land reform and agrarian transformation; and

\* by addressing the developmental needs arising from the socio-economic environment of South Africa;

**AND WHEREAS** the Constitution and national legislation enjoins the three spheres of government to be accountable and responsible in supporting and promoting the development and effective functioning of co-operatives in order to bring about a vibrant co-operative movement in South Africa;

**AND WHEREAS** this Act is aligned with ILO Recommendation 193 of 2002, which was also ratified by the South African government, and with co-operative values and principles outlined in the Co-operative Statement of Identity adopted by the International Co-operative Alliance (ICA) in 1995, which states that—

\* co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity;

\* co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others; and

\* co-operative principles are guidelines by which co-operatives put their values into practice,

**AND WHEREAS** all co-operatives are obligated to contribute towards community development in line with the 7th principle,".



**Substitution of Table of Contents of Act 14 of 2005**

82. The following Table of Contents is hereby substituted for the Table of Contents of the principal Act:

*"Sections*

**CHAPTER 1**

**DEFINITIONS, PURPOSES AND APPLICATION OF ACT**

1. Definition and interpretation
2. Purpose of Act
3. Compliance with co-operative principles
4. Forms and kinds of co-operatives
5. Application of Act 5A.
- 5A. Application of Co-operative Banks Act

**CHAPTER 2**

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

***Part 1***

***Application to register and name***

## **CHAPTER 4**

### **GENERAL MEETINGS**

27. Structure for decision making
28. General meetings
29. Annual general meetings
30. Representation at meetings
31. Minutes of general meetings

## **CHAPTER 5**

### **[MANAGEMENT] GOVERNANCE OF CO-OPERATIVES**

32. Board of directors
33. Appointment of directors
34. Meetings and resolutions of board of directors
35. Minutes of meetings of board of directors
36. Board of directors may delegate functions to director or committee or employee
37. Disclosure of interest
38. Acceptance of commission, remuneration or reward prohibited in certain circumstances

39. Returns relating to directors

## CHAPTER 6

### CAPITAL STRUCTURES

40. Capital of co-operative
41. Membership shares
42. Issue of certificates in respect of membership shares or member loans
43. Funds of members
44. Patronage proportion
45. Prohibited and permitted loans and security
46. **[Reserve fund of members]** Reserves for co-operatives

## CHAPTER 7

### AUDIT AND INDEPENDENT REVIEW OF CO-OPERATIVES

47. **[Audit]** Audited report
48. **[Approval of auditor's report and financial statements]** Consideration of audited report or independent reviewed report
49. Auditor and independent reviewer disqualified from acting
50. Appointment and termination of auditor or independent reviewer

- 51. Removal of auditor or independent reviewer
- 52. Attendance of meeting by auditor or independent reviewer
- 53. Right to information
- 54. Notice of error
- 55. **[Exemptions]**

## CHAPTER 8

### AMALGAMATION, DIVISION, CONVERSION AND TRANSFER

- 56. Amalgamation
- 57. Approval of amalgamation
- 58. Effect of registration of amalgamated co-operative
- 59. Division of co-operatives
- 60. Approval of division
- 61. Effect of registration of co-operatives constituted in terms of division
- 62. Conversion of co-operative to any other form of juristic person
- 63. Transfers
- 64. Protection of creditors
- 65. Registration of property upon amalgamation, division, conversion or transfer
- 66. Application to convert company into co-operative
- 67. Consideration of application

- 68. Effects of incorporation of company as co-operative
- 69. Special provision relating to company which has given an undertaking under section 66(3)
- 70. Registrar to give notice of conversion to registrar of Companies
- 70A. Fees for amalgamation, division, conversion and transfer

## CHAPTER 9

### WINDING-UP AND DE-REGISTRATION OF CO-OPERATIVES

- 71. Modes of winding-up
  - 71A. Voluntary winding-up
- 72. Winding-up by order of court
  - 72A. Application for declaratory order
  - 72B. Winding-up by order of Tribunal
- 73. **[Winding-up or de-registration by order of Minister]**
- 74. **[Admission and proving of claims against co-operative being wound up]**
- 75. **[Distribution account]**
- 76. **[Contribution account]**

## CHAPTER 10

**Part 2**

**Funding and financial management of Agency**

91G. Funding of Agency

91H. Annual budget and strategic plan

91I. Financial management, financial statements and annual report

**Part 3**

**National government oversight and executive authority**

91J. Executive authority

91K. Information

**CHAPTER 12B**

**CO-OPERATIVES TRIBUNAL**

91L. Establishment, legal status and composition of Co-operatives Tribunal

91M. Appointment and composition of Tribunal

91N. Functions of Tribunal

91O. Prohibition on Tribunal

91P. Appointment and composition of inspectors or inspectorate

91Q. Adjudication of hearings before Tribunal

91R. Right to participate in hearing

91S. Powers of Tribunal in adjudicating hearing

91T. Rules of procedure

91U. Witnesses

91V. Appointment, composition and functions of Co-operative Conflict  
Resolution Commission

91W. Right to information

91X. Summons

91Y. Authority to enter and search under warrant

91Z. Powers to enter and search

91AA. Conduct of entry and search

91BB. Compromise between co-operative and creditors

## **CHAPTER 12C**

### **INTERGOVERNMENTAL RELATIONS**

91CC. Applicability of intergovernmental relations framework policies and  
legislation

91DD. Intergovernmental structures

91EE. Functions of intergovernmental structures

91FF. Administrative and procedural arrangements

91GG. Establishment, composition and functions of Inter-Provincial Co-ordination

Committee on Co-operatives

91HH. Establishment of Provincial Interdepartmental and Municipal Co-ordinating

Structure

91II. Dispute and conflict resolution

91JJ. Framework for intergovernmental relations

## **CHAPTER 13**

### **MISCELLANEOUS PROVISIONS**

92. Offences

93. Appeal to Minister

94. Exclusion

94A. Reporting, monitoring, evaluation and assessment

94B. Chief Directorate: Co-operatives

95. Regulations

96. Delegation by Minister

97. Transitional provisions

98. Repeal of laws and savings

99. Short title and commencement



**SCHEDULE 1**

**SPECIAL PROVISIONS RELATING TO CERTAIN KINDS OF CO-  
OPERATIVES**

Part 1 Housing co-operatives

Part 2 Worker co-operatives

Part 3 Financial co-operatives

Part 4 Agricultural co-operatives

Part 5 Social co-operatives".

Substitution of expressions in Act 14 of 2005

83. The principal Act is hereby amended by the substitution for the expressions "reserve fund", and "tertiary co-operatives" and "financial services co-operatives" wherever they appear of the following expressions respectively: "indivisible reserve", and "national apex co-operative" and "financial co-operative".

**Short title and commencement of Act**

84. This Act is called the Co-operatives Amendment Act, 2012, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE CO-OPERATIVES AMENDMENT BILL, 2012**

### **1. INTRODUCTION**

The Co-operatives Act, 2005 (Act No. 14 of 2005), came into operation on 2 May 2007, introducing a new framework for the management of co-operatives in South Africa. The Co-operatives Amendment Bill ("the Bill") seeks to amend the Co-operatives Act and aims to address issues raised by various stakeholders who participated during a series of consultative workshops held by the Department of Trade and Industry ("the Department") and public submissions received by the Department.

### **2. OBJECTS OF THE BILL**

The Bill seeks to amend the Co-operatives Act, 2005, so as to provide for the substitution and addition of certain definitions; to provide for associate membership of co-operatives; to provide for categories of primary co-operatives; to provide for national apex co-operatives; to provide for the annual submission of information to the registrar; to amend the accounting practices by providing for audit and independent review of co-operatives; to provide for the payment of fees by co-operatives for the amalgamation, division, conversion or transfer of co-operatives; to provide for the voluntary winding-up of a co-operative by special resolution; to provide for a co-operative to apply for a declaratory order in respect of the liquidation process; to provide for the Tribunal to order the winding-up of a co-operative; to substitute the Advisory Board with the

Advisory Council; to provide for the establishment, functions and powers of the Co-operatives Development Agency; to provide for the funding and financial management of the Agency; to provide for oversight and executive authority of the Agency; to provide for the establishment, composition and functions of the Co-operatives Tribunal; to ensure compliance with the principles of intergovernmental relations; to provide for intergovernmental relations within the co-operatives sector; and to provide for the substitution of the long title and the Preamble; and to provide for matters connected therewith.

### **3. CONSULTATION**

The following departments and stakeholders were consulted:

- National Treasury;
- Department of Public Works;
- Department of Public Service and Administration;
- Department of Science and Technology;
- Department of Transport;
- Department of Agriculture, Forestry and Fisheries;
- Government Communication and Information System (GCIS);
- Department of Labour;
- Department of Higher Education and Training;
- Department of Mineral Resources;
- Department of Energy;
- Department of Human Settlements;

- Department of Social Development;
- Department of Arts and Culture;
- Department of Rural Development and Land Reform;
- Department of Environmental Affairs;
- Office of The Presidency;
- South African Revenue Services;
- All provinces, through the Co-operatives Inter-provincial Committee and provincial workshops;
- Municipalities, through provincial workshops;
- Government agencies, including Small Enterprise Development Agency (SEDA); Khula Enterprise Finance; Land Bank; the Industrial Development Corporation and the National Youth Development Agency (NYDA);
- The National Economic Development and Labour Council (NEDLAC); and
- The co-operatives sector, through co-operative workshops.

#### **4. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will be implemented through regulations and the co-operatives development strategy. New institutions, including the Co-operatives Development Agency, the Co-operative Tribunal and the Co-operative Training Academy, will be established to also assist in the implementation of and ensuring compliance with the Co-operatives Act. Business cases for each of these institutions will be developed and costing will be done through those business cases.

## **5. IMPLICATIONS FOR PROVINCES**

The provincial departments of Economic Development responsible for co-operatives will be responsible for co-ordinating and reporting all co-operative activities in the provinces involving other departments and all other stakeholders.

## **6. IMPLICATIONS FOR MUNICIPALITIES**

Municipalities will be responsible for co-ordinating all co-operative activities within their areas of jurisdiction.

## **7. PARLIAMENTARY PROCEDURE**

7.1 The Department and the State Law Advisers 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.

7.2 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.

