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GENERAL NOTICE

NOTICE 3354 OF 2003

DEPARTMENT OF TRADE AND INDUSTRY**PUBLICATION OF THE CO-OPERATIVES BILL, 2004, FOR PUBLIC COMMENT**

The Co-operatives Bill, 2004, is hereby published for general comment. All interested parties are invited to submit, prior to or on 9 January 2004, any written presentations to:

Ms Nweti Maluleke
Business Unit: Co-operatives
Private Bag X84
PRETORIA
0001
TEL: (012) 310-9315/9358
FAX: (012) 320-1554

The Minister of Trade and Industry intends introducing the Bill in Parliament during the first quarter of the 2004 Parliamentary session.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide for the formation, registration of co-operatives, establishment of a Co-operatives Advisory Board, winding up of co-operatives and to provide for matters connected therewith.

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

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CHAPTER 1 25

APPLICATION AND PURPOSE OF THE ACT

Definitions

1. In this Act, unless the context indicates otherwise—

“**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; 30

“**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 and which is organised and operated on co-operative principles; 35

“**co-operative group**” means an autonomous association of five or more persons that—

(a) comprises less than the minimum number of persons required to register as a co-operative, but otherwise complies with the provisions of this Act; or 40

(b) elects not to comply with any provision(s) of the Act applicable to co-operatives for a specified reason(s) acceptable to the registrar, but complies with the provisions of schedule 2;

“**primary co-operative**” means a co-operative formed by a minimum of seven persons whose object is to provide employment or services to its members; 45

“**secondary co-operative**” means a co-operative formed by two or more primary co-operatives to provide services to its members;

“**federal co-operative**” means a co-operative formed by two or more secondary co-operatives to provide services to its members;

“**co-operative apex organization**” means a co-operative formed by primary co-operatives or co-operative groups, and/or secondary and/or federal co-operatives to provide services to its members, and to represent the interests of co-operatives within a specific sector or region or province or nationally; 50

- “co-operative principles”** means the internationally accepted principles of co-operation, and as exemplified by the principles adopted by the International Co-operative Alliance;
- “department”** means the Department of Trade and Industry;
- “director-general”** means the Director-general of Trade and Industry; 5
- “general meeting”** means a meeting of the members of a co-operative or co-operative group, and may include, as the context indicates, an Annual General Meeting (“AGM”), a special general meeting or a regional or provincial general meeting;
- “ordinary resolution”** means a resolution passed at a general meeting by the majority of the members present; 10
- “Minister”** means the Minister of Trade and Industry;
- “membership share”** means a share issued to the members of a co-operative as a requirement of membership of the co-operative;
- “member loan”** means a loan by a member to the co-operative. 15
- “patronage proportion”** means the allocation by a co-operative to its member based on the business done by the member with or through the co-operative;
- “prescribed”** means prescribed by regulation;
- “registrar”** means the Registrar of Co-operatives and “deputy registrar” shall have a corresponding meaning; 20
- “special resolution”** means a resolution passed at a general meeting by a majority of 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; and 25
- “this Act”** includes regulations made thereunder.

Purpose

2. The purpose of this Act is as follows:

- (1) to promote the development of autonomous, self reliant co-operatives, and co-operative groups that comply with co-operative principles; 30
- (2) to create a legislative framework that will facilitate the development of such co-operatives;
- (3) to 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 in terms of this Act. 35

Compliance with co-operative principles

3. (1) For the purposes of this Act a co-operative will be deemed to comply with co-operative principles if:

- (a) membership of the co-operative is open to persons who can use the services of the co-operative and who are willing and able to accept the responsibilities of membership; 40
- (b) each member has only one vote;
- (c) to the extent feasible, members provide the capital required by the co-operative with a return paid on member capital not to exceed the maximum percentage specified in accordance with the constitution; 45
- (d) interest on membership shares, if any, is limited to the maximum percentage fixed in the constitution;
- (e) a surplus arising from the co-operative's operations is used:
 - (i) to develop its business;
 - (ii) to provide or improve common 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.

- (f) it educates its members and employees on the principles and methods of co-operation.

(2) A co-operative may restrict the classes of persons eligible for membership if such restriction reasonably relates to the business of the co-operative as set out in its constitution and to the commercial ability of the co-operative to provide services to prospective members, as long as such restriction does not constitute unfair discrimination. 5

(3) The constitution of a secondary co-operative or federation or co-operative apex body may provide that the members have more than one vote, despite subsection (1)(b).

Application of this Act 10

4. This Act applies to all co-operatives registered or deemed to be registered in terms of this Act.

CHAPTER 2

INCORPORATION OF CO-OPERATIVES

Application to register a co-operative 15

5. (1) An application to register a co-operative may be made by—

- (i) a minimum of seven persons that intend to found a primary co-operative, provided that a minimum of five persons may form a housing co-operative and a workers co-operative, as envisaged in of parts 1 and 2 of schedule 3; 20
- (ii) two or more primary co-operatives that intend to form a secondary co-operative; or
- (iii) two or more secondary co-operatives that intend to form a federal co-operative.
- (iv) a minimum of five co-operatives and/or co-operative groups that intend to form an apex organization. 25

(2) The following persons may not make an application under subsection (1):

- (a) an individual who is an un-rehabilitated insolvent or a legal entity which was declared insolvent or was liquidated; or
- (b) an individual who is of unsound mind. 30

Application procedure

6. (1) Before submitting an application to found a co-operative there must be at least one meeting of interested persons at which a business plan for the proposed co-operative is approved, a constitution of the proposed co-operative is adopted, and the first directors are elected. 35

(2) An application to register a co-operative must be submitted to the registrar in the prescribed form, and accompanied by the prescribed fee.

(3) The following documents must accompany such application:

- (a) a business plan;
- (b) a list of the founder members; 40
- (c) two copies of the constitution of the co-op, signed by the founder members; and
- (d) a list of the directors.

Registration of co-operative

7. The registrar must register the co-operative, and issue a certificate of registration with a registration number, if he or she is satisfied that— 45

- (a) the constitution complies with the Act;
- (b) it appears from the business plan that the business will be sustainable; and
- (c) the proposed name of the co-operative complies with section 10(1).

Effect of registration

8. A co-operative will be incorporated as a legal person with effect from the date on which it is registered, as reflected on its registration certificate.

Pre-incorporation contract

9. (1) A person who enters or purports to enter 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 and is entitled to the benefits flowing from that contract, unless the contract expressly provides otherwise. 5

(2) A co-operative may, within a reasonable time after its registration, ratify the contract referred to in subsection (1) by a decision of the majority of members in a meeting of members. 10

(3) If the co-operative ratifies the contract under this section—

(a) the co-operative is bound by the contract and entitled to its benefits as of the date of the contract; and

(b) the person who originally entered into the contract ceases to be bound by the contract or be entitled to the benefits of the said contract. 15

Name of co-operative

10. (1) The proposed name of the co-operative must not be the same or so similar to that of an existing co-operative that it may be misleading, or a name that is undesirable, prohibited, calculated to deceive, or otherwise misleading. 20

(2) A co-operative must have the words “co-operative” or “co-op” as part of its name. Further, it must include as the last word of its name the word “limited” or the abbreviation “Ltd.”, unless the constitution of a co-operative provides for unlimited liability.

(3) A co-operative must set out its name in legible characters in all contracts, invoices, negotiable instruments, letters and orders and places of business. 25

(4) If the name of a co-operative is indicative of a restriction on the business that may be carried on by it, the constitution of the co-operative may not be amended to remove that restriction unless its name is also amended.

Directive from registrar to change the name

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11. (1) The registrar may direct a co-operative to change its name if the co-operative’s name contravenes section 10.

(2) If a co-operative does not comply with a directive from the registrar under subsection (1) within sixty days from date of receipt thereof, the registrar may issue a certificate of amendment revoking the name of the co-operative and assigning a new name. 35

(3) The constitution of the co-operative is deemed to be amended accordingly on the date shown in the certificate of amendment issued in terms of subsection (2).

(4) On issuing a certificate of amendment under subsection (2), the registrar must publish the change of name immediately in a publication generally available to the public in the area(s) where the majority of the members reside. 40

Unlawful use of the word “co-operative”

12. Every entity, other than a co-operative or co-operative group registered in terms of this Act is guilty of an offence if the entity uses or authorises the use of the word or expression “co-operative”, “co-op”, “co-operative limited”, “co-operative Ltd”, “co-op Ltd” or “co-operative group” as part of its name or in any manner in connection with the conduct of its business so that the entity could reasonably be considered to be holding itself out as carrying on business as a co-operative. 45

Constitution of co-operative

13. (1) The constitution of a co-operative must state or provide as follows:

- (a) The name of the co-operative;
- (b) Whether it is a primary co-operative, or a secondary co-operative, or a federal co-operative or a co-operative apex organization; 5
- (c) The main objectives of the co-operative, including reference to the kind of co-operative in accordance with any categorisation of different kinds of co-operatives prescribed in terms of this Act, and a succinct description of the business of the co-operative;
- (d) That each member has one vote in the general meeting of the co-operative, except in the case of a secondary or federal co-operative, or a co-operative apex body, where the constitution may permit a member to have more than one vote, in proportion to the number of its members; 10
- (e) The place where the registered office of the co-operative will be located;
- (f) The minimum and maximum number of directors; 15
- (g) The powers and restrictions on the directors of the co-operative to manage the business of the co-operative;
- (h) Any restrictions on the business of the co-operative;
- (i) The requirements for membership of the co-operative, including the amount of any entrance fee or subscription and any restrictions on membership, and particulars regarding any shares that a member is required to hold in a co-operative upon application or acceptance as a member; 20
- (j) The requirements for withdrawal of membership of a co-operative, including any provisions relating to the liability of the member for a specified period after the date of withdrawal; 25
- (k) Provision for a specified percentage of the surplus to be transferred to an indivisible reserve fund;
- (l) Provision for the distribution of the assets of the co-operative on its dissolution; and
- (m) The date the financial year of the co-operative ends. 30

(2) 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 in addition state or provide as follows:

- (a) The minimum number of membership shares to be issued to each member;
- (b) The nominal value of the shares; 35
- (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 for;
- (d) The maximum percentage of the share capital of a co-operative a member may hold;
- (e) The circumstances under which shares issued to a member may be cancelled. 40

(3) The constitution of a co-operative may state or provide as follows:

- (a) The further objectives of the co-operative;
- (b) The amount of business allowed with non-members, subject to the provisions of this Act;
- (c) The holding of regional or provincial general meetings where a co-operative has members in more than one region or province, and the holding of a national conference of delegates to confirm decisions taken at such regional or provincial meetings; 45
- (d) Provision for a member to appoint a proxy to attend and vote at a general meeting in her or his stead; 50
- (e) Under what conditions, if any, non-members may become directors;
- (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; 55
- (i) Provision to make by-laws regarding any matter relating to the relationship between the co-operative and its members, provided such by laws are not inconsistent with the provisions of the constitution or the Act; and

- (j) Provision for the resolution of disputes between members of the co-operative, or between a member(s) of the co-operative and the co-operative itself, by way of private arbitration or otherwise.
- (4) The constitution of a co-operative—
 - (a) containing a provision which is inconsistent with the provisions of this Act shall notwithstanding such provision be valid in so far as the other provisions thereof are consistent with this Act; and
 - (b) is not invalid by reason only of the fact that it does not provide for a matter for which it must provide in terms of this Act.

Amendment to constitution

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14. (1) The constitution of a co-operative may be amended by the co-operative by special resolution.

(2) Notice of the general meeting at which a proposal to amend the constitution is to be considered must set out the proposed amendment.

(3) An amendment of a constitution will come into operation on the date it is registered with the registrar unless a later date is specified in the special resolution.

(4) The registrar must approve an amendment to the constitution that is submitted in the prescribed form if he or she is satisfied the provisions of the Act have been complied with.

(5) If the registrar is not satisfied that the provisions of the Act have been complied with he or she may conditionally approve or reject the application.

(6) No amendment to the constitution affects an existing cause of action or claim or liability to prosecution in favour of or against the co-operative or its directors or any civil, criminal, administrative, investigative or other action or proceeding to which a co-operative or its directors are a party.

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Powers of a co-operative

15. (1) A co-operative may do all such things as may be reasonably necessary to carry out its objects, subject to any exclusions or qualifications imposed by its constitution with reference to the powers listed in Schedule 1 hereto or otherwise, and subject to the provisions of this Act.

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(2) If a co-operative performs any act for which it does not have the power, the co-operative and each director of the co-operative who authorised the performance of such act or participated in the granting of such authorisation or in the performance of such act, knowing that the co-operative is not empowered to perform such act, will be guilty of an offence.

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Registered office of co-operative

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

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

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(3) A co-operative must notify the registrar in the prescribed form within fifteen days if the physical or electronic address as notified in subsection (2) changes.

Record keeping by a co-operative

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

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- (a) the co-operative's constitution and by-laws, if any, including any amendments;
- (b) the minutes of general meetings in a minute book, as envisaged in section 36;
- (c) the minutes of meetings of the board of directors in a minute book, as envisaged in section 44;
- (d) an attendance register, recording the attendance of directors at meetings of the board, as envisaged in section 45;
- (e) a list of its members, setting out their names and addresses, any membership fees paid, the number of any membership shares owned, and the amount of any member loans;

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- (f) a register of its directors, setting out the names and addresses of the individuals who are or who have been directors and the dates on which they became or ceased to be directors, as well as the name and address of any other co-operative or company or close-corporation of which they are or were a director or member, as the case may be; 5
 - (g) a register of directors interests in contracts or undertakings, as envisaged in section 48; and
 - (h) adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion. 10
- (2) A co-operative must retain its accounting records for a period of six years after the end of the financial year to which they relate.
- (3) The registrar may issue guidelines to co-operatives regarding the manner in which the records referred to in (1) above must be kept, including guidelines allowing a co-operative to keep records in an electronic format. 15
- (4) Members of a co-operative may examine the records referred to in paragraphs (a) to (g) of subsection (1) during the normal business hours of the co-operative and may take extracts from the records, free of charge, or have copies of them made after payment of a reasonable fee.
- (5) Despite subsection (4), where the constitution of a co-operative provides for the establishment of a supervisory board, only members of the supervisory board shall have access to the minutes of meetings of the board of directors, kept in accordance with paragraph (c) of subsection (1). 20
- (6) A co-operative or director who fails to comply with any provision of subsection (1) will be guilty of an offence. 25

CHAPTER 3

MEMBERSHIP OF CO-OPERATIVES

Application for membership

18. (1) No person may be admitted to membership in a co-operative unless—
- (a) the person has applied for membership in writing; 30
 - (b) the application has been approved by the board of directors; and
 - (c) the person has complied with the membership provisions required by the constitution, including payment of any entrance fees, subscribing for any minimum number of membership shares, paying any minimum amount on account of the subscription price of the shares or paying any minimum amount on account of a member loan. 35
- (2) An individual who is under the age of twenty-one years may make an application under paragraph (a) of subsection (1) with the consent of her or his guardian or parents.
- (3) If all the conditions set out in subsection (1) have been met within six months of the date on which the co-operative receives the application for membership, the board of directors may make the admission of the member effective as of the date of the application or as of any date after that date but before the end of the six months. 40

Rights and obligations of members

19. (1) A member of a co-operative shall have the following rights, which must be exercised in accordance with the constitution and this Act: 45
- (a) A right to participate to the fullest extent possible in the decision-making processes of the co-operative, including but not limited to the right to attend and vote at general meetings, to be elected to the board of directors or, where applicable, to a supervisory committee or as a delegate to a conference of delegates as envisaged in section 25; 50
 - (b) A right to information relevant to the exercise of the afore-going right, including a right to information regarding the relevant circumstances in which a matter to be decided arises, and information relevant to the financial well-being of the co-operative;
 - (c) A right to appoint a nominee to receive the member's shares when the member dies, or to transfer his or her share to another person, and to share in the distribution of any surplus. 55

(2) The duties of a member shall be as follows:

- (a) To be bound by the constitution of the co-operative, and by resolutions adopted by the co-operative in accordance with this constitution;
- (b) To attend general meetings, and to submit a written apology in the event that it is not possible for the member to do so.

5

Liability of members

20. The liability of a member of a co-operative by virtue of his or her membership is limited to an amount equal to the nominal value of the shares he or she holds in the co-operative for which he or she has not paid, unless the constitution provides that the members shall have unlimited liability, or otherwise circumscribes the liability of the members.

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Transfer of membership, membership loan or share

21. No transfer of a membership, a member loan or a membership share in a co-operative is valid unless the transferee has applied for membership of the co-operative, and complied with the provisions for membership as set out in the constitution of the co-operative and this Act.

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Withdrawal of membership

22. (1) A member may withdraw his or her membership in a co-operative by written notice to the co-operative.

(2) Any such withdrawal of membership is effective on the date on which the co-operative receives the notice.

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(3) The co-operative must within a reasonable period, but not longer than two years after the date a member's withdrawal becomes effective, repay the member the nominal value of her or his shares, all member loans, all other amounts held to the member's credit and all amounts outstanding on loans made to the co-operative by the member, together with any interest accrued on those amounts up to the date of the payment.

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(4) Notwithstanding subsection (3), if a co-operative determines on reasonable grounds that the repayment envisaged in subsection (3) would adversely affect the financial well-being of the co-operative, it may direct that the repayment be deferred for a period not exceeding four years after the effective date of a notice of withdrawal.

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(5) Unless the 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.

Termination of membership by members

23. (1) Unless the constitution or this Act provide otherwise, the membership of a member may be terminated by special resolution of the members.

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(2) If it is contemplated terminating the membership of a member by special resolution, the board of directors must ensure that the member has received the requisite notice, and allow the member concerned an opportunity to state his or her case at the general meeting, before a decision in this regard is taken. The provisions of this section should not be construed as preventing a general meeting from adopting such resolution in the member's absence.

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(3) If the membership of a member is terminated as contemplated in subsection (1), the co-operative must inform the member concerned of such termination and the reasons therefor.

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(4) A person whose membership has been terminated in terms of this section may only be re-admitted to membership by special resolution of the members.

Powers of registrar in the case of reduced number of members

24. If the membership of a co-operative is reduced to a number less than the number of members required for incorporation, and after six month's it remains at less than that number, the registrar may require

- (a) that the co-operative convert into co-operative group or other legal entity, in accordance with the provisions of Chapter 8; or 5
- (b) that it be wound up in terms of the provisions of Chapter 9.

CHAPTER 4**GENERAL MEETINGS****Structure for decision-making 10**

25. The structure for decision-making within a co-operative provided for in its constitution must conform with the following requirements:

(1) The highest decision making structure of a co-operative is a general meeting of members, subject to the provisions of subsection (2) below.

(2) A regional or provincial general meeting may be held instead of a general meeting, where a co-operative has members in at least two provinces and it is not practical for the members to attend a single general meeting. In this circumstance decisions of regional or provincial general meetings must be submitted to a conference of delegates for confirmation. A decision of a regional or provincial general meeting, confirmed at a conference of delegates, will have the same status as a decision of a general meeting. 15 20

(3) The board of directors is accountable to the general meeting.

(4) Where the constitution of a co-operative provides for the establishment of a supervisory committee, the board of directors will be accountable to such supervisory committee in between general meetings.

General meetings 25

26. (1) General Meetings must be held at the place(s) in the Republic provided for in the constitution or, in the absence of such a provision, at the place where the registered office of the co-operative is located or any other place in the Republic that a general meeting may approve.

(2) General meetings shall be held as often as prescribed in the constitution, provided there is at least one general meeting every calendar year, known as the annual general meeting. 30

(3) Special general meetings may be called at any time.

(4) The chairperson of the board of directors will chair all general meetings, or in her or his absence the vice-chairperson. In the absence of both the chairperson and vice-chairperson of the board of directors, the meeting may elect an acting chairperson to chair that meeting. 35

(5) Subject to the constitution of a co-operative and any regulations under 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 it permits all participants to communicate adequately with each other during the meeting. 40

(6) A person participating in a meeting referred to in subsection (4) is deemed to be present at the meeting.

(7) If the constitution of a co-operative permits a member to appoint a proxy to attend and vote at a general meeting in her or his stead, the same person may not act as a proxy on behalf of more members than the number prescribed in the co-operative's constitution. This number must not exceed twenty percent of the number of members entitled to vote. 45

(8) The provisions of subsections (1) to (6) shall apply to a conference of delegates held in terms of a co-operative's constitution, with such changes as the context may require. 50

Annual general meetings

27. (1) The first annual general meeting ("AGM") must be called not later than eighteen months after the co-operative has been incorporated.
- (2) AGMs other than the first AGM must be held not later than six months after the end of the preceding financial year. 5
- (3) The AGM must decide the following issues, amongst others:
- (a) the appointment of auditors;
 - (b) approval of a report on the affairs of the co-operative for the previous financial year; approval of financial statements for the preceding financial year; 10
 - (c) elections of directors;
 - (d) elections of a supervisory committee, where the constitution requires such a committee to be elected;
 - (e) future business plans of the co-operative; and
 - (f) plans to provide education and training for members and employees.
- (4) Where regional or provincial AGMs are held in terms of a co-operative's constitution, the constitution must provide that a conference of delegates is held within a period not exceeding two months of the last regional or provincial general meeting held, to ratify decisions taken. The constitution of such a co-operative must further provide a means whereby any serious differences of opinion between delegates from different regions or provinces in respect of any of the issues identified in subsection (3) 20 may be resolved in a democratic manner.

Notice of meetings

28. (1) Members must be given at least twenty-one days written notice of a general meeting, specifying the date, time and place of the meeting, and the agenda.
- (2) The fact that a member has not received notice of a meeting does not invalidate such meeting. 25
- (3) If a meeting of a co-operative is adjourned for less than thirty days, it is not necessary, unless the constitution provide otherwise, to give notice of the adjourned meeting other than by announcement at the meeting that is adjourned.
- (4) The provisions of subsections (1) to (3) shall apply to a conference of delegates held in terms of a co-operative's constitution, with such changes as the context may require. 30

Special resolutions

29. (1) A resolution of a general meeting shall constitute a special resolution if:
- (a) the notice of the general meeting specified the particulars of the resolution, and stated that the resolution was proposed as a special resolution; 35
 - (b) the resolution was passed by not less than two-thirds of the members present; and
 - (c) in the event of a resolution to convert a co-operative into a company or close corporation, or to wind up the co-operative, it was passed by at least 75 percent of all the members of the co-operative. 40
- (2) The constitution of a co-operative may require a larger majority of votes than specified in subsection (1) above for any specific purpose.
- (3) Where the constitution of a co-operative provides for the holding of a conference of delegates, a special resolution must be passed both by the majority required in terms of subsections (1) and (2) at each regional or provincial general meeting concerned, and by not less than a majority of two-thirds of the delegates present at such conference of delegates. 45

Members' proposals

30. (1) A member may submit a resolution on any matter that the member proposes to raise at an annual general meeting. 50
- (2) Such resolution must be attached to the notice of the meeting, together with, if requested by the person proposing the resolution, a statement of not more than two hundred words in support thereof.
- (3) A co-operative need not comply with subsection (2) if— 55

- (a) the proposal is not submitted to the co-operative at least thirty days before the anniversary date of the previous annual general meeting;
 - (b) it clearly appears that the purpose of the proposal is to enforce a personal claim or redress a personal grievance against the co-operative or its directors, officers, members or security holders. 5
- (4) No co-operative or person acting on behalf of a co-operative incurs any liability by reason only of circulating a proposed resolution or statement in accordance with this section.
- (5) If a co-operative refuses to attach a proposed resolution to a notice of a meeting, the board must notify the person submitting the proposal as soon as possible after receiving the proposal of the co-operative's intention to omit the proposed resolution from the notice, and its reasons for doing so. 10

List of persons entitled to receive notice

31. (1) The board of directors must prepare an alphabetical list of its members who are entitled to receive notice of and vote at general meetings. 15
- (2) Where a conference of delegates must be held, the board must prepare a list of delegates who are entitled to attend and vote at such meeting, and the names of their alternates.
- (3) Any member may examine the list contemplated in subsection (1) or (2)—
- (a) during usual business hours at the registered office of the co-operative or at the place where its records of members are maintained; and 20
 - (b) at the meeting for which the list was prepared.

Quorum for meetings

32. (1) The quorum for a general meeting must be one third of the number of members of a co-operative present at the time which the meeting is called. 25
- (2) Where the constitution provides for regional or provincial general meetings, the quorum must be one third of the number of members in that province or region present at the time the meeting is called.
- (3) Where the constitution provides for a conference of delegates, the quorum must be one-third the number of delegates entitled to attend such conference present at the time the meeting is called. 30
- (4) For the purposes of calculating the quorum, any apologies members have submitted that are acceptable to the board of directors must be deducted from the number of those who would otherwise be required to attend the meeting, in accordance with a list prepared in terms of section 31. 35
- (5) If the registrar is of the opinion that there is good reason, having regard to the kind of co-operative, to approve a provision in the constitution for a quorum of less than one-third, he or she may do so despite subsections (1) and (2), provided that such quorum is not less than twenty percent of the members present.
- (6) If a quorum is present, the members present may, unless the constitution provides otherwise, proceed with the business of the meeting even though a quorum is not present throughout the meeting. 40
- (7) If a quorum is not present at the time the meeting is called, or within a reasonable period of time thereafter, as stipulated in the constitution, the members present may adjourn the meeting to a determined date, time and place, but may not transact any other business. 45
- (8) At a meeting adjourned in terms of subsection (7), the persons present at the date, time and place determined in accordance with the constitution shall constitute a quorum and may transact business on the initial notice.

Representation at meetings

33. (1) If a juristic person is entitled to vote at a meeting of a co-operative, it may be represented by any member of the juristic person concerned authorised to do so by resolution of its board of directors or executive committee or an equivalent structure.
- (2) An individual who is authorised under subsection (1) to represent a juristic person may exercise on behalf of the juristic person all the powers the juristic person could exercise if it was an individual. 55

Voting by show of hands or ballot

34. (1) Voting at a general meeting or conference of delegates may take place by show of hands unless the constitution provides otherwise, and subject to the provisions of subsections (2) and (3).

(2) Any person who is entitled to vote at a meeting may demand a ballot either before or after a vote by show of hands, in which event voting must be by ballot. 5

(3) Voting must be ballot in the event that there is one person acting as proxy on behalf of more than one member, or more than one such person.

Resolution in lieu of meeting

35. (1) Unless the constitution provides otherwise, the board of directors may give twenty one day's written notice of its intention to adopt a resolution in lieu of a general meeting, which notice must be accompanied by a brief motivation for the reasons for adopting a resolution in this manner, and of the resolution proposed. 10

(2) A resolution circulated in accordance with subsection (1) and signed by a majority of members entitled to vote at the meeting, is as valid as if it had been passed at such a meeting. 15

(3) A copy of every resolution contemplated in subsection (1) must be kept with the minutes of the meeting.

Minutes of meetings

36. (1) The board of directors must cause minutes of general meetings to be kept in one of the official languages of the Republic and to be entered in a minute book to be kept at the registered office of the co-operative. 20

(2) Minutes in respect of any general meeting must be circulated to the members as soon as possible after the meeting, and presented for approval at the next general meeting. 25

(3) For the purposes of subsection (1), loose leaves of paper will not be deemed to constitute a minute book. The pages or leaves of such book must be bound together permanently, and consecutively numbered.

(4) The minutes of any general meeting, signed by the chairperson of the board or a person acting as chairperson, or a resolution adopted in terms of section 35, signed by the chairperson or person acting as chairperson, is in the absence of evidence to the contrary, proof of the outcome of the vote or the resolution. 30

(5) The provisions of subsections (1) to (4) shall apply to a conference of delegates held in terms of a co-operative's constitution, with such changes as the context may require. 35

Request for general meeting

37. (1) Members constituting not less than five percent of the members of a co-operative may submit a written request calling on the directors to convene a general meeting for the purpose stated in the request.

(2) Similarly members constituting not less than five percent of the members of a region or province may submit a written request calling on the directors to convene a regional or provincial general meeting for the purpose stated in the request. 40

(3) On receipt of the request, the board of directors must call a general meeting to transact the business stated in the request unless—

(a) the board of directors have called a general meeting and given notice thereof: 45
and

(b) the business of the meeting as stated in the request includes a matter which it is not within the powers of the members to determine.

(4) If the board of directors do not call a meeting within twenty-one days after receiving the request, any person who signed the request may call the meeting. 50

(5) A meeting called under this section must be called as nearly as possible in the manner in which meetings are to be called pursuant to the constitution and this Act.

(6) Unless the persons who are present and entitled to vote at a meeting called under subsection (4) resolve otherwise, the co-operative must reimburse the persons who signed the request for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

CHAPTER 5

5

MANAGEMENT OF CO-OPERATIVES

Board of directors

38. (1) The affairs of a co-operative shall be managed by a board of directors, which will, subject to the provisions of this Act and the constitution of the co-operative, exercise and perform the powers and duties of the co-operative. 10

(2) The board of directors will be elected by the members in general meeting in such manner and for such a period as may be set out in the constitution.

Persons competent to be directors

39. (1) To hold office as a director, a person must be a member of the co-operative, in the case of a primary co-operative, or a member of a co-operative that is a member, in the case of a secondary or federal co-operatives, or a co-operative apex organization, unless the constitution allows a non-member to be a director. 15

(2) The following persons are not competent to hold office as directors:

- (a) a minor;
- (b) a person of unsound mind; 20
- (c) an unrehabilitated insolvent; and
- (d) 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 or in connection with the formation or management of a co-operative or other corporate entity. 25

Vacation of office by directors and filling of vacancies

40. (1) A director of a co-operative ceases to hold office as a director on the board of directors if—

- (a) he or she becomes incompetent in terms of section 39 to hold such office;
- (b) he or she has been absent from more than three consecutive meetings of the board of directors of the co-operative without the board's leave: Provided that such leave shall not be granted for more than six consecutive meetings unless the absence is on the affairs of the co-operative; 30
- (c) upon the expiry of 30 days, or such shorter period as may be approved by the board, after he or she resigned as a director of the co-operative; and 35
- (d) he or she is removed from office under subsection (2).

(2) A director may at any time be removed from office by ordinary resolution passed at a general meeting of the co-operative.

(3) Any vacancy on the board of directors of a co-operative arising from a circumstance referred to in subsection (1) and every vacancy caused by the death of a director will be filled in such manner as may be provided in the constitution, and every director so appointed will hold office for the unexpired portion of the period of office of the vacating director or the director that died. 40

Chairperson, vice-chairperson and acting chairperson

41. (1) Unless the constitution of a co-operative provides otherwise, the board of directors of a co-operative will at its first meeting after the incorporation of the co-operative and thereafter as often as it may become necessary, elect a director as the chairperson and another director as the vice-chairperson of the board. 45

(2) If both the chairperson and the vice-chairperson are absent or unable to perform the functions of the chairperson the board may elect any other director to act as chairperson during such absence or incapacity. 50

(3) The chairperson and vice-chairperson will hold office until the first meeting of the board of directors subsequent to an annual general meeting, and subject to the constitution will be eligible for re-election.

Vacation of office by chairperson and vice-chairperson

42. (1) The chairperson of the board of directors of a co-operative shall vacate his or 5
her office—

- (a) if he or she ceases to be a director of the co-operative;
- (b) if he or she resigns as chairperson; or
- (c) if he or she is removed from office under subsection (2).

(2) The chairperson or vice-chairperson of a board of directors may at any time be 10
removed from office by the board.

Meetings and resolutions of board of directors

43. (1) A meeting of the board of directors of a co-operative will be held at a time and 15
place determined by the board or the chairperson of the board or any two directors of the board.

(2) Unless the constitution provides otherwise—

- (a) a majority of all the directors will constitute a quorum for any meeting of a 15
board of directors;
- (b) the decision of the majority of the directors present at a meeting of a board of 20
directors will constitute a resolution of such board; and
- (c) in the event of an equality of votes the chairperson of the board or the person 20
acting as chairperson, as the case may be, will have a casting vote in addition
to his or her deliberative vote.

(3) No resolution passed by a board of directors or act performed under the authority 25
of a board of directors will be invalid by reason only of a vacancy on the board or of the
fact that a person who is not entitled to sit as a director sat as a director at the time when
the resolution was passed or the act was authorised: Provided that the resolution was
passed or the act was authorised by the requisite majority of the directors who were
present at the time and entitled to sit as directors.

(4) Unless the constitution provides otherwise, a resolution in writing signed by all 30
the persons who are entitled to vote on that resolution at a meeting of the board of
directors is as valid as if it had been passed at such a meeting.

Minutes of meetings of board of directors

44. (1) The board of directors must cause minutes of the board meetings to be kept in 35
one of the official languages of the Republic and to be entered in a minute book to be
kept at the registered office of the co-operative.

(2) Minutes in respect of any meeting of a board of directors will be circulated to the
directors as soon as possible after the meeting, and presented for approval at the next
board meeting.

(3) A resolution of a board of directors in the form of a written resolution signed by 40
all the directors will constitute a decision of the board and must be entered in the minute
book referred to in subsection (1). The provisions of section 36(3) apply *mutatis*
mutandis to such a minute book.

(4) The minutes of any meeting of a board of directors purporting to be signed by the 45
chairperson of the board or a person who acted as chairperson, as the case may be, will
in any court be *prima facie* proof of the taking place of anything which according to such
minutes took place at the meeting.

Attendance register

45. (1) Every director present at any meeting of the board of directors must at the 50
meeting sign his or her name under the date of the meeting in an attendance register with
permanently bound leaves to be kept for such purpose by the co-operative.

(2) The attendance register will be kept at the registered office of the co-operative or
such other place as may be determined by the co-operative with the approval of the
registrar.

Board of directors may assign functions to a director or committee

46. (1) The board of directors may subject to such limitations and qualifications as may be set out in the constitution of the co-operative, delegate any of its powers to a director or a committee of directors, or authorise a director or any such committee to perform any of the board's duties or to act as the co-operative's representative or agent. 5

(2) A delegation under subsection (1) will not prevent the exercise of the relevant power by the board itself.

(3) The provisions of section 48 will, with the necessary amendments, apply in respect of a committee referred to in subsection (1).

Liability of directors and officers

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47. (1) A director or officer of a co-operative will not be liable to any person in his or her personal capacity for any loss or damage which may occur in or in connection with the performance of his or her duties, unless the loss or damage is due to—

- (a) his or her willful misconduct, dishonesty or gross negligence;
- (b) the fact that he or she willfully contravened or refused to comply with a provision of this Act or the constitution of the co-operative;
- (c) his or her reckless conduct; or
- (d) conduct which is or was intended to defraud any person or for any other fraudulent purpose, in which case he or she will be liable in his or her personal capacity without any limitations of liability. 20

(2) Without prejudice to any other criminal liability incurred, where any business of a co-operative is carried on in any manner contemplated in subsection (1), every director or officer who is knowingly a party to the carrying on of the business in any such manner will be guilty of an offence.

Directors to disclose interest

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48. (1) A director must, in accordance with this section, disclose to the co-operative the nature and extent of any interest that the director has in a material contract or transaction, or a proposed material contract or transaction, with the co-operative, and any material change to such interest.

(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 the same terms as are generally available to members. 30

(3) The director must make disclosure in writing, and the fact that a director has made disclosure must be recorded in the minutes of the meetings of directors. 35

(4) A director must make the disclosure:

- (a) at the meeting of directors at which the proposed contract or transaction is first considered;
- (b) if the director was not interested in the proposed contract or transaction at the time of the meeting referred to in subsection (a) at the first meeting after the director acquires an interest in it;
- (c) if there is a material change in the director's interest in the proposed contract or proposed transaction, at the first meeting after the change;
- (d) if the director becomes interested in the contract or transaction after it is made, at the first meeting after the director acquires an interest in it; 40
- (e) if the director had an interest in the contract or transaction before becoming a director, at the first meeting after becoming a director; or
- (f) if the contract or the transaction is one that would in the ordinary course of business not require the approval of directors as soon as the director becomes aware of the contract or transaction. 50

(5) An officer who is not a director must disclose any interest in a contract in the same manner and at the same time as a director is required to do in terms of this section.

(6) The board of directors must keep a register of directors' interests in contracts or undertakings, and enter therein full particulars of every disclosure of interest made in terms of this section. 55

Acceptance of commission, remuneration or reward prohibited in certain circumstances

49. (1) A director or an 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 his or her usual business or profession and he or she, if he or she is a director, has disclosed his or her interest in terms of the provisions of section 48. 5

(2) A director or employee who contravenes a provision of subsection (1) will be guilty of an offence. 10

Returns relating to directors

50. (1) A co-operative must notify the registrar in writing within 30 days of—

- (a) the full name and address of each person elected to hold office as a director at an annual general meeting;
- (b) any change of address of a director upon being informed of such change by a director; 15
- (c) any director vacating his or her office;
- (d) a person being appointed as a director, together with the full name and address of the person so appointed.

(2) A director who changes his or her address must within 30 days after such change inform the co-operative in writing of his or her new address. 20

(3) A co-operative that fails to comply with a provision of subsection (1) and a director who fails to comply with a provision of subsection (2) will be guilty of an offence.

CHAPTER 6

25

CAPITAL STRUCTURE

Initial capital

51. (1) The initial capital of a co-operative should be provided by its members.

(2) The capital contributed by members may comprise any of the following:

- (a) Entrance fees;
- (b) Membership fees or subscription;
- (c) Membership shares; and
- (d) Member loans. 30

Membership shares

52. (1) Membership shares may be issued only to members, each of whom must hold the minimum number of membership shares prescribed by the constitution. 35

(2) The constitution may not include any preference, right, condition, restriction, limitation or prohibition on membership shares, except as provided for by this Act.

(3) A member is not entitled to withdraw her or his shares for as long as s/he is a member of the co-operative. 40

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

(5) A transfer of membership shares is valid only if it complies with section 21 and any restrictions set out in the constitution.

(6) A co-operative has a claim on a membership share for any debt of that member to the co-operative. 45

Issue of certificates in respect of membership shares or member loans

53. (1) Each member is entitled to a certificate in respect of membership shares issued to her or him or a certificate in respect of member loans unless the constitution of a co-operative provides otherwise.

(2) If the constitution provides that no such certificates need be issued the co-operative must, on the request of a member, issue a statement of the number of membership shares held by, or the amount of any member loan of, the member. 5

(3) The face of each certificate that the co-operative issues in respect of membership shares or member loans after the coming into force of this section must contain—

- (a) the name of the co-operative; 10
- (b) a statement that the co-operative is subject to this Act;
- (c) the name of the person to whom it is issued;
- (d) a statement 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 loan; 15
- (e) a statement that the certificate is not transferable without the approval of the board of directors; and
- (f) a statement that the member is liable for the unpaid portion of any membership share issued to her or him.

Members' funds 20

54. (1) The constitution of a co-operative may provide for the establishment of one or more members' funds in which the member of a co-operative may be credited with—

- (a) contributions made by him or her to that fund;
- (b) interest on an amount paid upon his or her shares and set aside for future payment; 25
- (c) any bonus allocated to him or her set aside for future payment;
- (d) any amount paid to him or her after the reduction of share capital;
- (e) any amount allocated to him or her out of the distribution of reserves set aside for future payment;
- (f) any other money due to him or her which is a deferred payment. 30

(2) The money standing to the credit of a member in a members' fund—

- (a) may be applied for any purpose except for writing off a loss;
- (b) must be paid to the member in the manner and at the time provided for in the constitution;
- (c) may bear interest at a rate fixed in the constitution; 35
- (d) may on the due date be set off against the debt owing 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, 1965 (Act No. 23 of 1965) by reason only of the fact that the co-operative administers a members' fund. 40

Patronage proportion

55. (1) A co-operative may allocate among and credit or pay to its members as a patronage proportion all or a part of the surplus remaining after the transfer to the reserve fund of a percentage of the surplus specified in the constitution, in accordance with section 13(1)(f). Such allocation must be pro rata to the business done by the members with or through the co-operative in that financial year. 45

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

- (a) the quantity, quality, kind and value of things bought, sold, handled, marketed or dealt in by the co-operative; 50
- (b) the services rendered—
 - (i) by the co-operative on behalf of or to the member; and
 - (ii) by the member on behalf of or to the co-operative; and
- (c) differences that are, in the opinion of the board of directors, appropriate for different classes, grades or qualities of things and services. 55

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

(4) If the provisions of subsection (3) apply, the constitution must further provide 5
for—

- (a) the giving of notice to each member of the number of shares purchased or to be purchased for the member;
- (b) the manner of issuance or transfer of shares;
- (c) if applicable, the issuance and forwarding of certificates to members in respect 10
of shares so issued or transferred.

Prohibited loans and guarantees

56. (1) A co-operative may not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise to any member, director, or employee of the co-operative or to an associate of any such person for any purpose; if there are 15
reasonable grounds to believe that—

- (a) the co-operative is or would be, after giving the financial assistance, unable to pay its liabilities as they become due; or
- (b) the realisable value of the co-operative's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or 20
encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the co-operative's liabilities and the share capital.

(2) A co-operative may give financial assistance by means of a loan, guarantee or otherwise to—

- (a) any person in the ordinary course of business if the lending of money is part 25
of the ordinary business of the co-operative;
- (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 30
their own occupation; or
 - (ii) in accordance with a plan for the purchase of shares of the co-operative or any of its members to be held by a trustee;
- (d) members, or members of members, if the financial assistance is available to all 35
members on similar terms.

CHAPTER 7

FINANCIAL DISCLOSURE

Audit

57. (1) An audit of the affairs of a co-operative must be conducted once a year, in respect of each financial year, in order to: 40

- (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 of this Act;
- (c) report generally as to whether the assets and facilities of a co-operative are 45
being properly managed, and the operations of a co-operative properly conducted, in compliance with the Act; and
- (d) report on any other matter the auditors are required to report on in terms of a co-operative's constitution.

(2) The Minister may publish regulations further regulating the audit of co-operatives 50
in terms of subsection (1).

(3) The Minister may, in terms of the regulations envisaged in subsection (2), grant the registrar the power to permit a co-operative, notwithstanding the provisions of subsection (1), to conduct such audit every second year, or permit a suitably qualified person other than an auditor to conduct the required audit, subject to such conditions as 55
the registrar considers appropriate.

Approval of auditors' report and financial statements

58. (1) The AGM must approve the auditors' report and financial statements, subject to the provisions of subsection (5).

(2) Upon approval of the auditors' report and financial statements, they must be signed by the chairperson in confirmation of their approval, or by the person who acted as chairperson at the meeting where the auditor's report and financial statements were approved, and submitted to the Registrar. 5

(3) A co-operative may not issue, publish or circulate copies of the financial statements unless the statements are:

(a) approved and signed in accordance with subsection (1); and 10

(b) accompanied by a report of the auditor.

(4) The auditors' 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 the date of their approval.

(5) The board of directors must submit a copy of the auditors' report to the registrar within fifteen days of approval. If for any reason an AGM has failed to approve the auditors' report, the board of directors must notify the registrar within fifteen days of the reasons for such failure, and the action the co-operative proposes to address the situation. 15

Auditor disqualified from acting 20

59. A person is disqualified from being an auditor of a co-operative if such person has a personal or material interest in the co-operative or in any of the affiliates of a co-operative or in any subsidiary of a co-operative or in the business of any of its directors or officers, or in any other circumstance that is perceived as constituting a conflict of interest by the auditing profession. 25

Appointment of auditor

60. (1) The members must by ordinary resolution at the first annual general meeting and at each subsequent annual general meeting, appoint an auditor to hold office until the close of the next annual general meeting.

(2) Despite subsection (1), if an auditor is not appointed at a meeting of members the incumbent auditor continues in office until a successor is appointed. 30

(3) Where the co-operative is unable to appoint an auditor, the registrar may approve the person nominated by the co-operative to audit the books of a co-operative for one financial year.

(4) The fee payable to the auditor appointed in the manner contemplated in subsection (3) must be approved by the registrar. 35

(5) An auditor of a co-operative ceases to hold office when the auditor dies, resigns or is removed under section 61 or is struck 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 sent to the co-operative, or on the date specified in the resignation, whichever is later. 40

Removal of auditor

61. (1) The members may by ordinary resolution remove the auditor from office.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled in terms of section 62(1). 45

Filling vacancy

62. (1) The board of directors must fill a vacancy in the office of auditor as soon as possible after it occurs, unless the constitution provides that such a vacancy be filled by the members at a general meeting. 50

(2) If there is not a quorum of directors, the directors then in office must call a general meeting within twenty-one days after a vacancy in the office of auditor occurs to fill the vacancy. If the directors then in office fail to call a meeting or if there are no directors in office, such meeting may be called by any member.

(3) An auditor appointed to fill a vacant post holds office for the unexpired term of his or her predecessor. 5

Attendance of meeting by auditor

63. (1) The auditor of a co-operative must be given notice of any general meeting at which a report of the auditor is to be discussed and is entitled to attend such meeting, at the expense of the co-operative, and to be heard on matters relating to the auditor's duties. 10

(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 the auditor or a former auditor of the co-operative is given ten days written notice of such meeting. 15

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

Right to information

64. (1) At the request of the auditor, the members, directors, officers, employees or agents or mandatories of the co-operative must provide any information and 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. 20

(2) At the request of the auditor, the directors must obtain from any present or former directors, officers, employees and agents or mandatories 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. 25

Notice of error

65. (1) In the event that director or officer becomes aware of any error or misstatement in a financial statement that the auditor or a former auditor has reported on, she or he must notify the auditor without delay. 30

(2) If the auditor or former auditor of a co-operative is notified or becomes aware of an error or misstatement in a financial statement on which the auditor or former auditor has reported, and the error or misstatement is material, the auditor or former auditor must inform the board of directors accordingly.

(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— 35

- (a) prepare and issue revised financial statements; or
- (b) inform the members of the error or misstatement, and inform the registrar in the same manner as it informs the members. 40

CHAPTER 8

40

AMALGAMATION, CONVERSION AND TRANSFER

Amalgamation

66. (1) Two or more co-operatives may agree in writing to amalgamate provided the amalgamated co-operative would comply with the requirements for a co-operative to be registered in terms of the Act. 45

(2) An agreement to amalgamate envisaged in subsection (1) must set out the terms of the amalgamation, and the means by which it will be effected, including the following:

- (a) the provisions of the constitution of the amalgamated co-operative;
- (b) the name and address of each proposed director of the amalgamated co-operative; 50
- (c) the manner in which the shares of each amalgamating co-operative are to be converted into membership shares of the amalgamated co-operative and, if applicable, other securities of the amalgamated co-operative;

- (d) if any share of an amalgamating co-operative is not to be converted into shares 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;
- (e) the continuation of the members' respective interests in a members' fund of the amalgamated co-operative; 5
- (f) the application of any surplus which may have resulted from the operations of the amalgamating co-operatives; and
- (g) a provision that at least three month's notice of the intended amalgamation is given to the creditors of the co-operatives concerned. 10

Approval of amalgamation

67. (1) The board of directors of each amalgamating co-operative must submit the amalgamation agreement for approval to a general meeting of each amalgamating co-operative.

(2) A copy or summary of the agreement to amalgamate must accompany the notice of such meeting. 15

(3) An amalgamation agreement is adopted when the members of each amalgamating co-operative have approved the amalgamation agreement by separate special resolutions.

Submission to registrar

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68. (1) After the members of the respective co-operatives have approved the amalgamation, the constitution of the amalgamated co-operative must be submitted to the registrar for approval, together with a notice of registered office and a notice of the directors of the amalgamated co-operative.

(2) A declaration by the directors of each amalgamating co-operative must be attached to the constitution of amalgamation and must establish— 25

- (a) that the amalgamated co-operative will be organised and operated and will carry on business on co-operative principles;
- (b) that the amalgamated co-operative will comply with the provisions of this Act;
- (c) that there are reasonable grounds to believe that— 30
 - (i) the amalgamated co-operative will be able to pay its liabilities as they become due;
 - (ii) the realisable value of the amalgamated co-operative's assets will not be less than the total of its liabilities and share capital;
 - (iii) no creditor will be prejudiced by the amalgamation; and 35
 - (iv) adequate notice has been given to all known creditors of the amalgamating co-operatives.

(3) For the purpose of subparagraph (2)(c)(iv) adequate notice is given if a notice in writing is sent to each known creditor who has a claim against any of the amalgamating co-operatives that exceeds one thousand Rands. 40

(4) 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 relevant provisions of their constitutions;
- (b) the constitution is in accordance with the Act; 45
- (c) the co-operative will be organised and operated and will carry on business on co-operative principles; and
- (d) all applicable requirements of this Act have been complied with.

(5) For the purposes of subsection (4), the registrar may rely on the constitution and the declarations contemplated in subsection (2). 50

Effect of registration of amalgamated co-operative

69. As from the date shown on the certificate of registration:

- (a) the amalgamation of the amalgamating co-operatives and their continuance as one co-operative becomes effective, and the registration of the amalgamating co-operatives is cancelled; 55
- (b) the property of the amalgamating co-operatives becomes property of the amalgamated co-operative;

- (c) the amalgamated co-operative continues to be liable for the obligations of each amalgamating co-operative;
- (d) an existing cause of action, claim or liability to prosecute is unaffected;
- (e) a civil, criminal, administrative, investigative or other action or proceeding pending by or against an amalgamating co-operative may be continued to be prosecuted by or against the amalgamated co-operative; 5
- (f) a conviction against or ruling, order or judgment in favour of or against an amalgamating co-operative may be enforced by or against the amalgamated co-operative.

Conversion of co-operative to any other kind or form of juristic person 10

70. (1) (a) Subject to paragraph (b), a co-operative that has passed a special resolution authorising the conversion of the co-operative into any other kind or form of corporate body may apply to the registrar, in the form determined by the registrar, to cancel its registration as a co-operative.

(b) An application for the cancellation of registration as a co-operative contemplated in paragraph (a) may only be made— 15

- (i) with the written consent of at least 75 percent of all members present or represented by proxy at the meeting: Provided that these members constitute fifty percent plus one of all members;
 - (ii) if at least three month's notice of the intended conversion has been given to the creditors of the co-operative concerned. 20
- (2) An application referred to in subsection (1)(a) must be accompanied by—
- (a) a declaration by the chairperson of the board of directors of the co-operative concerned—
 - (i) that the consent in writing of the requisite number of the members of the co-operative have been obtained for the proposed conversion: 25
 - (ii) that proper notice has been given to the creditors of that co-operative;
 - (b) the prescribed fee.

(3) The registrar may require a co-operative referred to in subparagraph (1)(a) to submit to the registrar such proof as may be determined by him or her in respect of any matter contained in a declaration referred to in paragraph (a) of subsection (2). 30

(4) If the registrar is satisfied that the provisions of this Act have been complied with in respect of an application contemplated in subsection (2), the registrar must cancel the registration of the co-operative referred to in subsection (1)(a) and strike the name and other particulars of that co-operative off the register of co-operatives. 35

(5) As from the date on which the registration of a co-operative has been cancelled under subsection (4)—

- (a) such co-operative ceases to exist;
- (b) subject to subsection (6), all assets, rights, liabilities and obligations of such co-operative vest in the corporate body into which the co-operative is converted or, if it is by virtue of its constitution capable of owning property separate from its members, the unincorporated association of persons into which the co-operative is converted; 40
- (c) in the event of a co-operative converting into a company, all members of the co-operative become shareholders of the company. 45

(6) Any property which vests in the corporate body by virtue of subsection (5)(b) must be transferred to that corporate body without payment of transfer duty, stamp duty or any other fee or charge, in accordance with section 71.

Registration of property upon amalgamation or conversion

71. (1) The registrar of deeds upon submission to him or her of a certificate of amalgamation or conversion or order of court or its certified copy must endorse and make entries in any relevant register, title deed or other document in his or her office or laid before him or her to register the property in the name of the amalgamated or converted co-operative. 50

(2) No transfer duty, stamp duty or other fees is payable in respect of the registration contemplated in subsection (1). 55

Extraordinary disposition

72. (1) A sale, lease or exchange of all or substantially all of the property of a co-operative requires the approval of the members in accordance with subsections (2) to (6).

(2) In a event of a sale, lease or exchange of the property of a co-operative as contemplated by subsection (1), notice of a general meeting must be sent to all members and must include a copy or summary of the proposed agreement of sale, lease or exchange. 5

(3) Each member carries the right to vote with respect to an extraordinary disposition, whether or not it otherwise carries the right to vote. 10

(4) A disposition is authorised when approved by special resolution of members. Provided that the special resolution may authorise the directors to determine any terms and conditions of a sale, lease or exchange.

(5) The directors, if authorised by the members approving a proposed disposition, may abandon the disposition without further approval. 15

Reorganisation

73. (1) This section applies to—

- (a) a reorganisation made pursuant to a court order; and
- (b) a court order made under any other Act of Parliament or this Act that affects the rights among the co-operative, its members, and creditors. 20

(2) A court order for reorganisation may not result in a co-operative—

- (a) no longer being organised or operating or carrying on business on co-operative principles; or
- (b) not complying with the provisions of this Act.

(3) If a court order contemplated in subsection (1) is made with regard to a co-operative, the constitution of the co-operative may be amended by the order to effect any changes that might lawfully be made by an amendment to a co-operative's constitution under this Act. 25

(4) After an order contemplated to in subsection (1) has been made, a constitution of reorganisation in the form that the registrar determines together with, if applicable, notice of registered office and notice of change of directors must be sent to the registrar. 30

(5) On receipt of constitution of reorganisation the registrar must issue a certificate of amendment.

(6) A reorganisation becomes effective on the date shown on the certificate of amendment and the constitution of incorporation will be amended accordingly. 35

CHAPTER 9**WINDING-UP OF CO-OPERATIVES****Modes of winding-up**

74. A co-operative may be wound up—

- (a) voluntarily; 40
- (b) by an order of court, as provided below; or
- (c) by an order of the Minister, as provided below.

Voluntary winding-up

75. A co-operative may be wound up voluntarily by special resolution.

Winding-up by order of court 45

76. (1) A competent court may, on application by any interested person, order that a co-operative be wound up, if it appears to the court that it is just and equitable that the co-operative should be wound up.

(2) The court considering an application in terms of subsection (1) may adjourn the hearing thereof conditionally or unconditionally or before granting or refusing such application, make any provisional or other order it may deem fit. 50

Winding-up by order of Minister

77. The Minister may on the recommendation of the registrar order that a co-operative be wound up if, in his or her opinion:

- (a) the registration of the co-operative was obtained through fraud;
- (b) the co-operative was formed for a particular period or until the occurrence of a particular event, and that period has expired or that event has occurred; 5
- (c) the co-operative has not transacted business during a continuous period of one year;
- (d) the co-operative is not operating in accordance with its constitution or in accordance with co-operative principles. 10

Transitional provisions relating to the winding-up of co-operatives

78. The winding-up of a co-operative shall be effected in accordance with a law of general application to be enacted regulating the law of insolvency and the winding-up of legal persons, including co-operatives. Pending the enactment of such a law, the provisions of Chapter 10 of the Co-operatives Act, 1981 (Act No. 91 of 1981) shall 15 apply, notwithstanding its repeal in terms of this Act.

Special provisions relating to the winding-up of co-operatives

79. Having regard to co-operative principles and notwithstanding the enactment any law of general application regulating the law of insolvency and the winding-up of legal persons, the following matters are to be dealt with in accordance with this Act: 20

- (1) The admission and proving of claims against a co-operative being wound-up;
- (2) The distribution of any residue, in terms of a distribution account;
- (3) The recovery of a contribution, in terms of a contribution account.

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

80. (1) Any person who has a claim against a co-operative being wound up, excluding a claim against a members' fund, must— 25

- (a) lodge a sworn or solemn statement specifying the amount of the claim and the prescribed particulars relating to the claim together with supporting documents with the liquidator;
- (b) lodge a sworn statement setting out the amount of the claim and the particulars relating thereto, together with supporting documents (if any) within 90 days of the publication of the notice. 30

(2) The liquidator may admit or refuse to admit the co-operative's liability for the amount of a claim referred to in subsection (1) or may admit the co-operative's liability for any portion of such an amount. 35

(3) (a) Any person aggrieved by a decision taken by a liquidator under subsection (2) in connection with his or her claim may within 30 days after he or she was notified of such decision appeal to the registrar against such decision;

(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 the decision aside and order the liquidator to admit the claim or to admit it to the extent determined by the registrar. 40

(4) (a) Any person referred to in subsection (1) who has failed to lodge his or her claim with the liquidator within the period mentioned in that subsection, may thereafter with the consent of the registrar lodge his or her claim with the liquidator within a period of 30 days after the termination of the said period. 45

(b) The provisions of subsections (2) and (3) shall with the necessary adaptations apply in respect of a claim referred to in paragraph (a).

(5) A member who does not want his claim against a members' fund to proceed must inform the liquidator in writing thereof. 50

(6) (a) The provisions of this subsection do not prevent a creditor from proving a claim in any court.

(b) A person instituting an action against a co-operative being wound up must lodge his or her claim with the liquidator within the period contemplated in subsection (1) or, with the written consent of the registrar, within the further period contemplated in subsection (4). 55

Distribution account

81. (1) A distribution account shall provide for any residue remaining after the payment of any claims that are secured in law to be applied according to the provisions of this section.

(2) The residue referred to in subsection (1) must in the first place be applied in paying back the paid-up share capital of the co-operative to members of the co-operative. 5

(3) If such residue is less than the paid-up share capital the amount to be paid to a members out of such residue will be an amount which bears the same ratio to the amount of such residue as the paid-up value of his or her shares bears to the paid-up share capital. 10

(4) If such residue exceeds the paid-up share capital the balance remaining after the paid-up share capital has been paid back must, subject to the provisions of subsection (7), be allocated to the members of the co-operative—

(a) in the case of a co-operative the main object of which involves that its members conduct transactions with or through it, in accordance with the patronage proportion: 15

(b) in the case of a co-operative the main object of which does not involve that its members conduct transactions with or through it, in accordance with a basis set out in the constitution.

(5) (a) The patronage proportion mentioned in subsection (4)(a) must— 20

(i) be determined with reference to either the period specified in the constitution of the co-operative which preceded the commencement of the winding-up of the co-operative or the period for which the co-operative has existed, whichever period is the shorter.

(ii) be at least five years. 25

(6) For the purposes of subsections (4) and (5)—

(a) the value of the transactions conducted by a former member with or through such co-operative during the appropriate 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), provided— 30

(i) the former member, or, if he or she is deceased, his or her executor, has submitted his written consent to that effect to the co-operative within 90 days after such former member ceased to be a member of the co-operative; and

(ii) the constitution of the co-operative so provides; 35

(b) a co-operative incorporated in consequence of a conversion in terms of the Act will be deemed to have existed as from the date of incorporation of the previous co-operative so converted, and the value of the transactions conducted by a member of the first-mentioned co-operative during the appropriate period with or through the previous co-operative as a member may be added to the value of the transactions conducted by him or her with or through the first-mentioned co-operative; 40

(c) a co-operative incorporated in consequence of an amalgamation of two or more co-operatives in terms of this Act will be deemed to have existed as from the date of incorporation of the most recent of those co-operatives, and the value of the transactions conducted by a member of the amalgamated co-operative during the appropriate period with or through any of the previous co-operatives of which he or she was then a member may be added to the value of the transactions conducted by him or her with or through the amalgamated co-operative. 50

(7) If the constitution of a co-operative provides that an amount shall 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) shall in the first place be applied for the payment of such an amount.

Contribution account

82. (1) A contribution account must provide for the recovery of contribution from such persons as are liable for the payment thereof.

(2) A contribution account must, in respect of each contributory, indicate the ground on which he or she is liable for the payment of contribution, the amount for which he or she is liable and the contribution to be paid by him or her in terms of that contribution 60

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.

CHAPTER 10

JUDICIAL MANAGEMENT

Circumstances in which co-operatives may be placed under judicial management 5

83. (1) When any co-operative by reason of mismanagement or for any other cause—

- (a) is unable to pay its debts or is probably unable to meet its obligations; and
- (b) has not become or is prevented from becoming a successful concern, and there is a reasonable probability that, if it is placed under judicial management, it will be enabled to pay its debts or to meet its obligations and become a 10 successful concern, a competent court may, if it appears just and equitable, grant a judicial management order in respect of that co-operative.

(2) An application to a competent court for a judicial management order in respect of a co-operative may be made—

- (a) by a co-operative voluntarily after a special resolution to that effect; 15
- (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 competent court and it appears to that court that if the co-operative concerned is placed under judicial management the grounds for its winding-up may be removed and that it will 20 become a successful concern, and that the granting of a judicial management order would be just and equitable, such court may grant such an order in respect of that co-operative.

Transitional provisions relating to the judicial management of co-operatives

84. The judicial management of a co-operative shall be regulated in accordance with 25 a law of general application to be enacted regulating the law of insolvency and the winding-up of legal persons, including co-operatives. Pending the enactment of such a law, the provisions of Chapter 11 of the Co-operatives Act, 1981 (Act 91 of 1981) shall apply, notwithstanding its repeal in terms of this Act.

CHAPTER 11

30

ADMINISTRATION OF THIS ACT

The registrar of co-operatives

85. (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 35 on the registrar by or in terms of this Act;
- (b) may appoint as many persons as he or she may deem necessary as deputy registrars of co-operatives, to assist the registrar perform the functions of the registrar and to exercise such powers as have been delegated to the deputy.

(2) The Minister may from time to time designate such other officers in the 40 Department under his or her administration as may be necessary to assist the registrar.

(3) The registrar may, from time to time, delegate any power conferred upon him by or under this Act, to any officer in the public service.

(4) A delegation under subsection (3) shall not prevent the exercise of the relevant 45 power by the registrar himself or herself.

Seal and official stamp of registrar

86. (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. 5

(2) The impression of the seal of the office of the registrar will be judicially noticed in evidence.

Register of co-operatives to be kept by registrar

87. (1) The registrar must keep a register to be known as the register of co-operatives in the prescribed manner, in which particulars of all registered co-operatives are entered. 10

(2) The register of co-operatives or any extract or a copy of that register signed by the registrar is *prima facie* proof of the particulars contained therein.

Submission to registrar

88. 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. 15

Inspection of documents

89. (1) A person who has paid the prescribed fee is entitled to examine any document a co-operative has sent to the registrar as required in terms of this Act, except a report relating to transactions between a co-operative and its members, and to make copies of it or take extracts from it. 20

(2) The registrar must on receipt of a written application accompanied by the prescribed fee, provide any person with a copy, extract, certified copy or certified extract of any document a co-operative has sent to the registrar as required in terms of this Act, except a report relating to transactions between a co-operative and its members. 25

Form of records kept may be prescribed

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

CHAPTER 12**THE CO-OPERATIVES ADVISORY BOARD**

30

Establishment of Co-operatives Advisory Board

91. The Co-operatives Advisory Board ("Advisory Board") is hereby established.

Functions of Advisory Board

92. (1) The functions of the Advisory Board are:

- (a) to advise the Minister generally, and to make recommendations to her or him, with regard to co-operative development policy in the Republic and the application of any of the provisions of this Act or any other law on matters affecting co-operatives; 35
- (b) to advise the Minister regarding any dispute between, on the one hand, a co-operative or proposed co-operative or a member(s) of a co-operative and, on the other hand, the Registrar; 40
- (c) to advise the Minister regarding any Appeal by a co-operative or proposed co-operative or member of a co-operative against a decision or order of the Registrar;
- (d) to recommend guidelines for the audit of co-operatives; 45
- (e) to consider and advise on any matter referred to the Advisory Board by a co-operative or proposed co-operative or member of a co-operative, in a manner that promotes the development of co-operatives.

(2) The Minister may request the Advisory Board to advise him or her regarding any decision he or she is required to take in terms of this Act.

(3) Subject to the laws governing the public service, the Minister must provide the Advisory Board with the staff that the Minister considers necessary for the performance of its functions.

(4) The expenses of the Advisory Board are to be met by money appropriated by Parliament for that purpose and which is subject to auditing by the Auditor-General.

Members of Advisory Board

93. (1) The Minister must, after consultation with any co-operative apex organisations and with NEDLAC, appoint as members of the Advisory Board, nine persons, comprising—

- (a) three persons capable of representing the interests of co-operatives in the Republic;
- (b) two persons from the responsible Department designated by the Minister;
- (c) two persons from government departments with an interest in the development of co-operatives, other than the Department;
- (d) one member nominated by the voting members of NEDLAC representing organised labour;
- (e) one member nominated by the voting members of NEDLAC representing organised business.

(2) The Minister may designate one of the members of the Board as chairperson.

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

94. (1) The Minister must determine:

- (a) The term of office of the chairperson, vice-chairperson and members of the Advisory Board, which may not be more than three years;
- (b) With the concurrence of the Minister of Finance, the remuneration and allowances to be paid to members of the Advisory Board; and
- (c) Any other conditions of appointment not provided for in this section.

(2) A person whose period of office as chairperson or vice-chairperson or member of the Advisory Board has expired is eligible for reappointment.

(3) The chairperson, vice-chairperson or member of the Advisory Board may resign in writing.

(4) The Minister may remove the chairperson, vice-chairperson or 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.

Meetings of Advisory Board

95. (1) The Advisory Board may make rules in relation to the holding of, and procedure at, meetings of the Advisory Board, which rules shall be 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.

Public hearings

96. 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.

CHAPTER 13

MISCELLANEOUS PROVISIONS

Investigation by the registrar

97. (1) The registrar may order an investigation into the business of the co-operative, 5
if:
- (a) the registrar suspects that the co-operative is not conducting its affairs in accordance with co-operative principles or contravening any provision of this Act; or
 - (b) any person with an interest in the affairs of the co-operative requests the Registrar to investigate the affairs of the co-operative and the Registrar is of 10
the opinion that the need for such investigation is well-founded.
- (2) The registrar may make any recommendation she or he considers appropriate on the basis of an investigation in terms of subsection (1), including a recommendations to the co-operative concerned, to the Minister in terms of section 77, or to the relevant prosecuting authority in terms of section 98. 15

Offences

98. (1) Any person who knowingly contravenes any provision of this Act or does not fulfil duty imposed under this Act is guilty of an offence.
- (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 20
contains an untrue statement of a material fact or a material omission shall be guilty of an offence.
- (3) Any person convicted of an offence under this Act will be liable to imprisonment for a period not exceeding 24 months or to a fine or both such fine and such imprisonment. 25

Appeal to the Minister

99. A co-operative, a prospective co-operative and members of a co-operative, may appeal to the Minister on any decision of the registrar.

Exclusion of Insurance Act

100. The provisions of the Insurance Act do not apply to co-operatives in respect of 30
its 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 specially maintained in respect of such claim.

Regulations

101. The Minister may make regulations— 35
- (a) providing for anything that is to be prescribed by regulation in terms of this Act;
 - (b) prescribing the fees or the manner of determining the fees that may be charged in respect of the filing, verification or copying of a document in terms of this 40
Act, or in respect of any services rendered by the registrar;
 - (c) respecting 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 late payment of fees and the circumstances in which any fees previously paid may be refunded in whole or in part; 45
 - (d) prescribing criteria with respect to exemptions permitted by this Act;
 - (e) prescribing the standards of accounting by a co-operative to be followed for the purposes of Chapter 7;
 - (f) categorising specific kinds or types of co-operatives.

Delegation by Minister of his or her powers under this Act

102. (1) The Minister may, from time to time delegate any power conferred upon him or her by or under this Act, to the registrar, or any officer in the Public Service.

(2) A delegation under subsection (1) will not prevent the exercise of the relevant power by the Minister himself or herself.

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Transitional provisions

103. (1) Any co-operative registered in terms of the Co-operatives Act, 1981 (Act No. 91 of 1981) will be deemed to be registered in terms of this Act, and the statute of any co-operative registered in terms of Co-operatives Act, 1981 will be deemed to comply with the provisions of this Act, subject to the provisions of this section.

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(2) A co-operative registered in terms of the Co-operatives Act, 1981 is required to ensure that its constitution conforms with the provisions of this Act, and to this end to adopt any amendments to its constitution that may be necessary within a period of three years from the date of commencement of this Act.

(3) At any time prior to the expiry of the period specified in subsection (2) such co-operative is required to submit a statement to the registrar indicating that in its opinion it complies with the provisions of this Act.

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(4) Upon receipt of a statement envisaged in subsection (3), the registrar shall either issue such co-operative with a certificate stating that its constitution complies with the provisions of this Act, or issue a directive specifying in what respect the co-operative's constitution is considered not to comply with the provisions of this Act, and a further period of time within which it is required to comply.

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(5) The registrar may require a co-operative that fails to comply with a directive in terms of subsection (4) to:

(a) convert into a co-operative group or other legal entity, in accordance with the provisions of Chapter 8; or

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(b) be wound up in terms of the provisions of Chapter 9.

Repeal of laws and savings

104. (1) Subject to subsection (2) the laws specified in Schedule 4 are repealed by this Act.

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(2) Anything done under the provisions of the laws repealed by subsection (1) and which may be done under the provisions of this Act, are deemed to have been done under this Act.

Short title and commencement

105. This Act is called the Co-operatives Act, 2004 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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SCHEDULE 1

GENERAL POWERS OF A CO-OPERATIVE

Subject to the provisions of this Act and its constitution, a co-operative shall have powers to:

- (a) employ staff on a full-time, part-time or temporary basis and to determine appropriate conditions of employment; 5
- (b) enter into a contract with any person for the performance of work on behalf of the co-operative;
- (c) establish training, recreation, sports or other facilities or administer a housing scheme in the interest of its employees; 10
- (d) acquire or hire movable or immovable property, including rights thereon;
- (e) hypothecate, let, sell or otherwise dispose of movable or immovable property, including rights thereon;
- (f) acquire, hypothecate or dispose of bonds, debentures, stocks and other securities; 15
- (g) acquire or alienate patents, licences, concessions, trade marks or the like, and exercise and protect the rights, privileges and powers attached thereto;
- (h) in the Republic or elsewhere establish or take over, or acquire interests or shares in, trusts, companies or other juristic persons or partnerships and finance them: Provided that the objectives of the institution so established or taken over, or in which interests or shares have been acquired must relate to the objectives of the co-operative concerned; 20
- (i) indemnify any person against damage or loss or guarantee the obligations of any person or become surety or give security for the due fulfilment thereof;
- (j) undertake studies and do research in connection with any matter which may be beneficial to the carrying out of its objects or finance or otherwise assist any person in undertaking such studies or in doing such research; 25
- (k) award bursaries;
- (l) open accounts with banking or other financial institutions;
- (m) make, draw, accept, endorse or negotiate negotiable instruments; 30
- (n) subject to the provisions of section 1 of the Banks Act, 1965 (Act No. 23 of 1965) and subject to the authority of a special resolution, in the Republic or elsewhere borrow or raise money or overdraw a banking account;
- (o) invest money;
- (p) make or accept donations; 35
- (q) procure the registration of a co-operative in any other country or territory;
- (r) collaborate with any person in the performance of any act which the co-operative is by law permitted to perform;
- (s) become a member of a co-operative of which it is competent to become a member, or of any association or organization which seeks to promote any matter in which the co-operative has an interest; 40
- (t) act as an agent of its members or in the interest of its members as intermediary in connection with any pension fund, pension scheme, provident fund or medical scheme;
- (u) act as agent of its members or in the interest of its members as intermediary in connection with— 45
 - (i) insurance business within the meaning of the Insurance Act, 1943;
 - (ii) any other insurance business in terms of which an amount which becomes payable at the death of a member or the occurrence of any other event is paid over to the co-operative on behalf of such member or his estate; 50
- (v) participate in companies, other juristic persons or partnerships established by it in terms of paragraph (h) or in which it acquired interests or shares in terms of that paragraph, or in other co-operatives, including the performance of services on behalf of such companies, juristic persons, partnerships or co-operatives, as agreed with them in writing; 55
- (w) provide information and guidance to its members;
- (x) advance money to its members;
- (y) carry out any function assigned to it by or under any law.

SCHEDULE 2

SPECIAL PROVISIONS RELATING TO CO-OPERATIVE GROUPS

Application of this schedule

1. This schedule applies to a co-operative group that is registered or deemed to be registered in terms of the Act. 5

Application to register

- (1) An application to register a co-operative group may be made by three or more persons who agree to work together in a jointly owned and democratically-controlled enterprise.
- (2) An application to register a co-operative group must be submitted to the registrar on the prescribed form, on which the persons making the application must briefly specify the reasons application is made for registration as a co-operative group and not a co-operative, and must be accompanied by the prescribed fee. 10

Documents 15

2. The following documents must accompany such application:
- (a) a business plan;
 - (b) a list of the founder members; and
 - (c) two copies of the constitution of the co-operative group, signed by the founder members. 20

Registration of co-operative group

3. The registrar must register the co-operative group, and issue a certificate of registration, if satisfied that:
- (a) the constitution complies with the provisions of this schedule;
 - (b) it appears from the business plan that the business will be sustainable; 25
 - (c) the name of the co-operative group includes the phrase "co-operative group", and otherwise complies with the requirements regarding the names of co-operatives as set out in section 10 of the Act; and
 - (d) the reasons specified in the application, as envisaged in section 2(2) of this Schedule, are not inconsistent with the status of co-operative group, as 30 defined, and the purposes of the Act.

Effect of registration

4. (1) A co-operative group will be incorporated as a legal person with effect from the date of which it is registered, as reflected on its registration certificate.
- (2) A co-operative group has unlimited powers to do anything which is not repugnant 35 to the carrying out of its objectives.

Constitution

5. (1) The constitution of a co-operative must contain provisions regarding the following matters:
- (a) the name of the co-operative group; 40
 - (b) the main objective of the co-operative group;
 - (c) the requirements for membership of the co-operative group, including the amount of any entrance fee and/or subscription;
 - (d) provision whereby there is an annual general meeting of members held;
 - (e) provision to elect office-bearers comprising a chairperson, vice-chairperson 45 and secretary or secretary/treasurer of the co-operative group;
 - (f) provision whereby special general meetings may be held, convened by the chairperson or, by default, upon request of a specified number of members;
 - (g) the date the financial year of the co-operative group ends;

- (h) provision for the distribution of assets of the co-operative group on its dissolution.
- (2) The constitution of a co-operative group may contain the following:
 - (a) a provision establishing an executive committee, comprising the chairperson, vice-chairperson, secretary or secretary/treasurer and/or other members, to manage the affairs of the co-operative between general meetings: 5
 - (b) provisions relating to the proceedings of an executive committee:
 - (c) provisions relating to the appointment of a manager; and
 - (d) provisions relating to the appointment of an accounting officer.

Amendment of constitution 10

6. (1) The constitution of a co-operative group may be amended by the decision of a majority of two thirds of the members present at a general meeting.

(2) An amendment of the constitution will be of no force and effect unless registered with the registrar.

Membership of co-operative group 15

- 7. (1) A member must apply for membership of a co-operative group in writing.
- (2) Application for membership must be approved by a general meeting or, if there is one, by an executive committee comprising the chairperson, vice-chairperson, secretary or secretary/treasurer and other members.
- (3) On being accepted as a member of a co-operative group, a member has one vote on all matters to be decided by the members. 20
- (4) A member may withdraw membership by written notice to the co-operative.
- (5) A co-operative group may terminate the membership of a member if two thirds of the members present at a general meeting so decide, provided the member concerned is given an opportunity to be heard before such decision is taken. 25
- (6) No transfer of membership in a co-operative group is valid unless approved by the members in general meeting.

Liability of members

8. The liability of a member of a co-operative group by virtue of his/her membership is limited to the amount of his/her unpaid subscriptions. 30

General meetings

- 9. (1) Not less than one week's notice must be given to each member of a co-operative group of a general meeting.
- (2) In the case of a special general meeting forty-eight hours notice may be given, notwithstanding the provisions of subsection (1). 35
- (3) The quorum for a general meeting is half the members present.
- (4) If a quorum is not present within half an hour of the time and date of a scheduled meeting, the meeting must be adjourned until the same time and place at a date not less than seven days and not more than ten days from the date of the adjourned meeting.

Finances 40

- 10. (1) A co-operative group must open an account in the name of the co-operative group with a registered bank or building society or the South African Post Office.
- (2) All monies received in the name of the co-operative group must be receipted in a receipt book maintained for this purpose.
- (3) Expenditure in the name of the co-operative group may only be incurred upon the signature of not less than two members, one of whom must be the chairperson, vice-chairperson, secretary or secretary/treasurer. 45
- (4) A co-operative group must keep a record of all expenditure incurred, including supporting vouchers.
- (5) A co-operative group must prepare income and expenditure statements monthly or quarterly which must be submitted to general meetings for approval. 50

(6) At the end of the financial year, a co-operative group must prepare a statement reflecting the income and expenditure of the co-operative group for that year, which must be submitted at the annual general meeting for approval.

Application to convert to a co-operative

11. (1) A co-operative group may apply to the registrar to be registered as a co-operative in terms of the Act, with the approval of a resolution of a general meeting. 5
- (2) The registrar must approve an application for conversion if he is satisfied that
- (a) the reasons that prevailed at the time of registration as a co-operative group no longer prevail;
 - (b) creditors of the co-operative group have been given not less than three months written notice of the proposed conversion. 10
- (3) If the registrar approves the conversion of a co-operative group to a co-operative, the assets and liabilities of the co-operative group become the assets and liabilities of the co-operative with effect from the date of registration thereof.

Duty to report

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12. Every registered co-operative group must provide the registrar, within fifteen days of an annual general meeting being held, with the following:
- (1) a copy of its annual financial statement;
 - (2) a narrative report of its activities for the financial year;
 - (3) names and residential addresses of its office-bearers; 20
 - (4) a physical address for service of documents; and
 - (5) such other information as may be prescribed.

Register of co-operative groups

13. (1) The Registrar must maintain a register of registered co-operative groups in the prescribed form. 25
- (2) The Minister may make such regulations as are considered necessary or expedient in order to regulate the activities of co-operative groups.

SCHEDULE 3

SPECIAL PROVISIONS RELATING TO CERTAIN KINDS OF CO-OPERATIVES

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PART 1 HOUSING CO-OPERATIVES

Application of this schedule

1. (1) This Part applies to housing co-operatives in addition to the requirements of the Act. 35
- (2) A housing co-operative is defined as a primary co-operative which provides housing to its members, or a secondary co-operative that provides services to housing co-operatives.
- (3) A primary housing co-operative must comprise a minimum of five persons, despite the provisions of section 5(1) of the Act. 40

Name

2. The name of a housing co-operative must include the following words, "housing co-operative", or "housing co-op", or "housing co-operative".

Constitution of a housing co-operative

3. In addition to the other requirements of this Act, the constitution of a housing co-operative must provide as follows: 45

- (a) The main objective of a primary housing co-operative must be to provide housing for its members or, in the case of a secondary housing co-operative, to provide services to housing co-operatives, and to undertake housing developments on behalf of existing housing co-operatives, or housing co-operatives to be established; 5
- (b) That in the case of a primary housing co-operative a use agreement must be concluded between the member and the co-operative, regarding the terms and conditions on which the member occupies a housing unit;
- (c) That a member of a primary co-operative has the right to occupy the housing unit allocated to her or him for as long as s/he is a member, in accordance with the use agreement and subject to the provisions of the constitution; 10
- (d) That the right to occupy the housing unit provided in paragraph (c) terminates once membership is terminated, in accordance with section 4 below;
- (e) A procedure for determining disputes between members and the co-operative;
- (f) A provision for the establishment of adequate reserves and the maintenance of adequate insurance to protect the co-operative from loss. 15

Termination of membership

4. Notwithstanding any other provisions of this Act, the membership of a member a primary housing co-operative may be terminated without a special resolution of the members, in accordance with the following provisions: 20

- (1) If the member is in arrears with payments due in terms of the use agreement and is served with a written notice to pay such arrears by a date specified in such notice, his or her membership will terminate automatically upon failure to effect payment by the date so specified.
- (2) A person whose membership is terminated in terms of (1) above shall not have a right to appeal. S/he shall only be re-admitted to membership if s/he pays the arrears that were due at the date his or her membership was terminated, as well as any other payments due by virtue of his or her continued occupancy after that date, if applicable. 25
- (3) The directors may terminate the membership of a member in circumstances other than subparagraph (1) if there is good and sufficient reason to do so, provided the directors give the member concerned reasonable prior notice that termination is contemplated for reasons stated in such notice, and the member is afforded the right to be heard before a decision is taken. 30
- (4) A member whose membership is terminated in terms of subsection (3) must have a right to appeal to a general meeting, which right must be exercised within the time limit prescribed in the constitution. 35
- (5) A decision of the directors to terminate the membership of a member is confirmed if the members, at a duly called general meeting, do not reverse the directors' decision. 40
- (6) If a general meeting is duly called to consider the appeal of a terminated member and a quorum of members is not present, the decision of the directors is deemed to have been confirmed.
- (7) A member has the right to occupy the unit allocated to him or her until the termination has been confirmed by the members, provided s/he exercises her or his right of appeal within the time-limit prescribed and is not in arrears with any payments. 45
- (8) Once a person no longer has a right to occupy a housing unit, the co-operative may regain possession by consent or by obtaining an order of court from a Magistrate's Court to evict her or him. 50
- (9) 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 in terms of which the collection of payments from members, the service of any notice such as envisaged in subsection (1) above, and the institution of any proceedings to evict a person will be managed by the secondary co-operative on its behalf. 55

Regulations

5. The Minister may, in consultation with the Department of Housing, make regulations regarding any matter relating to the operation or administration of housing co-operatives.

Exclusion

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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 COOPERATIVES

Application of this part

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1. (1) This part applies to worker co-operatives in addition to the requirements of the Act.

(2) A worker co-operative is defined as a co-operative whose main objectives include providing employment to its members.

(3) A worker co-operative must comprise a minimum of five persons, despite the provisions of section 5(1) of the Act. 15

Name

2. The name of a worker co-operative must include the words "worker co-operative limited", or "worker co-op limited or ltd".

Requirements of constitution

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3. (1) In addition to the other requirements of this Act, the constitution of a worker co-operative must provide that:

- (a) Membership is restricted to natural persons who work for the co-operative.
- (b) 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, should not exceed half the person's expected annual remuneration. 25
- (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 percent. 30
- (d) The period of probation applicable to an applicant for membership, which should not exceed a period of two years.
- (e) The procedure for allocating, crediting or distributing any surplus earned, including a provision that not less than fifty percent 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; 35
- (f) The manner in which the membership of a member may be terminated, in accordance with paragraph 4 below. 40

(2) The constitution of a worker co-operative may provide: 40

- (a) How work is to be allocated;
- (b) For laying off or suspending of members when there is lack of work, and the recall to work of members who have been laid off;
- (c) A procedure for disciplining members.

Termination of membership

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4. (1) Notwithstanding any other provisions of this Act, the constitution of a workers co-operative may give the directors the power to terminate the membership of a member if there is good reason to do so.

(2) Before deciding to terminate the membership of a member, the directors must give the member concerned reasonable prior notice that termination is contemplated, and afford the member the right to be heard before a decision is taken. 50

(3) A member whose membership is terminated by the directors must have a right to appeal to a general meeting, which right must be exercised within the time limit prescribed in the constitution.

(4) A decision of the directors to terminate the membership of a member is confirmed if the members, at a duly called general meeting, do not reverse the directors' decision. 5

(5) If a general meeting is duly called to consider the appeal of a terminated member and a quorum of members is not present, the decision of the directors is deemed to have been confirmed.

(6) The termination of membership in terms of this section does not constitute a dismissal in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995). 10

Laid-off member

5. A temporary lay-off of a member does not result in termination of his/her membership. After a member has been laid off and two years have elapsed after the date of the lay-off without the member having resumed employment with the co-operative, the directors of the members may, in accordance with the constitution, terminate the membership of the member. 15

Regulations

6. The Minister may, in consultation with the Department of Labour, make regulations regarding any matter relating to the operation or administration of worker co-operatives.

PART 3

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FINANCIAL SERVICES CO-OPERATIVES

Application of this part

1. (1) This part applies to financial services co-operatives in addition to the requirements of the 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. 25

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 financial services the co-operative provides to its members, which may include the following: 30

- (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; 35
- (d) to stand surety on behalf of its members to any person including a body corporate to the extent of the member's deposit in the co-operative;
- (e) to render any other banking or financial service.

(2) The co-operative must not receive deposits from the general public or any person who is not a member. 40

Banks Act

3. A co-operative to whom this part applies is required to register in terms of the Banks Act, 1990 (Act No. 94 of 1990) notwithstanding its registration in terms of this Act. 45

Usury Act

4. A co-operative to whom this part applies is not required to comply with the provisions of the Usury Act, 1968 (Act No. 73 of 1968) or any regulation applicable to micro-finance, notwithstanding the provision of any other law.

Establishment of a self-regulatory body for all co-operatives

5. (1) The Registrar may, in conjunction with the Registrar of Banks, direct that all co-operatives to whom this part applies belong to a secondary co-operative that is accepted by the Registrar of Banks as representing a self-regulatory body, in compliance with the requirements for exemption from the provision of the Banks Act.

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(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.

Regulations

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7. The Minister may, in consultation with the Department of Finance, make regulations regarding any matter relating to the operation or administration of financial services co-operatives.

SCHEDULE 4:**LAWS REPEALED BY SECTION 104**

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