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OF  
SOUTH AFRICA



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# Government Gazette Staatskoerant

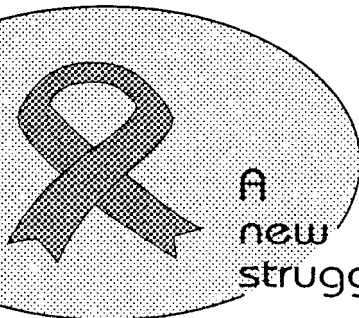
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PRETORIA, 28 NOVEMBER 2000

No. 21794

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

**Prevention is the cure**

**AIDS  
HELPLINE**

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DEPARTMENT OF HEALTH

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**GENERAL NOTICE**

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NOTICE 4483 OF 2000

**NATIONAL DEPARTMENT OF AGRICULTURE****PUBLICATION OF DRAFT CO-OPERATIVES BILL, 2001 FOR COMMENT**

The draft Co-operatives Bill, 2001, is hereby published for comment,

Interested persons are hereby invited to furnish written comments and representations concerning the draft Bill within four weeks after publication hereof to the National Department of Agriculture at the following addresses:

- (a) if forwarded by post:

The Senior Legal Officer  
National Department of Agriculture  
Private Bag x250  
PRETORIA  
0001  
(For attention Adv. R van Zyl)

- (b) if delivered by hand, be delivered to:

The Senior Legal Officer  
National Department of Agriculture  
Agriculture Building Room F-FF-15  
20 Beatrix Street  
Arcadia, PRETORIA  
(For attention: Adv. R van Zyl)

- (c) if sent by facsimile, be transmitted to:

Fax number: (01 2) 325-7391  
(For attention: Adv. R van Zyl)

- (d) if submitted by electronic mail, be transmitted in Ms Word 95 format to:

[RonelVZ@nda.agric.za](mailto:RonelVZ@nda.agric.za)

- (e) It is incumbent upon the sender to ensure that such comments are received.

A copy of the Bill may be requested via electronic mail from [ChristaT@nda.agric.za](mailto:ChristaT@nda.agric.za). The Bill is also available on the Website of the National Department of-Agriculture at <http://www.nda.agric.za>.

## BACKGROUND

The Co-operatives Bill is drafted to replace the Co-operatives Act, 1981 (No. 91 of 1981) *in order* to bring it in line with the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996). The draft Bill also proposes to make the formation of co-operatives more accessible to **all** communities and furthermore to cater for all types of co-operatives.

The following Bill like the present Act provides for measures pertaining to the following:

- Application and administration of the Act;
- The process of incorporation of co-operatives;
- Membership of co-operatives;
- The election and appointment of directors of co-operatives;
- Capitalisation of co-operatives;
- Disclosure by co-operatives and auditing;
- Amalgamation conversion and arrangement by co-operatives;
- Liquidation and dissolution of co-operatives.

The Bill provides for some new concepts *inter alia*:

- Principles of co-operatives are provided for in the Bill;
- The Bill is less **prescriptive** regarding the process of formation of co-operatives;
- Corporate governance is being emphasised;
- The Bill provides for measures whereby developing or emerging co-operatives to be accessed to a more user friendly approach to financial reporting and auditing;
- The Bill provides for the supervisory board to oversee the directors of the co-operatives;
- In terms of this Bill a co-operative advisory board can be appointed by the Minister;
- The Bill provides for the registrar's **supervisory** function as to the liquidation of co-operatives to be transferred to the Master of the Supreme court;
- The Bill provides for the creation of the co-operatives guarantee fund;
- The Bill provides for the special measures for particular **sectoral** types of co-operatives namely:
  - agricultural and farming co-operatives
  - financial services co-operatives
  - housing co-operatives
  - workers co-operatives
  - transport co-operatives
  - medical services co-operatives

However, this does not exclude other types of co-operatives.

## FIRST DRAFT CO-OPERATIVES BILL OF 2000 (April 2000)

To provide for the formation, registration and winding up of co-operatives and to provide for matters connected therewith.

## PREAMBLE:

The Co-operative Act will be an Act of general application in South Africa. Every person will have the right to be or not to be a member of a co-operative engaged in lawful business. The right to be or not to be a member of a co-operative will be in accordance with the principles embodied in the Bill of rights of the Constitution Act 108 of 1996. The right of co-operatives to be free from government control is fundamental. Independent, self reliant, self-responsible, self-managing and financially viable co-operatives can be a catalyst for the government to achieve its objectives. Co-operatives are to be operated on co-operatives basis underpinned by sound business principles. Co-operatives will be legal entities capable of suing and being sued with limited liability. The new Act is intended to encourage, enhance and support the development and growth of co-operative movement in all sectors in the interest of the community of South Africa.

## 1. Definitions:

In this Bill, unless the context indicates otherwise -

“advisory board” means the Co-operatives Advisory Board;

“affairs” means the relationship between a co-operative and its affiliates and their members, shareholders, directors and officers, but does not include the business carried on by these bodies;

“affiliated member” means a person affiliated to a co-operative by virtue of his membership in a co-operative, which is a member of another co-operative;

“agent” means a person who or an entity, which is appointed by any person including a co-operative to do certain things for it, in a representative capacity;

“agricultural product” means a product derived from farming operations, and in relation to an agricultural co-operative or farmers co-operative any product derived from the processing or manufacturing of that product, and declared an agricultural product from time to time by the Minister by notice in the Gazette;

“annual financial statement” means an audited financial statement;

“annual general meeting” means a meeting of members of the co-operative referred to in section 63;

“auditor” means a firm of chartered accountants as well as any other person appointed in terms of section 140 who is required to audit co-operatives in terms of the regulations under this Act;

“board” means the Board of Directors of an advisory board or the Fund;

“body co-operate” includes a co-operative, co-operative entity, company, close corporation or any other body corporate wherever or however incorporated;

“by-laws” means the rules agreed to and set out by members of a co-operative which regulates their relationship as members, to which every member is bound by;

“chief executive officer” in relation to a Guarantee Fund means the person appointed to manage the affairs of the Fund in terms of Chapter 16 of this Act or by whatever

designation he or she may in terms of the by-laws of the co-operative concerned be called:

"co-operative" means an autonomous association of person or persons united voluntarily to meet their common economic and social needs through a jointly owned and democratically controlled enterprise registered in terms of this Act;

"co-operative entity" means a body corporate that is organised and operated on co-operative principles,

"court" means the High Court of the Republic, within the area in which the co-operative has a registered office or place of business or conducts business;

"debt obligation" means a bond, debenture, note or other evidence of indebtedness of an entity, whether secured or unsecured;

"director" means a director appointed under section 151 and 194 serving as director on the board of directors;

"director general" means the Director General of the National Department responsible for the administration of this Act;

"deputy Registrar" means the Deputy Registrar of Co-operatives;

"entity" means a body corporate, trust, partnership, a fund or an unincorporated organisation;

"external co-operative" means a co-operative registered outside the Republic;

"executive management" means the managing director of the co-operative and any other person appointed as an executive manager;

"federation" means a co-operative whose membership is composed substantially of two or more secondary co-operative entities, federations or leagues of co-operative entities;

"financial services co-operatives" means co-operative referred to in chapter 18 which co-operatives provides banking services and other related services to its members which deal mainly with finance or such as –

- (a) credit unions;
- (b) Co-operative banks
- (c) Savings and credit co-operatives
- (d) village banks;

"fund" means a Guarantee Fund established in terms of section 242;

"holder" means -

- (a) in respect of a security certificate, the person in possession of the certificate issued or endorsed to the person or bearer or in blank;
- (b) in respect of the ownership of a membership share, the person referred to in sub-section (1) of section 99; and
- (c) in respect of the ownership of an investment share, the person referred to in section 104;

“incorporated” means used with reference to a body corporate that is incorporated by or under the Act of Parliament or the provincial legislature;

“incorporator” means a person who signs the statutes;

“inspector” means a person designated as an inspector under section(s) 220;

“issuer” in respect of security, means the entity that or a person who issues the security;

“interested person” means any person who has an interest in the co-operatives including a person referred to in chapter 14 and any other chapter or section in this Act;

“investment share” means a share in the capital of a co-operative that is not a membership share;

“joint meeting” means the meeting constituting the directors of the board of directors and directors of the supervisory board, in which the business of the co-operative of federation is being discussed referred to in chapter 11;

“member” means any person or entity accepted by a co-operative to be a member thereof;

“member loan” means a loan required by the co-operative from its members as a result of their membership in the co-operative;

“membership share” means a share described in section 99;

“minister” means the Minister in whose department the office of the Registrar of Co-operatives is housed;

“officer” includes a chairperson of the board, vice chairperson of the board, the chief executive officer, secretary of the board, financial manager of the co-operative, and any other individual designated as an officer of the co-operative in the statutes or by resolution of the board;

“ordinary resolution” means a resolution passed by the majority or any greater number set out in the statutes or by-laws or unanimous decision of the votes cast by or on behalf of persons who are entitled to vote in respect of the resolution;

“patronage proportion” means an amount that the co-operative allocates among and credits or pays to its members or to its member and non-member patrons based on the business done by them with it or through the co-operative;

“person” includes a natural person, a corporate body or an unincorporated association;

“prescribed” means prescribed by regulations;

“President” means the President of the Republic of South Africa;

“proxy” means a completed and executed form of proxy by means of which a member, or shareholder appoints a proxy holder to attend and act on the member’s or shareholder’s behalf at a meeting of members or shareholders;

“register of co-operatives” means the register referred to in sub-section (1) of section 12;

“Registrar” means the Registrar of Co-operatives;

“repealed Acts” means the repealed Co-operatives Act of 1981 (Act 91 of 1981);

“Republic” means South Africa;

“round robin resolution” means a written resolution circulated amongst the directors including the supervisory board directors for their approval or disapproval and signed by the majority of them;

“secretary” means any person appointed to perform the function of a secretary of a co-operative;

“secondary co-operative” means two or more primary co-operatives joining together to form a secondary co-operative;

“share” means a membership share or an investment share;

“shareholder” means a person has share(s) in the co-operative;

“shareholders meeting” means a meeting of shareholders of the co-operative referred to in section 61 and 63;

“special meeting” means a meeting of members or shareholders of the co-operative in terms of sub-section (3) of section 63;

“special resolution” means a resolution of members passed at the general meeting of members in terms of section 69;

“subsidiary”

- (a) For purposes of this Act a company is deemed to be a subsidiary of a co-operative if-
- (i) that co-operative is a shareholder of that company holding majority shares and in control of the appointment and removal of the majority of the directors of the Board of Directors of that company;
  - (ii) that company is a subsidiary within the meaning of Companies Act (61 of 1973), of another company which is a subsidiary of the co-operative in terms of this subsection;
  - (iii) companies which in terms of provision of this subsection are subsidiaries of that co-operative together hold more than one-half of that company's share capital or
  - (iv) that co-operative and one or more companies which in terms of a provision of this subsection are subsidiaries of the co-operative together holding more than one-half of that company's share capital.

“supervisory board” means the board of directors constituting in non-executive directors who are also members of the co-operative unless the by-laws provides differently which supervises executive management of the co-operative;

“this Act” means the Co-operatives Act No. --- of 2000;

“unanimous decision” means an agreement taken by and approved by all members or directors of the co-operative present at a meeting.

## CHAPTER I

### PURPOSES, APPLICATION AND ADMINISTRATION OF THE ACT

#### Purpose of the Act

2. The purposes of this Act are -
  - (a) to set out the law applicable to the business endeavors of persons who have associated themselves in a democratic manner to carry on a common purpose for the mutual benefit of each other;
  - (b) to provide an environment which is conducive to the development of co-operatives; and
  - (c) advance the cause of uniformity of co-operative business law in the Republic.

#### Application of this Act

3. This Act applies to all co-operatives incorporated in terms of this Act, in South Africa and external co-operatives, including those co-operatives incorporated in terms of the repealed Act.
  - (a) The date of incorporation of co-operatives will be deemed to be the date on which it was initially registered in terms of this Act or repealed Act.
  - (b) Any provision contained in the statutes of co-operatives registered in terms of the repealed Acts that is required to be contained in the statutes of a co-operative under this Act, is deemed to be contained in the statutes of the co-operative. ,
  - (c) Co-operatives must within 5( five) years of coming into operation of this Act, amend their statutes in line with the requirement of this Act.
  - (d) Any co-operative classified as an agricultural or trading co-operative in terms of the repealed Act will be deemed to be a co-operative under this Act.

#### Non Application of Certain Acts

4. When co-operatives are engaged in co-operative business (including federations) and it appears that or their activities create monopolies but these activities are conducted amongst or in between members and the co-operative or co-operatives federations. then the Competitions Act of 1998, does not apply to them.

#### Limitations on business of co-operatives

5. No co-operative may carry on the business of a tertiary education institution, which confers degrees and diplomas unless, authorised to do so by the national legislature.

#### The office of the Registrar of Co-operatives

6. The office of the Registrar of Co-operatives will be established in terms of this Act in Pretoria.
7. The office of the Registrar of Co-operatives Will have a seal. The impression of such seal will be accepted as evidence by the court of law.



- 8.
- (1) The Minister -
- (a) must appoint an officer in the public service as the Registrar of Co-operatives, with the authority to exercise and perform the powers, duties and functions conferred or imposed upon him/her by or under the provisions of this Act or regulations made in terms of this Act;
  - (b) may appoint a person(s) as Deputy Registrar(s) of Co-operatives with the authority to exercise and perform the delegated powers, duties and functions of the Registrar subject to the control and directions of the Registrar, and
  - (c) may appoint a person as acting Registrar of Co-operatives with the authority to exercise and perform the powers, duties and functions of the Registrar referred to in paragraph (a) in the absence of or incapacity of the Registrar and Deputy Registrar.
- (2) The Minister may from time to time designate such other officers in the Department as may be necessary to assist the Registrar in the performance of the functions of the Registrar by or under this Act.

The duties and powers of the Registrar

9. In addition to the powers, duties and functions conferred on the Registrar in terms of this Act or regulations made in terms of this Act, the Registrar will have a discretion to do whatever is necessary and lawful to effect the provisions of this Act.

A seal and official stamp for the Registration Office of the Co-operatives

10. The Minister must determine -
- (a) a seal of office for the Registrar, which must be impressed on the certificate of registration of co-operatives and, in so far as it may be required in terms of the any provision of this Act or otherwise deemed necessary by the Registrar, any other document issued by the Registrar in term of this Act.
  - (b) an official stamp for the Registration Office for Co-operatives, which must be used as in terms of this Act.

Regulations

11. The Minister may make regulations
- (a) providing for anything that by this Act is to be prescribed or provided for in the regulations;
  - (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 under this Act or under a regulation made under this 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;

- (d) prescribing the rules with respect to exemptions permitted by this Act, and
- (e) prescribing that, for the purpose of chapter 8, the standards of accounting by a co-operative as they exist from time to time are followed.

#### Register of co-operatives

12.

- (1) The Registrar must keep a register of co-operatives, in which particulars including statutes of all registered co-operatives are entered in terms of this Act.
- (2) The register of co-operatives *or* any extract or a copy of that register signed by the Registrar will be proof of particulars of the co-operative recorded
- (3) For purposes of this Act the register of agriculture, special farmers and trading co-operatives, kept by the Registrar in terms of repealed legislation will be deemed to be part of the register referred *to in* sub-section (1).
- (4) When this Act requires those statutes or a statement relating to a co-operative is sent to the Registrar -
  - (a) the statutes *or* statement must be signed by a director or **officer** or, in the case of statutes of incorporation, by incorporators; and
  - (b) on receiving the statutes or statement in the form that the Registrar has fixed, any other required documents and the prescribed fees, the Registrar,
    - (i) record the date on which it is received,
    - (ii) subject to sections 21, issue the appropriate **certificate**,
    - (iii) file the certificate, statutes or statement, or a copy, image or photographic, electronic *or* other reproduction of it, and
    - (iv) send the certificate, statutes or statement, or a copy, image or photographic, electronic or other reproduction of it, to the co-operative or its representative.
- (5) A certificate referred to in subsection (4) which is issued by the Registrar, may be dated as of the date of receipt of the statutes, or court order pursuant to which the certificate was issued or of any later date specified by the court or person who signed the statutes or statement.
- (6) A signature required on a certificate issued by the Registrar under this Act may be printed or otherwise reproduced on the certificate or may be made in accordance with the regulations.

- (7) Despite subsection (4), a certificate of de-registration may be dated the date a co-operative amalgamates, dissolves voluntarily or involuntarily or reregister under this Act or another Act.
  - (8) Every co-operative must send the Registrar an annual return in the form, and on the date, the Registrar fixes.
  - (9) The Registrar may provide any person with a certificate that a co-operative has sent to the Registrar a document required to be sent, or has paid any fees prescribed.
  - (10) The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if authorised to do so by the person who sent the document or by the representative.
  - (11) If a certificate that contains an error is issued to a co-operative by the Registrar, the directors, members or shareholders must, on the request of the Registrar, pass the resolutions and send the documents required to comply with this Act, and take any other steps that the Registrar may reasonably require. The Registrar may demand the surrender of the certificate and issue a corrected certificate.
  - (12) A certificate corrected under sub-section (11) must bear the date of the certificate it replaces.
  - (13) If a corrected certificate issued under sub-section (11) materially amends the terms of the original certificate, the Registrar must without delay give notice of the correction in a publication generally available to the public.
- 13.
- (i) A person who has paid the prescribed fee is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Registrar, except a report sent under paragraph (2)(c) of section 44, and to make copies of it *or* take extracts from it.
  - (ii) The Registrar must provide any person with a copy, extract, certified copy or certified extract of a document required by the Act or the regulations to be sent to the Registrar, except a report sent under paragraph (2)(c) of section 44.
- 14,
- (i) Records required by this Act to be maintained by the Registrar may be in bound or loose-leaf form or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.
  - (ii) If records that are maintained by the Registrar are maintained other than a written form,
    - (a) the Registrar must provide any copy required to be provided under paragraph (1) of section 13 in the intelligible written form;
    - (b) a report reproduced from those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records of more than six years after the date it is received.

15. The Registrar is not required to produce any document other than a certificate and attached statutes or statement filed under section 20, more than six years after the date it is received.
16. Information or notices required 'by this Act to be sum-marked in a publication generally available to the public or to be published by the Registrar may be made available to the public or published by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information or notice in intelligible form within a reasonable time.

## CHAPTER 2

### BASIC CO-OPERATIVE PRINCIPLES AND INCORPORATION

#### Basic co-operative principles

17. (1) A co-operative is organised and operated and carries on business on sound **co-operative** basis for purposes of this Act if -
  - (a) membership is open, voluntary and nondiscriminatory;
  - (b) **any** person is allowed to apply for membership if he or she is willing to accept the responsibilities of being a member and can derive benefits byway of patronage;
  - (c) membership is permissible for a natural person or legal entity;
  - (d) members are bound to each **other** and to the co-operatives in terms of clearly defined principles contained in the statutes;
  - (e) management decision are taken democratically in the **interest** of the co-operative and members;
  - (g) each member has one vote by virtue of his/her membership;
  - (g) members provide the initial capital required **by** the co-operative;
  - (h) surplus funds arising from the co-operative's business are used -
    - (i) to develop its business,
    - (ii) to provide and improve common service **to** members,
    - (iii) for community welfare and promotion of co-operatives or co-operatives enterprises,
    - (iv) to provide reserves or payment of interest on member loans or dividends on membership **shares** and investment shares, or
    - (v) are distributed amongst members as **patronage** return.

- (i) to train employees, officers and managers and to educate members and the general public with regard to the principles and techniques of a co-operative enterprise, and specifically to provide skill training for its work force;
  - (j) it is transparent and open in its operations with its members;
  - (k) it is autonomous with limited liability.
- (2) Paragraphs 17(a), 17(b) and 17(c) are subject to any restrictions set out in the by-laws and statutes of the co-operative with regard to whether or not, a person is accepted as a member upon application, as long as the restrictions are not contrary to provisions embodied in the Bill of Rights, in terms of the Constitution Act of 1996.
- 18.
- (3) Despite paragraph 17(1)(f),
- (a) the statutes or by-laws of a co-operative may provide that members or delegates or representatives have more than one vote,
  - (b) if, before the coming into effect of this Act the statutes of a co-operative incorporated in terms of the repealed Act, permitted a member or delegate or representative to have more than one vote such member or delegate or representative will have more than one vote,
  - (c) the statute of a co-operative may provide that subject to the conditions set out in the statutes a co-operative entity may have more than one vote.

#### Incorporation, Organisation and Structure

- 19.
- (1) An application for incorporation of a co-operative may be made by a minimum of seven persons who, or by two primary co-operatives that intend to form a **secondary** co-operative or by two or more secondary co-operatives that intend to form federation respectively.
- (2) A person may not make an application under sub-section (1) if the person is,
- (a) **an** individual who is not at least '18 (eighteen) years old unless assisted by his or her guardian or parents or is an emancipated **minor**;
  - (b) an individual who is an **un-rehabilitated** insolvent or a **legal** entity which was declared insolvent,
  - (c) an individual who is of unsound mind and has **been** declared by three psychiatrists or so found by a Court of law in the Republic.

#### Documents to be submitted to the Registrar

20. Applicant(s) must send the following to the Registrar
- (a) two statutes of incorporation:
  - (i) a notice of registered office in terms of paragraph 1 (b) 21;

- (c) a declaration signed by the incorporators that after incorporation the co-operative will be organised and operated and carry out business on sound co-operative basis;
- (d) if applicable, a declaration signed by the incorporators that the co-operative will comply with all the requirements of this Act within two years from date of registration;
- (e) a notice signed by the first directors of the co-operative;
- (f) a business plan; and
- (g) any other information that the Registrar may request.

#### Statutes of a co-operative

21.

(1) The statutes of incorporation must contain the following:

- (a) the name of the co-operative;
- (b) the proposed registered address of the co-operative;
- (c) the name, address and identity numbers or date of births of each incorporator
- (d) The minimum and maximum number of directors;
- (e) the powers of the directors of the co-operative to manage the business of the co-operatives;
- (g) restrictions of the directors to manage the business of the co-operative;
- (g) any restrictions on the business of the co-operative;
- (h) any restrictions on the class of members of the co-operative;
- (i) the statement regarding the duty of the co-operative to carry on its business on co-operatives principles;
- (k) the statement whether or not the co-operative will have offices in one or more provinces;
- (l) the statement that the co-operative will be incorporated with a share capital payable by members upon application or acceptance as member;
- (m) the statement that the number of membership shares to be issued will be limited or unlimited, the maximum number of membership shares that may be issued, and, if the membership shares are to have a par value and, if they are not to have par value, whether the membership shares will be issued, purchased, redeemed or otherwise acquired at a fixed price or at a price determined in accordance with a formula, and if so, the particulars of the formula;
- (n) provision for investment share capital and particulars thereof;

- (o) provision to enter into joint ventures with other persons or body corporate;
  - (p) provision for the distribution of the property of the co-operative on its dissolution;
  - (q) the date of the financial year of the co-operative;
  - (r) nominal value of shares.
- (2) The statutes may set out any provisions that could be set out in the by-laws of the co-operative and if they do, any reference in this Act to the by-laws of the co-operative also refers to the provisions of the statutes.
  - (3) Subject to sub-section (4), the statutes or a unanimous decision may require a greater number of votes of directors, members or shareholders than is required by this Act to effect an action.
  - (4) The statutes may require, in order to remove a director or delegate more than a majority of the votes cast by or on behalf of persons entitled to vote be cast.
  - (5) The statutes may set the amount of business allowable with non-members by the co-operative.
  - (6) The incorporators of the co-operative must sign the statutes, submitted to the Registrar.
  - (7) External co-operatives must have statutes or by-laws or documents similar to statutes or by-laws, whichever way they may be referred to in the country of origin to be registered with the Registrar.

#### Certificate of Incorporation

22.

- (1) The Registrar must issue a certificate of incorporation after examining the documents referred to in section 20, to a co-operative if he is satisfied that,
  - (a) the statutes are in accordance with the Act;
  - (b) the co-operative will be organised, operated and will carry on business on co-operative basis;
  - (c) from the business plan it appears that the business can be sustainable; and
  - (d) the co-operative will comply with the Act or where it does not immediately comply, it will do so within two years from date of registration, failing which it will be de-registered.
- (2) For purposes of paragraph (1)(b) of section 21, the Registrar may rely on the statutes and the declaration required by paragraph (c) of section 20
- (3) The Registrar may issue a certificate of incorporation conditionally if he or she is of the opinion that the spirit of this Act will be realised.

#### Date of Incorporation

23. A co-operative will come into existence on the date of incorporation reflected on the certificate of incorporation.

## Operation of the co-operative

24. The co-operative must not start operating its business before it has complied with section 62, even if the Registrar has issued a certificate of incorporation.

## By-laws contents

25.

(1) The by-laws of the co-operative must provide for -

- (a) the qualifications of members and the procedures for acceptance of members;
- (b) the rights of members and joint-members;
- (c) the obligation of members, including any obligation to use the services of the co-operative and fees to be paid by members;
- (d) the relationship between an individual member and the co-operative;
- (e) whether or not the member's interest can be assigned, ceded or transferred and conditions applicable to that assignment, cession or transfer;
- (9) the election, selection, qualifications, terms of office and removal of directors, directors of the supervisory board and members of committees of board of directors;
- (g) the distribution of any surplus earnings arising from the operation of the co-operative;
- (h) whether or not the co-operative will act as the agent or mandatory for its members;
- (i) conditions on which membership is terminated voluntarily and otherwise and the determination of the value and disposition of the member's interest in the co-operative on termination;
- (j) the manner in which members will be notified of the meeting and how votes may be cast;

## Optional provisions

(2) The by-laws of the co-operative may provide for-

- (a) the representation of members by delegates and, if so, the powers, duties, selection, voting rights and procedures for the removal of delegates or representatives;
- (c) the referral of disputes between a member and the co-operative to a process of dispute resolution; and
- (d) any other matters that the members consider necessary or desirable.



**Effect of the statutes**

26. **The statutes** and by-laws of the co-operative bind it and its members to the same extent as if they -
- (a) had been signed by **the** co-operative and every **member**; and
  - (b) contained undertaking by every member and successor, assigns, mandatory and legal representatives of every member to observe all the provisions of the articles and by-laws.

**Request by member and shareholder**

27. Each member and shareholder may on request, not more than once in each calendar year, receive free of charge one copy of the statutes, the by-laws and any unanimous decision, and one copy of amendments to the statutes, the by-laws and any unanimous decision of the co-operative.

**Co-operative basis**

- 28.
- (1) Every co-operative must be organised and operate business on co-operative **basis**.
  - (2) An interested person may make an application to Court if -
    - (a) a co-operative is not organised and does not **operate its** business on **co-operative** basis,
    - (b) **in** the case of a co-operative to which chapters 17 or 18 or 19 or 20 or 21 or 22 apply it does not comply with the applicable requirements.
  - (3) The court must order the cooperative **to** operate its business on co-operative basis or any order it deems fit and necessary.

**Pre-incorporation contract**

- 29.
- (1) A person who enters or purports to enter into a written contract in the name or on behalf of the co-operative before it is registered is personally bound by the contract and is entitled to the benefits, unless the contract expressly provides otherwise.
  - (2) A co-operative may, within a reasonable time after its registration, ratify the contract referred to in sub-section (1) by a decision of the majority of members in a meeting of members.
  - (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.

## Name of co-operative

30. A co-operative must have the word "co-operative limited " or "co-op ltd" as part of its name.
31. A co-operative must set out its name *in* legible characters in all contracts, invoices, negotiable instruments, letters and orders and place(s) of business.
32. The directors may reserve a name for a period of three months for an intended co-operative or for one that intends changing its name.
33. A co-operative may not be incorporated with, have, carry on business under or **identify** itself by a name that is –
- (a) prohibited, deceptively misdescriptive, as may be prescribed; or
  - (b) reserved for another co-operative or body corporate.

## Direction from Registrar

- 34.
- (1) The Registrar may direct the co-operative to change its name if the co-operative's name contravenes section 33 when the co-operative came into existence.
  - (2) If a co-operative has not complied with a directive from the Registrar under subsection (1) within sixty days from date of receipt of the directive, the Registrar may issue a certificate of amendment revoking the name of the co-operative assigning a new name.
  - (3) The statutes of the co-operative are deemed to be amended accordingly on the date shown in the certificate of amendment issued in sub-section (2).
  - (4) On issuing of a certificate of amendment under sub-section (2) the Registrar must publish the change of name immediately in a publication generally available to the public.

## Unlawful use of co-operative

35. Every entity, other than a co-operative **incorporated** under this Act or a body, corporate incorporated by or under another Act of Parliament or an Act of the legislature of a province, is guilty of an **offence** if the entity uses or authorises the use of the word "co-operative", or "**co-op**", 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.

## Initial capital

- 36.
- (1) Members of co-operative must provide the initial capital of a co-operative.
  - (2) The statutes must set out how much should a member contribute.

## Amendment of statutes by special resolution

37.

- (1) Subject to sub-section (4) and the statutes of a co-operative may be amended by a special resolution to,
- (a) change its name;
  - (b) change the place in which its registered office is situated;
  - (c) add, change or remove a restriction on the business or businesses that the co-operative may carry on;
  - (d) change a price or formula at which membership shares may be issued or redeemed or otherwise acquired by the co-operative;
  - (e) add, change or remove restrictions on membership;
  - (f) convert a co-operative that is incorporated without membership shares to a co-operative with membership shares and provide for membership shares with a par value and their par value or membership shares without a par value and the maximum number of membership shares that may be issued;
  - (g) convert a co-operative with membership shares into a co-operative without membership shares and provide for the conversion of membership shares into member **loans**;
  - (h) change any maximum number of shares that the co-operative **is** authorised to issue;
  - (i) reduce or increase its stated capital which, for the purposes of the **amendment**, is deemed to be set out in the statutes;
  - (j) create investment shares or new classes of investment shares;
  - (k) change the designation of **all** or any of its investment shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its investment shares, whether issued or unissued;
  - (l) change the investment shares of any class, whether issued **or** unissued, into a different number of investment shares of the same **class** or into the same or a different number of investment shares of other classes;
  - (m) divide a **class** of investment shares, whether issued or unissued, into series and fix the number of investment shares and **the** rights, privileges, restrictions and conditions of them;
  - (n) authorise the directors to divide any **class** of unissued investment shares into series and fix the number of investment shares and the rights, privileges, restrictions and conditions of **them**;
  - (o) authorise the directors to change the rights, privileges, restrictions and conditions attached to unissued investment shares;
  - (p) revoke, diminish **or** enlarge any authority **conferred under** paragraphs ( n ) a n d ( o ) ;
  - (q) increase or decrease the number of directors or the minimum **or** maximum number of directors, subject to section 89;

- (r) add, change or remove restrictions on the issue, transfer or **ownership** of investment shares; or
- (s) add, change or remove any other provision that is permitted by this Act to be set out in the statutes.

#### Termination

- ( 2 ) The directors and the supervisory board may, if authorised by the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the members or shareholders.

#### Restriction on amendment

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

#### Co-operative basis

- (4) An amendment to the statutes of a co-operative may not be made if it would result in the co-operative not being organised or operated and not carrying on business on a co-operative basis or, if applicable, result in the co-operative not being in compliance with requirements embodied in chapter(s) 17 or 18 or 19 or 20 or 21 or 22.

#### Proposal to amend

38.

- (1) Subject to sub-section (2), a person referred to in sub-section (5) of section 74 may make a proposal to amend the statutes and section 75 applies, with any modifications that the circumstances require, to any meeting of the co-operative at which the proposal is to be considered.

#### Notice of amendment

- (2) Notice of the meeting of a co-operative at which a proposal to amend the statutes is to be considered must set out the proposed amendment and, if applicable, state that a dissenting member or a dissenting shareholder is entitled to the benefit of section 145, but failure to make that statement does not invalidate an amendment.

#### Separate resolutions

- (3) A proposed amendment to the statutes referred to in sub-section (1) is adopted when approved by a special resolution of the members and, subject to section 104, if the co-operative has issued investment shares, by a separate special resolution of the shareholders or the class or series thereof.

#### Right to vote

- (4) Each investment share that is affected by a proposed amendment to the statutes carries the right to vote in accordance with section 104.

#### Delivery of statutes

39.

- (1) Subject to any revocation under sub-section (2) of 37, after an amendment has been adopted, statutes of amendment must be sent to the Registrar in

the form that the Registrar fixes, together with any information that the Registrar may require and a declaration of the directors,

- (a) that the co-operative will be organised and operated and will carry on business on a co-operative basis; and
- (b) if the co-operative is one to which chapter(s) 17 or 18 or 19 or 20 or 21 or 22 apply, that the co-operative will comply with the relevant chapter referred to in this paragraph.

#### Certificate of amendment

40. On receipt of statutes of amendment and the declarations with the same effect as those required by paragraphs (c) and (d) of section 20, the Registrar must issue a certificate of amendment or a conditional certificate of amendment in line with subsection 3 of section 22.

#### Effect of certificate

41. (1) An amendment becomes effective on the date shown in the certificate of amendment and the statutes are amended accordingly.

#### Existing claims not affected

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

#### Restated statutes

42. (1) The directors may at any time, and must when reasonably so directed by the Registrar, restate the statutes of incorporation as amended.
- (2) Restated statutes of incorporation in the form that the Registrar fixes must be sent to the Registrar. On receipt of restated statutes of incorporation, the Registrar must issue a certificate of restatement.
- (3) Restated statutes of incorporation are effective on the date shown in the certificate of restatement.

## CHAPTER 3

### REGISTERED OFFICE AND RECORDS

#### Registered Office

43. (1) A co-operative must maintain a registered office in the place set out in its statutes.
- (2) A notice of registered office in the form that the Registrar fixes must be sent to the Registrar together with any statutes that designator change the place of the registered office of the co-operative.

- (3) The directors may change the address of the registered office within the place specified in the statutes,
- (4) A co-operative must **send** to the Registrar, within fifteen days after any change of address of its registered office, a notice in the form that the Registrar fixes.

#### Record keeping

44.

- (1) A co-operative must prepare and maintain the following records at its registered office or at any other place in the Republic designated by the directors:
  - (a) the co-operative's statutes and by-laws, including any amendments and a copy of any unanimous decision;
  - (b) the minutes of meetings of the members and shareholders;
  - (c) copies of all notices of directors and notices of change of directors;
  - (d) a list of its members, **setting** out their names and addresses, **the** number of any membership shares owned and the amount of any member loans;
  - (e) a list of its shareholders, setting out their names and addresses and the number of investment shares owned;
  - (9)** **a** register of its directors of the board and directors of the **supervisory** board, setting out the names and addresses of the individuals **who** are or who have been directors of **the** "board and of the supervisory board and the dates on which they became or ceased to be such directors; and

#### Other records

- (2) *In* addition to the records specified in sub-section (1), a co-operative **must** prepare and maintain adequate
  - (a) accounting records;
  - (b) records containing minutes of meetings and resolutions of directors and any committee of directors; and
  - (c) records sufficient for the purpose of calculating patronage returns that show for each member particulars of the transactions between the co-operative and the member.

#### Off-site records

- (3) A co-operative may keep all or any of the records mentioned in paragraphs (1)(a), (b), (c) and (f) and **(2)(a)** and (b) of this section at a place other than **its** registered **office** if the records are available for inspection during regular **office** hours at the registered office or another office in the Republic **by means** of electronic technology and if to do so **would not** contravene any other law in Republic. The co-operative must provide technical assistance to persons **who** wish to use the electronic technology.

## Retention of accounting records

- (4) Subject to **any other Act** of parliament and to any Act of the **legislature** of a province that provides for a longer retention **period**, a co-operative must retain the accounting records referred to in paragraph (2)(a) of this section, for a period of six years after the end of the financial year to which they relate.

## Records of continued co-operatives

- (5) For the purposes of paragraph (1)(b) and sub-sections (2) to (4), if a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

## Form of records

45.

- (1) Any register or record required by **this Act** must be prepared and maintained in a form that is capable of reproducing any required information in intelligible **written** form within a reasonable time, including -
- (a) a bound or loose-leaf form;
  - (b) a photographic form;
  - (c) a system of mechanical or electronic data processing; *or*
  - (d) any other information storage device.

## Precautions

- (2) A co-operative and its agents and mandataries must take reasonable precautions respecting the registers and records required by this Act, to
- (a) prevent their loss or destruction;
  - (b) prevent the falsification of entries in them; and
  - (c) facilitate the detection and correction of inaccuracies in them.

## Records open to directors' inspection

- (3) The records described in section 44, other than those described in paragraph (2)(c) of section 44, must be open for inspection by the directors at any reasonable time.

## Inspection and copying of records by members, creditors and shareholders

- (4) Members, creditors and shareholders of the co-operative, their legal representatives may examine the records referred to in paragraphs (1)(a) to (1)(c) and (1)(f) of this section, **during the usual** 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.

## Lists

46.

- (1) Members, ~~shareholders~~ and creditors of a co-operative and their legal representatives and any other person, may request that the co-operation provide them with a list of shareholders, no later than ten days after the co-operative receives the affidavit referred to in sub-section (2) and after payment of a reasonable fee,

## Affidavit

- (2) A request under sub-section (1) must be accompanied by an affidavit containing
- (a) the name and address of the applicant; and
  - (b) an undertaking that the list of members or shareholders will not be used except as permitted by sub-section (5).

## Request by Registrar

- (3) The Registrar may request that the co-operative provide him or her with a list of members or shareholders, no later than ten days after the co-operative receives the request.

## Contents of list

- (4) The list of members or shareholders provided under sub-section (1) or (3) must set out in alphabetical order the names and addresses of the members or shareholders of the co-operative as of a date not more than ten days before the receipt of the affidavit referred to in sub-section (2) or the request referred to in sub-section (3).

## Permitted uses of list

- (5) A list obtained under subsection (1), must not be used by any person except in connection with
- (a) an effort to influence voting at a meeting of the co-operative; and
  - (b) any other matter relating to the affairs of the co-operative.

## Non-inclusion of name on request

- (6) A member or shareholder may advise the co-operative in writing that their name is not to be included in a list prepared by the co-operative further to a request under sub-section (1), in which case the co-operative must not include that name in the list but must mention on the list that the list is incomplete.

## Corporate seal

47

- (1) A co-operative may but need not adopt a corporate seal and may change a corporate seal that it adopted.
- (2) A document executed on behalf of a co-operative is not invalid merely because a corporate seal is not affixed to it.



## CHAPTER 4

### MEMBERSHIP

#### Conditions for Membership

48.

- (1) Subject to this Act and any provision in the statutes, membership in a co-operative is governed by its by-laws.
- (2) 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 has not paid and / or a liability circumscribed in the statutes of the co-operative.

#### Application for membership

49.

- (1) No person may be admitted to membership in a co-operative until -
  - (a) the person has applied for membership in writing;
  - (b) the application has been approved by the directors and supervisory board with the directive of the members to do so; and
  - (c) the person has complied with the membership provisions required by the by-laws, including 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.

#### Effective date of membership

- (2) If all the conditions set out in sub-section (1) have been met within six months after the date on which the **co-operative** receives the application for membership, the directors may, **make** the admission of the member into membership effective as of the date of the application or as of any date after that date but before the end of the six months.

#### Right to vote

50.

- (1) Subject to sub-section (8) of section 104 and paragraph (1)(9) of section 17, a member has one vote on all matters to be decided by the members.
- (2) If the by-laws provide that the voting rights of a member are vested in one or more delegates to be elected or appointed by the members, the delegates so elected or appointed may exercise all or any of those rights.
- (3) When in this Act reference is made to a meeting of members and the co-operative has a by-law providing for the appointment of delegates, a reference in this Act to a meeting of members is to be construed as a reference to a meeting of delegates.

## Members under eighteen years of age

- 51.
- (1) Subject to the by-laws, and paragraph (2) (a) of section 19 a person less than eighteen years of age may be admitted to membership in a co-operative and may vote at meetings of the co-operative.
  - (2) The statutes and by-laws of a co-operative, and any unanimous decision, are binding on a member who is less than eighteen years of age referred to in sub-section (1).

## Withdrawal of membership

- 52.
- (1) Unless the by-laws provide otherwise, this section applies to the voluntary withdrawal of a member from membership in a co-operative.
  - (2) A member may withdraw from membership in a co-operative by written notice to the co-operative. Any such withdrawal is effective on the later of the date stated in the notice and the date on which the co-operative receives the notice.
  - (3) Subject to sub-section (4), the co-operative must, no later than one year after the effective dates of a notice of withdrawal, redeem all membership shares held by the withdrawing member at the redemption price determined in accordance with provision of the status or by-laws and repay to the member 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.
  - (4) Despite sub-section (3), if the directors determine that the redemption of membership shares, or the repayment of membership loans, of a withdrawing member would adversely affect the financial well-being of the co-operative, the directors may direct that the redemption and repayment referred to in sub-section (3) take place after the end of the one year period.
  - (5) Unless the directors determine otherwise,
    - (a) the withdrawal of a member from the co-operative does not release the member from any debt or obligation to the co-operative or contract with the co-operative; and
    - (b) the co-operative need not, despite sub-section (3), repay to the member amounts outstanding on loans made to the co-operative that have a fixed maturity date until that date has arrived.

## Termination of membership by the supervisory board

- 53.
- (1) This section sets out the rights and procedures that apply to termination of membership. The by-laws of a co-operative may derogate from this section, but only in respect of the manner in which the membership of members may be terminated.
  - (2) The supervisory board may by special resolution (if authorised by the members) order the termination of the membership of a member for good reason and pay the member but, if paying the member will result in the co-operative being insolvent or will affect the finances of the co-operative negatively, the termination will not go ahead.

- (3) Not more than ten days after the date on which a special resolution is made, the **secretary** of the co-operative must give written notice to the member of the termination and the reasons for it. Subject to sub-sections (4) and (5), the effective date of the termination is the later of the date specified in the written notice and thirty days after the member receives the notice.

#### Appeal

- (4) A member whose membership has been terminated may appeal from the decision of the supervisory board to the next **meeting** of members by giving written notice to the secretary of the member's intention to appeal no later than thirty days after receiving notice of the special resolution.

#### Effect of notice of appeal

- (5) If a member gives a notice of appeal, the effect of the special resolution is suspended until the vote of the members under sub-section (6).

#### Resolution of members

- (6) If a member appeals the termination of membership, a vote of members must be taken at the next meeting of members as to whether **the member's** membership should be terminated as of the effective date referred to in sub-section (3). The vote is by majority of the members present at the meeting, unless a greater proportion is specified in the articles, the by-laws or a unanimous agreement.

#### Effect of termination of membership

- (7) Subject to **sub-sections (1)** and (2) of this section, if a member's membership is terminated, a co-operative must, no later than one year after the date of the special resolution, redeem all membership shares held **by** the member at the redemption price determined in accordance with sub-section (3) of section 109, and repay to the member all member loans and 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.
- (8) Unless the supervisory board determines otherwise, the termination of the membership of a member does not release the member from any debt or obligation to the co-operative or contract with the co-operative.

#### If address of member is unknown

- (9) If the address of a member whose membership has been terminated by the supervisory board is unknown to the co-operative after all reasonable efforts have been made to ascertain it and two years have elapsed since the effective date referred to in sub-section (3), the co-operative must transfer all amounts owing under sub-section (7) to a reserve fund, but those amounts do not, despite sub-section (7), include any interest that would have accrued after the end of the two years.

#### Amounts paid to entitled persons

- (10) If any amounts are transferred to a reserve fund under sub-section (9), the co-operative must pay those amounts to any person whom, no later than ten years after the transfer, shows evidence of entitlement satisfactory to the co-operative. If no person appears to show that evidence within the ten years, the amounts become the property of the co-operative.

## Limitation on by-law

54. No by-law governing the withdrawal of a member from membership or the termination of the membership of a member may authorise redemption of membership shares or member loans where the finances of the co-operative or the co-operative will become insolvent after such redemption.

## Termination of membership by members

55. Unless the by-laws provide otherwise, the membership of a member may be terminated by a special resolution of the members. Sub-sections (2) and (7) of section 53 applies, with any modifications that the circumstances require, to a termination by the members.

## Other Terminations

- 56.
- (1) The supervisory board if authorised by the resolution of members of the co-operative may, by written notice to a member, terminate the membership if the member
    - (a) is a body corporate and winding-up proceedings have commenced with respect to it; or
    - (b) failed, during a period of two consecutive years, to transact any business with the co-operative.

## Provisions not to apply

- (2) Sub-sections (1), (2) and (7) of section 53, other than sub-sections (3) to (6) and (8) to (10) of section 53, do not apply to a termination under this section.

## Housing co-operatives

57. If the membership of a person in a non-profit housing co-operative is terminated, any right of the person to possession or occupancy of residential premises acquired by virtue of membership in the co-operative is subject to Chapter 19.

## Re-admission

58. A person whose membership has been terminated under section 53 or 55 may be readmitted to membership only by special resolution of the members.

## Transfer

59. No transfer of a membership, a member loan or a membership share in a co-operative is valid for any purpose unless it is approved by the supervisory board at the recommendation of the directors and the transferee has otherwise complied with the statutes and by-laws of the co-operative and, if applicable, become a party to a unanimous decision.

## If membership too low

60. If the membership of a co-operative is reduced to a number less than the number of members required for incorporation, and if after thirty days notice remains at less than that number, the Registrar may require the co-operative
- (a) to convert into a company or close corporation under the Companies Act and Close Corporations Act respectively.
  - (b) to be liquidated or dissolved under chapter 13.

## CHAPTER 5

### CORPORATE GOVERNANCE

#### Meetings

##### Place of members' meeting

61.

- (1) Meetings of the members of a co-operative are to be held at the place in the Republic provided for in the by-laws or, in the absence of such a provision, at any place in Republic that the directors may determine.

##### Place of shareholders' meetings

- (2) Meetings of the shareholders must be held at the place set out in the statutes. If the statutes do not set out such a place, the meetings are to be held at the place in the Republic that the directors determine, unless all the shareholders entitled to vote **at** the meeting agree that the meeting is to be held at another place that is not in the Republic.

##### Electronic meeting

- (3) Subject to the by-laws, a member or a shareholder 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.

##### Presence

- (4) A person participating in a meeting referred to in sub-section (3) is deemed to be present at the meeting.

#### Calling members' meetings

62.

- (1) After the incorporation of the co-operative the directors in the notice to the Registrar must call a meeting of members without delay.
- (2) The members, at their first meeting, must
  - (a) adopt the by-laws of the co-operative;
  - (b) subject to sub-section (1) of section 107, appoint an auditor **to** hold **office** until the close of the first annual meeting of members.
  - (c) admit person(s) to membership in the co-operative and authorise the directors to issue membership shares and members loan accounts **certificates**.
  - (d) elect directors of the supervisory board.

#### First annual general meetings of members

63.

- (1) The directors must call the first annual meeting of members not later than eighteen months after the co-operative is incorporated an annual meeting of members must be held not later than the **earlier** of ,
  - (a) fifteen months after holding the last annual meeting, and

- (b) six months after the end of the preceding financial year.
- (2) At the annual meeting of the members the following issues must be addressed:
- (a) appointing auditors;
  - (b) considering financial statements;
  - (c) electing directors of the supervisory board; and
  - (d) any other business which can be decided at an annual meeting of members.

#### Special meetings

- (3) The directors may at any time call a special meeting of the members or of the shareholders.

#### Unanimous decision

- (4) [If a unanimous decision contains a provision that eliminates the need for meetings of shareholders, a shareholder may nevertheless at any time call a special meeting of the shareholders.

#### Record date

64.

- (1) The directors may fix in advance a date as the record date for the determination of the members or shareholders who are entitled to receive payment of a bonus or dividend or for any other purpose, except the right to receive notice of, or to vote at, a meeting, but the record date so fixed must not precede by more than sixty days the particular action to be taken.

#### Record date of members' meetings

- (2) For the purpose of determining the persons who are entitled to receive notice of, or to vote at, a meeting of members, the record date is
- (a) the day before the day on which the notice is given; or
  - (b) if no notice is given, the day of the meeting.

#### Record date of shareholders' meetings

- (3) For the purpose of determining the shareholders who are entitled to receive notice of a meeting of the shareholders, the directors may fix in advance a date as the record date for that determination, but the record date so fixed must not precede by more than sixty days or by less than twenty-one days the date of the meeting.
- (4) For the purposes of determining the shareholders who are entitled to vote at a meeting of shareholders, the directors may fix in advance a date as the record date for that determination, but the record date so fixed must not precede by more than sixty days or by less than twenty-one days the date of the meeting.

## If no record date fixed

- (5) If no record date is fixed under subsection (1) or (3), the record date
- (a) for the determination of members or shareholders for any purpose, other than to establish the right of a member or shareholder to receive notice of a meeting or to vote, is the day on which the directors pass the resolution relating to the particular purpose; and
  - ~~(b)~~ for the determination of shareholders that are entitled to receive notice of a meeting is
    - (i) the day before the day on which the notice is given, or
    - (ii) if no notice is given, the day of the meeting.

## If record date fixed

- (6) If a record date with respect to shareholders is fixed under this section, unless notice of the date is waived by each shareholder whose name is set out in the securities register at the close of business on the day the directors fix the record date, notice of the record date must be given not less than seven days before the record date by advertisement in a newspaper published or distributed in a place where the co-operative has its registered **office** and in each place in the Republic where it has a transfer agent or where a transfer of its investment shares may be recorded.

## Notice of meetings

65.

- (1) Notice of the time and place of a meeting of a co-operative must be sent not less than twenty-one days or more than sixty days before the meeting -
- (a) to each person who is entitled to vote at the meeting;
  - (b) to each **director**; and
  - (c) to the auditor of the co-operative, if any.
- (2) The by-laws of a co-operative may derogate from this section, but only in respect of the manner in which notice of a meeting of members may be given to members.

## Notice not required

66. A notice of a meeting of a co-operative need not be sent to a member who was not registered on the records of the co-operative on the record date fixed or determined under sub-section (2) of section 64.

## Failure to receive notice

67. Failure to receive notice of a meeting does not deprive a person of a right to vote at the meeting to which the person is **otherwise** entitled and does **not** invalidate such meeting.

## Notice when adjournment

68.

- (1) If a meeting of a co-operative is adjourned for less than thirty days, it is not necessary, unless the by-laws provide otherwise, to give **notice of the**

adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

- (2) If a meeting of members is adjourned by one or more adjournments for a total of thirty days or more, if notice of the adjourned meeting is given and there is no quorum, then the meeting can proceed without the quorum.
- (3) If a meeting of shareholders is adjourned by one or more adjournments for a total of thirty days or more, if notice of the adjourned meeting was given and there is no quorum, then the meeting can proceed without the quorum.

#### Special business

69.

- (1) All matters dealt with at a special meeting of a co-operative and all matters dealt with at an annual meeting, except consideration of the financial statements, the auditor's report, the business of the co-operative, the election of directors, the remuneration of directors and the re-appointment of the incumbent auditor, are special business.
- (2) Notice of a meeting of members of a co-operative at which special business is to be transacted must -
  - (a) state the nature of the special business in sufficient detail to permit the recipient to form a reasoned judgement with respect to the special business;
  - (b) contain the text of any special resolution to be submitted to the meeting and state that the resolution will be passed as a special resolution;
- (3) The statutes or by-laws of the co-operative may prescribe the votes necessary to pass a special resolution which should not be less than the fourths of persons present and entitled to vote.

#### Waiver of notice

70.

- (1) A person who is entitled to attend a meeting of a co-operative may waive notice of the meeting in any manner (including in writing).
- (2) Attendance at a meeting of a co-operative is a waiver of notice of the meeting, except when a person attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.

#### Proposals

71.

- (1) A member may
  - (a) submit to the co-operative notice of any matter that the member proposes to raise at an annual meeting; and
  - (b) discuss at the meeting any matter in respect of which the member would have been entitled to submit a proposal but no resolution may be taken.



## Proposals to amend statutes

- (2) The following persons may, in accordance with this section, make a proposal to amend the statutes:
- (a) a member;
  - (b) a director or a shareholder; and
  - (c) a person who alleges that he or she has beneficial ownership of investment shares, may be required within fourteen days of submitting a proposal to be considered at a meeting to give satisfactory evidence of that beneficial ownership.
- (3) A proposal submitted for consideration at a meeting must be attached to the notice of the meeting, together with, if requested by the person making the proposal, a statement of not more than two hundred words in support of the proposal and the name and address of the person making the proposal.

## Exceptions

- (4) A co-operative need not comply with sub-section (3) if
- (a) the proposal is not submitted to the co-operative at least ninety days before the anniversary date of the previous annual 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;
  - (c) not more than two years before the receipt of a request, a person failed to present, at a meeting, a proposal that, at the person's request, had been attached by the co-operative to the notice of the meeting;
  - (d) substantially the same proposal was attached to a notice of meeting relating to a meeting of the co-operative held not more than two years before the receipt of the proposal and the proposal was defeated; or
  - (e) the rights conferred by sub-section (1) and (2) are being abused to secure publicity.

## Liability for circulation

72. No co-operative or person acting on behalf of a co-operative incurs any liability by reason only of circulating a proposal or statement in accordance with section 71.

## Refusal to include proposal

- 73.
- (1) If a co-operative refuses to include a proposal in a notice of a meeting referred to in section 71, the co-operative, not later than ten days after receiving the proposal, must notify the person submitting the proposal of its intention to omit the proposal from the notice and send the person a statement of the reasons for the refusal.

## Application to court

- (2) On the application of a person claiming to be aggrieved by a co-operative's refusal under sub-section (1), a court may restrain the holding of the meeting

at which the proposal is sought to be presented and make any further order it thinks fit.

Order to omit proposal from notice

- (3) A co-operative or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the co-operative to omit the proposal from a notice of meeting, and the court, if it is satisfied that sub-section (4) of section 71, applies, may make any order that it thinks fit.

List of persons entitled to receive notice

74.

- (?) A co-operative must prepare an alphabetical list of its members as of the record date established under sub-section (2) of section 64 or, if the by-laws provide for delegates, of the delegates, who are entitled to receive notice of and vote at a meeting of members.
- (2) Subject to paragraph (1)(9) of section 17, a member or delegate whose name appears on the list referred to in sub-section (1) is entitled to one vote at a meeting of members.
- (3) If a record date for voting is fixed under sub-section (4) of section 64, a co-operative must prepare no later than ten days after the record date, an alphabetical list of shareholders who are entitled to vote as of the record date at a meeting of shareholders that show the number of investment shares held by each shareholder.
- (4) A shareholder named in the list referred to in sub-section (3) is entitled to vote for the investment shares opposite his or her name at the meeting to which the list relates.

List of shareholders entitled to receive notice

- (5) If a record date for voting is not fixed under sub-section (5) of section 64, a co-operative must prepare, not later than ten days after a record date for notice of meeting is fixed under sub-section (4) of section 64 or not later than the record date referred to in sub-section (5) of section 64, as the case may be, an alphabetical list of shareholders who are entitled to receive notice of a meeting of shareholders as of the record date that shows the number of shares held by each shareholder.
- (6) A shareholder whose name appears on the list referred to in sub-section (5) is entitled to vote for the investment shares shown opposite their name at the meeting to which the list relates, except to the extent that
- (a) the shareholder has transferred the ownership of any of those investments shares after the record date, and
- (b) the transferee of those investment shares demands, not later than ten days before the meeting, or any shorter period that the by-laws of the co-operative provide, that the transferee's name be included in the list before the meeting and produces properly endorsed investment share certificates or otherwise establishes that the transferee owns the investment shares, in which case the transferee may vote the shares at the meeting,

## Examination of list

- (7) A person who is entitled to vote at a meeting of a co-operative may examine a list that relates to the meeting
- (a) during usual business hours at the registered office of the co-operative or at the place where its records of members and shareholders are maintained; and
  - (b) at the meeting for which the list was prepared.

## Procedure

## Quorum

75.

- (1) Unless the by-laws provide otherwise, a quorum is present at a meeting of the co-operative if persons holding a majority of the voting rights that may be exercised at the meeting are present in person or represented in a manner provided for by this Act or permitted by the by-laws.

## Opening quorum sufficient

- (2) If a quorum is present at the opening of a meeting, the persons who are present and entitled to vote may, unless the by-laws provide otherwise, proceed with the business of the meeting even though a quorum is not present throughout the meeting.

## Adjournment

- (3) If a quorum is not present at the opening of a meeting, the persons who are present and entitled to vote may adjourn the meeting to a fixed time and place but may not transact any other business.
- (4) If a quorum is not present at a meeting which was adjourned and another date, time and place were fixed in the manner referred to in sub-section (3), persons present constitute a quorum and may transact business on the initial notice.

## Representative

76.

- (1) If an entity is entitled to vote at a meeting of a co-operative, the co-operative must recognise any individual authorised by a resolution of the directors or governing body or similar authority of the entity to represent it at meetings of the co-operative.
- (2) An individual who is authorised under sub-section (1) to represent an entity may exercise on behalf of the entity all the powers the entity could exercise if it was an individual.

## Joint voting by members or shareholders

77.

- (1) Unless the by-laws provide otherwise, each joint member may vote at a meeting of members.
- (2) Unless the statutes provide otherwise, if two or more persons hold investment shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the others, vote the investment shares, but, if two or

more of those persons who are present vote, in person or by proxy, they vote as one on the investment shares jointly held by them.

Voting by show of hands or a ballot

78.

- (1) Unless the by-laws provide otherwise, voting at a meeting of a co-operative takes place by a show of hands except when a ballot is demanded by a person who is entitled to vote at the meeting.
- (2) A person who is entitled to vote at a meeting may demand a ballot either before or after a vote by show of hands.

Resolution in lieu of meeting

79.

- (1) Unless the by-laws provide otherwise, and except when a written statement is submitted under section 71, a resolution in writing signed by all the persons who are entitled to vote on that resolution at a meeting of directors of the co-operative and the supervisory board or the shareholders, is as valid as if it had been passed at such a meeting.
- (2) Unless the by-laws provide otherwise, and except when a written statement is submitted under section 71, a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of a co-operative, and signed by all the persons who are entitled to vote at the meeting, satisfies all the requirements of this Act relating to meetings.
- (3) A copy of every resolution referred to in sub-section (1) and (2), must be kept with the minutes of the meeting.

Proof

80. An entry in the minutes of a co-operative of a vote taken under section 78 or a resolution made under section 79 is, in the absence of evidence to the contrary, proof of the outcome of the vote or resolution.

Shareholder(s) meeting

81.

- (a) if a co-operative has only one shareholder, or only one holder of any class or series of investment shares, the shareholder present in person or represented by proxy constitutes a meeting of the shareholders or a meeting of shareholders of that class or series.
- (b) if a co-operative has more than one shareholder, or any holders of any class or series of investment shares, the shareholders present or represented by proxy constitute a meeting of shareholders or a meeting of shareholders of that class if they are in majority.

Requisition of meeting

82.

- (1) Two or more persons who together hold not less than five per cent of the voting rights that could be exercised at a meeting of a co-operative, may requisition the directors to call such a meeting for the purposes stated in the requisition.

- (2) The requisition
- (a) must state the business to be transacted at the meeting to be sent to each director and to the registered office of the co-operative; and
  - (b) may consist of several documents of like form, each signed by one or more persons who are entitled to vote at the meeting.

#### Directors calling meeting

- (3) On receipt of the requisition, the directors must call a meeting to transact the business stated in the requisition unless,
- (a) the directors have called a meeting and given notice of it under section 62;
  - (b) the business of the meeting as stated in the requisition includes matters described in any of paragraphs (4)(b) to (e) of section 71; or
  - (c) the business of the meeting as stated in the requisition includes a matter -
    - (i) in the case of a requisition by a member, outside the powers of the members, and
    - (ii) in the case of a requisition by a shareholder, outside the powers of the shareholders.

#### Member or shareholder calling meeting

- (4) If the directors do not call a meeting within twenty-one days after receiving the requisition, any person who signed the requisition may call the meeting unless any of paragraph (a) to (c) of sub-section (3) applies.

#### Procedure

- (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 by-laws and this Act.

#### Reimbursement

- (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 requisition for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

#### Other methods of calling meetings

83.

- (1) A member or a director, or a shareholder who is entitled to vote at a meeting of the co-operative, may call the meeting if it is not called within the time required by the Act, the statutes and the by-laws.
- (2) A meeting called, held and conducted under this section is for all purposes a meeting duly called, held and conducted.

## Meeting called by Court

84.

- (1) A court, on the application of a director ~~or~~ a person who ~~is~~ entitled to vote ~~at~~ a meeting, may order a meeting of a co-operative to be called, held and conducted within the time and in the manner that the court directs, if
- (a) it is not feasible to call the meeting within the time and in the manner in which those meetings are to be called;
  - (b) it is not feasible to conduct the meeting in the manner required by this Act and the by-laws and any unanimous decision; or
  - (c) ~~the~~ court thinks the meeting should be called, held and conducted in the manner it directs for any other reason

## Varying quorum

- (2) ~~Without~~ restricting the generality of sub-section (1), a court may order that ~~the~~ quorum required by the by-laws or this Act be varied or dispensed with ~~at~~ a meeting called, held and conducted under this section.

## Valid meeting

- (3) A meeting called, held and conducted under this section is for all purposes a meeting duly called, held and conducted.

## Court review of election

85.

- (1) A co-operative, a director or any person who ~~is~~ entitled to vote in the ~~election~~ or appointment of a director or an auditor may apply to a court to resolve any dispute in respect of the election or appointment of a director or an auditor of the co-operative.
- (2) On an application under sub-section (1), a court may make any order it ~~thinks~~ fit, including an order
- (a) restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
  - (b) declaring the result of a disputed election or appointment
  - (c) requiring a new election or appointment, and including in the order directions for the management of the business and affairs of ~~the~~ co-operative until a new election is held or a new appointment is ~~made~~; or
  - (d) determining the voting rights ~~of~~ persons claiming ~~to~~ be ~~entitled~~ to vote.

## By-laws

## Making or amendment of by-law by members

86.

- (1) The members may, by special resolution, make, amend or repeal any by-law that regulates the business and affairs ~~of~~ the co-operative.

- (2) Unless the by-laws of a co-operative provide otherwise, the directors may by special resolution, make a by-law or amend a by-law of the co-operative, but only if the by-law or amendment is not contrary to a by-law made by the members.
- (3) The directors must present a by-law or an amendment to a by-law that is made under sub-section (2) to the members at the next meeting of members and the members may, by special resolution, confirm or amend it.
- (4) If a by-law or an amendment to a by-law made by the directors is not confirmed, with or without amendments, under sub-section (3), the by-law or amendment is repealed as of the date of the meeting of members at which it was not confirmed.

#### Proposal of by-law

87. A member may, in accordance with section 71, make a proposal to make, amend or repeal a by-law.

#### Effective date of by-law

- 88.
- (1) A by-law or an amendment to or repeal of a by-law made by the members is effective from the later of the date of the resolution made under sub-section 86(1) and the date specified in the by-law, amendment or repeal.
  - (2) A by-law or an amendment to a by-law made by the directors, is effective the day after the by-law is made or amended by the directors, until it is confirmed or not confirmed or is confirmed subject to an amendment by the members at a meeting.
  - (3) If a by-law or an amendment to a by-law made by the directors under sub-section (2) of section 86, is not submitted by the directors to the next meeting of the members, as required under sub-section (3) of this section 86, the by-law or amendment ceases to be effective from the date of that meeting.

#### New resolution of directors

- (3) If a by-law or an amendment to a by-law made by the directors under sub-section (2) of section 86, is repealed under sub-section (4) of section 86, or ceases to be effective under sub-section (3), no subsequent resolution of the directors to make or amend a by-law that has substantially the same purpose or effect is effective until it is confirmed, or confirmed as amended, by the members.

## CHAPTER 6

### MANAGEMENT AND OFFICERS

#### General Provisions

89. A co-operative must have at least two executive managers or any greater minimum number that is set out in the statutes or by-laws.

#### Qualifications

- 90.
- (1) A person is qualified to be an executive manager, if the person:

- (a) is an individual;
- (b) is older than eighteen years of age;
- (c) is of sound mind and was never found by a court in the Republic or elsewhere to be of unsound mind; or
- (d) is not an un-rehabilitated insolvent.

#### Additional qualifications

- (2) A co-operative may provide in its by-laws for qualifications or disqualification of executive managers in addition to those in sub-section (1).
- (4) Executive managers will be in charge of the day to day management of the co-operative.

#### Appointment of executive management

- (4) The supervisory board appoints the executive managers of the co-operative one of them will be a managing director or chief executive officer, One of the executive managers appointed by the supervisory board must be a financial manager or person with financial management experience to look after the finances of the co-operative.

#### Duties and functions of executive managers

- 91. Subject to this Act and to the statutes and by-laws or unanimous decisions, the executive managers manage and supervise the management of the business and affairs of the co-operative, subject to the supervision by the supervisory board.
- 92.
  - (1) Every executive manager and officer must, in exercising his or her powers and performing the duties of office -
    - (a) act honestly, in good faith and to do the best he or she can in the interest of the co-operative and members;
    - (b) exercise the care, diligence and skill that any reasonable and prudent person would exercise in comparable circumstances;
    - (c) exercises his or her professional skills as may be required by the co-operative in terms of sub-section 2 of section 90, in the work he or she carries out as executive manager of the co-operative.
    - (d) executive managers and officers must comply with this Act, the statutes, the by-laws and any unanimous decision of the co-operative.

#### No exculpation

- (3) No provision in a contract, the statutes, the by-laws, a unanimous decision or a resolution relieves an executive manager or an officer from complying with this Act and the regulations or from liability for non-compliance.



## Executive management

93.

- (1) Executive management must hold meetings from time to time during the management of the business of the co-operative.
- (2) Executive managers must attend every meeting of the supervisory board to discuss the business of the co-operative as managers thereof, and report to the supervisory board on developments and other related matters that the supervisory board may want to discuss with it.

## Delegation of powers to executive management

94. The supervisory board may delegate to a managing director or the executive management collectively any of its powers, except the power to -

- (a) fill a vacancy of an executive manager temporarily or otherwise until the supervisory board appoints a replacement,
  - (b) declare bonus or dividends on shares, interest on member loans or patronage returns.
  - (c) approve a financial statement of the co-operative themselves.
  - (d) submit to the persons who are entitled to vote questions or matters required to be approved at its meeting.
  - (e) make decisions that by this Act or the statutes or a unanimous decision are required to be made by a vote of greater than a majority of the directors of the supervisory board.
  - (g) redeem or otherwise acquire shares issued by the co-operative.
  - (g) issue securities, except in the manner and on the terms authorised by the supervisory board.
- (2) The executive management or managing director or executive officer is obliged to act within the scope of its mandate unless it has been specifically given written authority to do so by the supervisory board.

## Deemed assent

95.

- (1) An executive manager who is present at a meeting of executive management is deemed to have consented to any resolution made or action taken at the meeting unless,
  - (a) an executive manager requests that a dissent is entered in the minutes of the meeting or the dissent is so entered;
  - (b) an executive manager sends a written dissent to the secretary of the meeting before it is adjourned; or
  - (c) an executive manager sends a written dissent by confirmed delivery service or delivers it personally, to the registered office of the co-operative immediately after the meeting is adjourned.

## Loss of right to dissent

- (2) An *executive* manager who votes for or expressly consents to a resolution or action taken at a meeting is not entitled to later dissent.

## Remuneration

96. Unless the statutes, the by-laws or a unanimous decision provides otherwise, the **supervisory** board may fix the remuneration of executive management and the executive management may fix the remuneration of officers and employees of the co-operative.

**CHAPTER 7**

## CAPITAL STRUCTURE

## Loan capital

97. Subject to sub-section (1) of section 36, the **capital** of a **co-operative with** membership shares may be in the form of member loans and those loans may be in the amounts, payable at the times, and with or without interest, that the statutes of the co-operative provide.

## Membership shares

98. A co-operative with membership shares may have one class of membership shares, designated as such in the statutes. A co-operative may **issue par** value shares of shares of no par value.

## Issuance to members

99.
  - (1) Membership shares may be issued only to members, each of whom must hold the minimum number of membership shares prescribed by the **by-laws**.
  - (2) The membership shares of a co-operative confer on their holders' equal rights, including equal rights to -
    - (a) receive dividends declared on membership shares; and
    - (b) subject to the statutes, receive a share of the value of the surplus the remaining property of the co-operative on dissolution.

## Membership shares

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

## Transfer requires approval

- (4) A transfer of membership shares is valid only if it complies with section 59 and any restrictions set out in the by-laws.

## No right to vote

- (5) The right to vote attaches to membership in accordance with sub-section (8) of section 104, and not to a membership share.

**Redeemable**

- (6) Membership shares may be redeemed by the co-operative,

## Certificates

## Issue of certificates

100.

- (1) The by-laws of a co-operative may provide that no membership share certificates or certificates in respect of member loans need be issued. If the by-laws provide 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.
- (2) 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;
  - (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;
  - (e) a statement that the certificate is not transferable without the approval of the directors; and
  - (o) a statement that there is a charge on the membership shares or member loans represented by the certificate in favour of the co-operative for any indebtedness of the member to the co-operative,

## Certificate of membership

- (3) Each member is entitled to a certificate of membership.

## Members' funds

101.

- (1) The statutes 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 to that fund;
  - (b) any interest on amount paid;
  - (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 distribution of reserves set aside for future payment;

- (f) any other money due to him or her which is a deferred payment.
- (3) The money standing to the credit of the member in a members' fund –
- (a) may be applied for any purposes other purposes except for writing off a loss;
  - (b) must be paid to the member in the manner and at the time provided for in the statutes;
  - (c) may bear interest at a rate fixed in the statutes;
  - (d) may on the due date be set off against the debt owing by the member to the co-operative.
- (3) Actions of the co-operative relating to this section are not or should not be deemed to be activities prohibited by the Banks Act of 1990 (Act 94 of 1965).

#### Distribution on dissolution

102.

- (1) A statute of a co-operative may provide that, on dissolution of the co-operative and after the payment of all debts and liabilities, including any declared and unpaid bonus or dividends, the amount to be paid to the holders of any investment shares and the amount to be paid on the redemption of membership shares - the value of the remaining property of the co-operative is to be distributed or disposed of to any person, including distribution -
- (a) among the members at the time of dissolution, in any manner, including equally among the members irrespective of the number of membership shares or amount of member loans, if any, held or made by a member; and
  - (b) among the members at the time of dissolution on the basis of patronage returns accrued to those members during a stated period before the dissolution.

#### Claim on membership shares for amounts

103.

- (1) A co-operative has a claim on a membership share or any amount standing to the credit of a member or the legal representative of a member for a debt of that member to the co-operative.
- (2) A co-operative may
- (a) enforce a claim referred to in sub-section (1) in the manner set out in its by-laws; or
  - (b) apply any moneys standing to the credit of a member toward payment of a debt due by the member to the co-operative.

## Investment shares

104,

- (1) The statutes of a co-operative may provide that the co-operative may issue investment shares, and if they do, the statutes must set out the following:
- (a) whether the investment shares may be issued to non-members;
  - (a) whether the number of investment shares is to be unlimited and, if not, the maximum number of investment shares that may be issued; and
  - (b) the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to the investments shares.

## No voting rights

- (2) Subject to the statutes and to this Act, no right to vote at a meeting of the co-operative attaches to an investment share.
- (3) Despite sub-section (2) investment shareholders may vote in the meeting of investment shareholders or may pass a special resolution in lieu of a meeting.

## Exception

- (4) The statutes may provide that an investment share confers on its holder the right to vote at an election of directors of the Supervisory Board by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled; or
- (5) The investment shareholders, any class of investment shareholders or the holders of a series of investment shares, may elect a fixed number or a percentage of the directors referred to in subsection (4).

## Limit on shareholders' directors

- (6) Despite sub-sections (2) to (5), neither the statutes nor a unanimous decision may provide that the investment shareholders have the right to elect more than twenty per cent of the directors of the supervisory Board.

## One shareholder one vote

- (7) If investment shareholders are entitled to vote in accordance with sub-section (4) or otherwise in accordance with this Act, investment shares entitles the holder to one vote unless the by-laws or statutes provides differently.

## Members may exercise shareholder rights

- (8) Despite paragraphs (1)(f) of section 17 and section 18, a member who holds an investment share may exercise any voting right that holders of investment shares have.

## Member authorisation

- 105. No investment share may be issued until the members have authorised the principle of the issuance of investment shares.

## Pre-emptive fight

106.

- (1) If the statutes so provide, no investment shares of any class may be issued unless the investment shares are first offered to members and if the members do not exercise their right in terms of this section then to the shareholders of that class. The shareholders of that class have a pre-emptive right to acquire the offered investment shares in proportion to their holdings of the investment shares of that class, at the price at which and on the terms on which those investment shares are to be offered to others.

## Limitation

- (2) Even if the statutes provide the pre-emptive right referred to in sub-section (1), shareholders have no pre-emptive right to acquire investment shares that are to be issued
  - (a) in exchange for a thing or service other than money;
  - (b) as an investment share dividend or in payment of a patronage return; or
  - (c) -pursuant to the exercise of conversion privileges, options or rights previously granted by the co-operative.

## Claim on investment shares

107.

- (1) Subject to sub-section (1) of section 104, the statutes or by-laws may provide that the co-operative has a claim on an investment share registered in the name of a shareholder or the legal representative of a shareholder for a debt of the shareholder to the co-operative, including an amount unpaid as of the date a body corporate was "continued under this Act"; in respect of an investment share issued by it.
- (2) A co-operative may enforce a claim referred to in sub-section (1) in accordance with its by-laws.

## Patronage returns

108.

- (1) A co-operative may allocate among and credit or pay to the members, as a patronage return, all or a part of the surplus arising from the operations of the co-operative in a financial year in proportion to the business done by the members with or through the co-operative in that financial year, calculated in the manner described in sub-section (2) at a rate set by the directors.

## Calculation of patronage

- (2) For the purpose of sub-section (1), the directors may calculate the amount of the business done by each member with or through a co-operative in a financial year by taking into account
  - (a) the quantity, quality, kind and value of things bought, sold, handled, marketed or dealt in by the co-operative;
  - (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 directors, appropriate for different classes, grades or qualities of things and services.

#### Non-member patronage allocation

- (3) The by-laws may provide that a co-operative may allocate among members holding membership loans, shareholders, or pay to persons who use the services of the co-operative but who are not members a share of any surplus at a rate that is equal to or less than the rate at which the surplus is distributed to members.

#### Calculation of non-member patronage

- (4) If a co-operative allocates among and credits or pays to persons referred to in sub-section (3) a share of any surplus, the directors must calculate the business done by the non-member patrons in the manner described in sub-section (2).

#### Investment of patronage return

109.

- (1) A co-operative may, in its by-law provide that the whole, or any part that the directors may determine, of the patronage return of each member in respect of each financial year be applied to the purchase for the member of membership or investment shares in the co-operative.

#### Contents of by-law

- (2) The by-law must provide for the giving of notice to each member of the number of shares purchased or to be purchased for the member, the manner of issuance or transfer of shares, the payment for the shares out of the patronage returns of members and, if applicable, the issuance and forwarding of certificates to members representing shares so issued or transferred.

#### Price of shares

- (3) No member is required under this section to purchase membership shares, in the case of membership shares or investment shares at a price ,
- (a) if the statutes provide for a fixed price or a price determined in accordance with a formula, in excess of that price; and
- (b) in any other case, in excess of the fair value of the membership shares or the fair market value of the investment shares.

#### Loans from patronage returns

110. A co-operative may, in its by-law, require its members to lend to it the whole, or any part that the directors may determine, of the patronage returns to which they may become entitled in each financial year, on the terms and at the rate of interest that the directors determine, so long as the rate of interest does not exceed the rate that is provided in the by-laws.

#### Insolvent co-operative

111. If a co-operative is unable to pay its liabilities as they become due, no member need, under section 110, lend a patronage return to the co-operative, and no member need purchase shares under section 109.

## Marketing plans

112.

- (1) Subject to sub-section (3), this section applies to a co-operative and its members if the members are required by a marketing plan established under an Act of Parliament, or of the legislature of a province to sell or deliver things or render services to or through a producer board or a marketing commission or agency.

## Patronage returns

- (2) For the purposes of allocating, crediting and paying patronage returns among or to members and of making payments to members as part of the price or proceeds of their things or services, the members referred to in sub-section (1), are deemed to have sold and delivered the things or to have rendered the services, or, if the by-laws so specify, any portion or category of the things or services, to the co-operative.

## Conditions

- (3) The by-laws of a co-operative may provide that this section does not apply to a member until any conditions with respect to the delivery of things or rendering of services set out in the by-laws are fulfilled.

## Loans and Guarantees

## Prohibited loans and guarantees

113.

- (1) Subject to sub-section (2) and any additional restrictions set out in the statutes, a co-operative or any of its affiliates, may not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise,
  - (a) to any member, shareholder, director, officer or employee of the co-operative or of an affiliate or to an associate of any such person for any purpose, or
  - (b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by a co-operative or affiliate,if there are reasonable grounds for believing that
  - (c) the co-operative is or, after giving the financial assistance, would be unable to pay its liabilities as they become due, or
  - (d) 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 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.

## Permitted loans and guarantees

- (2) A co-operative may give financial assistance by means of a loan, guarantee or otherwise,
  - (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the co-operative;



- (b) to any person on account of expenditures incurred *or* to be incurred on behalf of the co-operative;
- (c) to a subsidiary of the cooperative;
- (d) to employees of the co-operative or of any of its affiliates
  - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or
  - (ii) in accordance with a plan for the purchase of shares of the co-operative or any of its affiliates to be held by a trustee; and
- (e) to members, or members of members, if the financial assistance is available to all members on similar terms.

#### Enforceability

- (3) A contract made by a co-operative in contravention of this section, may be enforced by the co-operative or by a lender for value in good faith without notice of the contravention.

#### Enforcement of contract to buy shares

114.

- (1) A co-operative must fulfil its obligations under a contract to buy shares of the co-operative provided that will not be in breach of the statutes or by laws.
- (2) Until the cooperative has fulfilled all its obligations under a contract referred to in sub-section (1), the other party retains the status of claimant entitled to be paid as soon as the co-operative is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of shareholders whose rights were in priority to the rights given to the class of investment shares being purchased, but in priority to the rights of members and other shareholders.

#### Debt obligations

115.

- (1) Debt obligations issued by a co-operative are not redeemed by reason only that the indebtedness evidenced by the debt obligation is repaid.
- (2) Debt obligations issued by a co-operative and purchased, redeemed or otherwise acquired may be cancelled or may secure any obligation of the co-operative then existing or later incurred.

## CHAPTER 8

### FINANCIAL DISCLOSURE

#### Annual financial statements before the members

116.

- (1) The directors and the supervisory board must place before the members at every annual meeting of members,

- (a) comparative financial statements in conformity with the generally accepted accounting practice or in form as may be prescribed relating separately to,
    - (h) the period that began on the date the co-operative was incorporated and ended not more than six months before the annual meeting or, if the co-operative has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and
    - (ii) the immediately preceding financial year;
  - (b) the report of the auditor and the supervisory board; and
  - (c) any further information respecting the financial position of the co-operative and the results of its operations required by the statutes, the by-laws or a unanimous decision.
- (2) The Registrar may exempt a co-operative from the requirements set out in this section.

#### Annual financial statements to shareholders and Registrar

- (3) Where shareholders have a right to have an annual meeting the directors and the supervisory board must place the documents described in sub-section (1) before the shareholders at every annual meeting of shareholders.
- (4) The co-operative must furnish the Registrar with a signed annual financial statements of the co-operative by the directors of the board and the supervisory board

#### Exemption

117. The Registrar may, on application of a co-operative, accompanied by an explanation or reasons authorise the co-operative to omit from its financial statements any prescribed item, and the Registrar may, if the Registrar reasonably believes that disclosure of any information to be contained in the statements would be detrimental to the co-operative, permit the omission on any reasonable conditions that the Registrar thinks fit.

#### Consolidated statements

- 118.
- (1) A co-operative must keep at its registered office a copy of the financial statements of each of its subsidiaries and of each entity the accounts of which are consolidated in its financial statements.
  - (2) The financial statements referred to in section 116 have to be on the form of consolidated financial statements if so required by generally accepted accounting practices or if required by this Act in its regulations.

#### Examination

- (3) The members and shareholders of a co-operative and their agents, mandataries and legal representatives may on request examine the statements referred to in sub-section (1) during the usual business hours of the co-operative and may take extracts from them free of charge.

## Barring examination

- (4) A co-operative may, not later than fifteen days after a request to examine under sub-section (3), apply to a court for an order barring the right of any person to so examine, and the court may, if it is satisfied that the examination would be detrimental to the co-operative or a subsidiary, bar the right and make any further order it thinks fit.

## Notice

- (5) A co-operative must give the person requesting to examine under sub-section (3) notice of not later than 15 days after the request, a notice of an application under sub-section (4), and the person may appear and be heard in person or by counsel.

## Approval of financial statements

119.

- (1) The directors and the supervisory board must approve the financial statements referred to in section 116 and the approval is evidenced by the manual signature of one director and two directors of the supervisory board, or a facsimile of the signatures reproduced on the statements.

## Condition precedent

- (2) A co-operative may not issue, publish or circulate copies of the financial statements referred to in section 116 unless they are,
- (a) approved and signed in accordance with sub-section (1); and
  - (b) accompanied by the report of the auditor and directors of the supervisory board of the co-operative, if any.

## Copies to members and shareholders

120.

- (1) A co-operative must send a copy of the documents referred to in section 116 to each member and shareholder, except to a member or shareholder who has informed the co-operative in writing that they do not want a copy of the documents,
- (a) not less than twenty-one days before each annual meeting of members;
  - (b) not less than twenty-one days before each annual meeting of shareholders, if sub-section (2) of section 116, applies; or
  - (c) not later than a resolution in lieu of an annual meeting is signed under section 79.
- (2) Despite sub-section (1) the co-operative need not send the documents referred to in subsection (1) if they were made available for inspection 21 days at the registered office or branches or place of business of the co-operative.

**Copies of financial statements to Registrar**

121.

- (1) The co-operative must send the documents referred to in section 116 to the Registrar within twenty one (21 ) days before the annual meeting of members.

**Subsidiary co-operative**

- (2) A subsidiary co-operative is not required to comply with this section if its financial statements are consolidated or combined with those of its holding co-operative entity and the statements of its holding co-operative entity are sent to the Registrar in compliance with this section.

**Qualifications of auditor**

122.

- (1) Subject to sub-section (5), a person is disqualified from being an auditor of a co-operative, the person is not independent of the co-operative, or any of its affiliates or of the directors or officers of the co-operative or its affiliates,

**Independence**

- (2) For the purposes of this section,
- (a) independence is a question of fact; and
- (b) a person is deemed not to be independent if the person, or another person with whom the person is in business,
- (i) is a director, officer or employee of the co-operative or any of its affiliates, is in business with the co-operative or any of its affiliates, or is in business with a director, officer or employee of the co-operative or any of its affiliates,
- (ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the co-operative or any of its affiliates, or
- (iii) has been a liquidator or trustee in insolvency of the co-operative or any of its affiliates within two years of the proposed appointment of the person as auditor of the co-operative.

**Duty to resign**

- (3) An auditor who becomes disqualified under this section must, subject to sub-section (5), resign without delay after becoming aware of the disqualification.

**Disqualification order**

- (4) Any interested person may apply to a court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

**Exemption order**

- (5) Any interested person may apply to a court for an order exempting an auditor from disqualification under this section and the court may, if it is satisfied that an exemption would not unfairly prejudice the members or shareholders, make an exemption order on any terms that it thinks fit. The order may have retrospective effect.

**Appointment of auditor**

123.

- (1) Subject to section 62, the members must, by ordinary resolution, at the first annual meeting of members and at each subsequent annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

## Eligibility

- (2) An auditor appointed under sub-section (5) of section 122, is eligible for appointment under sub-section (1).

## incumbent auditor

- (3) Despite sub-section (1), if an auditor is not appointed at a meeting of members, the incumbent auditor continues in office until a successor is appointed.

## Remuneration

- (4) The members at members' meeting must by ordinary resolution of the members give the directors and the supervisory board the power to remunerate the auditors.

## Other auditors

124. Where the co-operative is unable to appoint a chartered accountant or firm of auditors referred to in this Act, the Registrar may approve the person nominated by the co-operative to audit the books of a co-operative for one financial year end. The fee payable to the auditor appointed, in this manner will be approved by the Registrar.

## Ceasing to hold office

125.

- (1) An auditor of a cooperative ceases to hold office when the auditor dies, resigns or is removed under section 126 or is struck from the roll of auditors in terms of the laws of the Republic.

## Effective date of resignation

- (2) 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.

## Removal of auditor

126.

- (1) The members may by ordinary resolution at a special meeting remove the auditor from office, unless a court under section 128 appointed the auditor.

## Vacancy

- (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 under sections 127 and 128.

## Filling vacancy

127.

- (1) Subject to sub-section (3), the directors must fill a vacancy in the office of auditor without delay after it occurs.

## Calling meeting

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

## Members filling vacancy

- (3) The by-laws of a co-operative may provide that a vacancy in the office of auditor may only be filled by vote of the members.

## Unexpired term

- (4) An auditor appointed to fill a vacancy holds office for the unexpired term of their predecessor.

## Court appointed auditor

128. If a co-operative does not have an auditor, the court may, on the application of a member or shareholder, appoint and fix the remuneration of an auditor who holds office until an auditor is appointed by the members.

## Right to attend meeting

129. (1) The auditor of a co-operative is entitled to receive notice of every meeting of the co-operative and, at the expense of the co-operative, to attend and be heard at the meetings on matters relating to the auditor's duties.

## Duty to attend and report

- (1) If a director or member of a co-operative, whether or not the member is entitled to vote at the meeting, or a shareholder that is entitled to vote at that meeting of shareholders, gives written notice not less than ten days before a meeting of the co-operative to the auditor or a former auditor of the co-operative, the auditor or former auditor must attend the meeting at the expense of the co-operative and answer questions relating to the auditor's duties.
- (2) The auditor must report the finding of his audit to the supervisory board. If at the meeting of members, the executive directors and the supervisory board fail to give the report then the auditor must give his report at the meeting of members and file such report with the Registrar.

## Notice to co-operative

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

## Statement of auditor

- (5) An auditor is entitled to submit to the co-operative a written statement giving the reasons for the auditor's resignation or the reasons why the auditor opposes a proposed action or resolution set out in any of paragraphs (a) to (c), in any of the following situations:
- (a) the auditor resigns;

- (b) the auditor receives a notice or otherwise learns of a meeting of members called for the purpose of removing the auditor from office; and
- (c) the auditor receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because the term of office of the incumbent auditor has expired or is about to expire.

#### Other statements

- (6) In the case of a proposed replacement of an auditor, whether through removal or at the end of the auditor's term, the following rules apply with respect to other statements:
  - (a) the co-operative must make a statement on the reasons for the proposed replacement and
  - (b) the proposed replacement auditor may make a statement in which he or she comments on the reasons referred to in paragraph (a).

#### Circulating statement

- (7) The co-operative must send a copy of the statements referred to in sub-sections (5) and (6) without delay to every person who is entitled to receive notice of a meeting referred to sub-section (1) and to the Registrar.

#### Replacing auditor

- (8) No person may accept appointment or consent to be appointed as auditor of a co-operative if the person is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, the auditor is to be replaced.

#### Exception

- (9) Despite sub-section (8), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a co-operative if, no later than fifteen days after making the request referred to in that sub-section, the person does not receive a reply.

#### Effect of non-compliance

- (10) Unless sub-section (9) applies, an appointment as auditor of a co-operative of a person who has not complied with sub-section (8) is null or void.

#### Examination

130.

- (1) An auditor of a co-operative must make any examination that is in the auditor's opinion necessary to enable the auditor to report in the manner that may be prescribed on the financial statements required by this Act, to be placed before the members or shareholders, except any financial statements or parts of statements that relate to the period referred to in sub-paragraph (a)(1) of section 116.

- (2) An auditor **must not audit the financial of the co-operative only but, must also** audit the procedures followed by management in decision making, the capacity of the workforce of the co-operative, membership of the co-operative, and any other matter that may have an impact on the success or financial viability of the co-operative, including other audits which may be provided for in the by-laws or unanimous decision of the co-operative.

#### Reliance on other auditor

- (3) Despite section 129, an auditor of a co-operative may reasonably rely on the report of an auditor of an entity the accounts of which, are included in whole or in part in the financial statements of the co-operative.

#### Application

- (4) Sub-section (3) applies whether or not the financial statements of the co-operative reported on by the auditor are in consolidated form.

#### Right to information

131.

- (1) On the demand of an auditor of a co-operative, the present or former directors, officers, employees or agents or mandataries and supervisory board 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 to enable the auditor to make the examination and report.

#### Other information

- (2) On the demand of the auditor of a co-operative, the directors must obtain from the present or former directors, officers, employees and agents or mandataries of the co-operative the information and explanations that the present or former directors, officers, employees and agents or mandataries are reasonably able to provide and that are, in the auditor's opinion, necessary to enable the auditor to make the examination and report.

#### No civil liability

- (3) A person who in good faith makes an oral or written communication under sub-section (1) or (2) is not liable in any civil action arising from having made the communication.

#### Audit committee

132.

- (1) Subject to sub-section (2), a co-operative referred to in chapter 18 must have an audit committee composed of not fewer than three directors.

#### Exemption

- (2) The Registrar may, on application of a co-operative, authorise the co-operative to dispense with an audit committee and the Registrar may, if satisfied that the members and shareholders will not be prejudiced, permit the co-operative to dispense with an audit committee on any reasonable conditions that the Registrar thinks fit.



## Duty of committee

- (3) An audit committee must review the financial statements of the co-operative before they are approved under section 134.

## Auditor's attendance

- (4) The auditor of a co-operative is entitled to receive notice of every meeting of the audit committee and, at the expense of the co-operative, to attend and be heard at the meeting. If requested to do so by a member of the audit committee, the auditor must attend every meeting of the committee held during the auditor's term of office.

## Calling meeting

- (5) The auditor of a co-operative or a member of the audit committee may call a meeting of the committee.

## Notice of error

133.

- (1) A director or officer of a co-operative must, without delay, notify the auditor and the audit committee, if any, of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on.

## Errors in financial statements

- (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 if in their opinion the error or misstatement is material, the auditor or former auditor must inform each director accordingly.

## Duty of directors

- (3) When under sub-section (2) the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors and the supervisory board must -
- (a) prepare and issue revised financial statements; or
  - (b) otherwise inform the members and shareholders and, if the co-operative is one that is required to comply with section 117, inform the Registrar of the error or misstatement in the same manner as it informs the members.

## Qualified privilege

134. Any oral or written statement or report made under this Act by the auditor or former auditor of a co-operative has qualified privilege.

## Audit requested by the Advisory Board

135.

- (1) The advisory board must once every two years or any time it deems necessary direct that an audit be done on any co-operative, by an auditor other than an auditor appointed by the co-operative.

- (2) The audit referred to in sub-section (1), maybe done even after its appointed auditor did an audit of the co-operative.
- (3) The advisory board may decide that the co-operative pays the audit fees for an audit requested by the Advisory Board or it may pay these fees if the co-operative does not have sufficient funds to do so.
- (4) The auditor must advise the directors of the co-operative and the co-operative, represented by its directors and the supervisory board of his findings and discuss them with them.
- (5) After the discussions referred to in sub-section (4), and the necessary changes have been effected the auditor appointed according to sub-section (1) must submit his/her report to the advisory board.
- ( 6 ) The advisory board may if necessary, take steps which -
  - (a) result in the removal of auditor of the co-operative;
  - (b) obliges the co-operative to be audited by the auditor appointed according to sub-section (1) for a period of two years;
  - (c) oblige the members to ratify this appointment in its next annual general meeting. Any payment due to this auditor must be made by the co-operative.

## CHAPTER 9

### AMALGAMATION, CONVERSION AND TRANSFER

#### Amalgamation

136. Two or more co-operatives, including holding and subsidiary co-operatives, may amalgamate and continue as one co-operative, provided that the amalgamation agreement sets out a capital and corporate structure for the amalgamated co-operative that is one that would meet the requirements for a co-operative to be incorporated under this Act.

#### Amalgamation agreement

- 137.
- (i) Each co-operative proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out,
    - (a) the provisions that are required to be included in statutes, of incorporation under this Act;
    - (b) the name and address of each proposed director of the amalgamated co-operative;
    - (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, investment shares or 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

of a co-operative that the holders of those shares are to receive in addition to or instead of shares of the amalgamated co-operative;

- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated co-operative or of any other body corporate the shares of which are to be received in the amalgamation;
- (f) whether the by-laws of the amalgamated co-operative are to be those of one of the amalgamating co-operatives, and if not, a copy of the proposed by-laws; and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated co-operative.

#### Cancellation

- (2) If shares of one of the amalgamating co-operatives are held by or on behalf of another of the amalgamating co-operatives, the amalgamation agreement must provide for the cancellation of the shares when the amalgamation becomes effective without any repayment of capital in respect of them, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated co-operative,

#### Approval

138.

- (1) The directors of each amalgamating co-operative must submit the amalgamation agreement for approval to a meeting of the members of each amalgamating co-operative and to a meeting of the shareholders of each amalgamating co-operative.

#### Notice of meeting

- (2) A notice of a meeting of members or shareholders complying with subsection (2) of section 63 must be sent in accordance with that section to each member and shareholder of each amalgamating co-operative and must,
  - (a) include or be accompanied by a copy or summary of the amalgamation agreement; and
  - (b) state that a dissenting member or shareholder is entitled to the benefit of section 160.

#### Failure to make statement

- (3) Failure to make the statement referred to in paragraph (2)(b) does not invalidate an amalgamation.

#### Right to vote

- (4) Each investment share carries the right to vote with respect to an amalgamation agreement, whether or not it otherwise carries the right to vote.

#### Approval

- (5) An amalgamation agreement is adopted when the members of each amalgamating co-operative and, if any of the amalgamating co-operatives

has issued investment shares, their shareholders, have approved the amalgamation agreement by separate special resolutions,

#### Vertical short-form amalgamation

139.

- (7) Unless the by-laws of the amalgamating co-operative provides differently, a co-operative that is a holding co-operative may amalgamate with one or more of its wholly owned subsidiary co-operatives. The co-operative and subsidiaries continue as one co-operative without complying with sections 136 to 138 if,
- (a) the amalgamation is approved by a resolution of the directors and supervisory board of each amalgamating co-operative; and
  - (b) the resolutions provide that
    - (i) the shares of each subsidiary be cancelled without any repayment of capital in respect of them,
    - (ii) except as may be prescribed, the statutes of amalgamation be the same as the statutes of incorporation of the holding co-operative, and
    - (iii) no shares may be issued by the amalgamated co-operative in connection with the amalgamation.
- (2) The amalgamation will not be allowed if -
- (a) the creditors of the co-operative will be negatively affected by the said amalgamation.
  - (b) the co-operative will not continue to operate its business on co-operative basis.

#### Horizontal short-form amalgamation

- (3) Unless the by-laws of the amalgamating co-operatives provides differently two or more wholly owned subsidiary co-operatives of a holding entity may amalgamate and continue as one co-operative without complying with sections 136 to 138 if,
- (a) the amalgamation is approved by a resolution of the directors and supervisory board of each amalgamating co-operative; and
  - (b) the resolutions provide that
    - (i) the shares of all but one of the amalgamating subsidiaries be cancelled without any repayment of capital in respect of them,
    - (ii) except as may be prescribed, the statutes of amalgamation be the same as the statutes of incorporation of the amalgamating subsidiary whose shares are not cancelled, and
    - (iii) the share capitals of the amalgamating subsidiaries whose shares are cancelled are added to the share capital of the amalgamating subsidiary whose shares are not cancelled.

## Change of name

- (4) Despite sub-paragraph (3)(b)(ii) and section 37, the directors and the supervisory board of the holding entity of the subsidiaries referred to in sub-section (2) may, register the name of the amalgamated co-operative with the Registrar, if the name was approved by members.

## Sending of statutes

140.

- (1) After an amalgamation has been approved under section 138 or 139, statutes of amalgamation in the form that the Registrar fixes must be sent to the Registrar, together with a notice of registered office and a notice of the directors of the amalgamated co-operative.

## Attached declarations

- (2) A declaration of the directors (with the approval of the supervisory board) of each amalgamating co-operative must be attached to the statutes of amalgamation and must establish,
- (a) that the amalgamated co-operative will be organised and operated and will carry on business on a co-operative basis;
- (b) if the co-operative is one to which chapter 17 or 18 or 19 or 20 or 21 or 22 applies, that the amalgamated co-operative will comply with the chapter 17 or 18 or 19 or 20 or 21 or 22;
- (c) that there are reasonable grounds to believe that
- (i) each amalgamating co-operative is, and the amalgamated co-operative will be, able to pay its liabilities as they become due, and
- (ii) the realizable value of the amalgamated co-operative's assets will not be less than the total of its liabilities and share capital of all classes and
- (9) that there are reasonable grounds to believe that
- (i) no creditor will be prejudiced by the amalgamation, or
- (ii) adequate notice has been given to all known creditors of the amalgamating co-operatives and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

## Adequate notice to creditors

- (3) For the purpose of sub-paragraph (2)(e)(ii), adequate notice is given if
- (a) 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 rand; and
- (b) a notice in writing is published once in a newspaper published or distributed in the place where each amalgamating co-operative has its registered office and reasonable notice is given in each province where the co-operative carries on business.

## Certificate of amalgamation

- (4) On receipt of statutes of amalgamation and the declarations required by sub-section (2), the Registrar must issue a certificate of amalgamation if he/she is satisfied that
- (a) the statutes is in accordance with this Act;
  - (b) the co-operative will be organised and operated and will carry on business on a co-operative basis;
  - (c) the things described in paragraphs (2)(d) and (e) are true; and ,
  - (d) if applicable, Chapters 17, 18, 19, 20, 21 and 22 have been complied with.

## Reliance on certificate

- (5) For the purposes of paragraph (4)(b) to (d), the Registrar may rely on the statutes and the declarations required by sub-section (2).

## Effect of certificate

141. On the date shown in a certificate of amalgamation,

- (a) the amalgamation of the amalgamating co-operatives and their continuance as one co-operative becomes effective;
- (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 cooperative;
- (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;
- (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; and
- (g) the statutes of amalgamation are deemed to be the statutes of incorporation of the amalgamated co-operative and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated co-operative.

## Conversion of co-operative to any other kind or form of juristic person or to unincorporated association of person

142.

- (1)
- (a) Subject to paragraph (b), any co-operative that has passed a special resolution authorizing the conversion of the co-operative into any other kind or form of corporate body or, in the case of a provisionally registered co-operative, into an unincorporated association of person may apply to the Registrar, in such form as

- may be determined by the Registrar', to cancel its registration as a co-operative.
- (b) An application for the cancellation of the registration **as a** co-operative referred to in paragraph (a) shall not be made -
- (i) except with the consent in writing of at least three-fourths of all members and or shareholders present or represented by proxy at the meeting provided; that these members and or shareholders constitute fifty plus one of the voting rights of all members of the co-operative with the right to vote;
- (ii) unless at least three month's notice of the intended conversion has been given to the creditors of the co-operative concerned, who shall, on demand, be entitled to payment of any amounts owing to any of them on the date immediately before the registration of the co-operative is cancelled.
- (2) An application referred to in sub-section (1) (a) must be accompanied by -
- (a) a declaration by the chairperson of the board 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;
- (ii) that proper notice has been given to the creditors of that co-operative and that any such creditors who demanded payment of any amounts owing to them have been paid or will be paid before the registration of the co-operative is cancelled;
- (b) fees in the value of an amount determined in terms of the regulations under this Act.
- (3) The Registrar may require a co-operative referred to in sub-paragraph (1)(a) to submit to him or her 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 sub-section (2).
- (4) If the Registrar is satisfied that the provisions of this Act have been complied with in respect of an application referred to in sub-section (2), he or she will cancel the registration of the co-operative referred to in sub-section (1) (a) and strike the name and other particulars of that co-operative off the register of co-operatives.
- (5) As from the date on which the registration of co-operative has been cancelled under sub-section (4) -
- (a) such co-operative ceases to exist;
- (b) all assets, rights, liabilities and obligations of such co-operative shall, subject to the provisions (6), 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 form its members, the unincorporated association of persons into which the co-operative is converted.

- (c) all members and shareholders of the co-operative becomes shareholders of the company.
- (6)
- (a) Any property which vests, by virtue of the provisions of paragraph (b) of sub-section (5), in the corporate body or unincorporated association of persons concerned must be transferred, without payment of transfer duty, stamp duty or any other fee or charge, to that corporate body or unincorporated association of persons, as the case may be.
  - (b) The Registrar of deeds must upon production to him or her of the title deed of immovable property which is as provided in paragraph (a) transferred to the corporate body or unincorporated association of persons concerned, endorse the title deed to the effect that the immovable property described therein vests in that corporate body or unincorporated association of persons and shall make the necessary entries in his or her registers, and thereupon that title deed shall serve and avail for all purposes as proof of the title of that corporate body or unincorporated association of persons to the property in question.
  - (c) each notice states that the co-operative intends to amalgamate with one or more specified co-operatives in accordance with this Act and that a creditor of the co-operative may object to the amalgamation not later than thirty days after the date of the notice.

#### Registration of property

143.

- (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, endorse in and make entries in or 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
- (2) No transfer duty, stamp duty or other fees is payable in respect of the registration contemplated in sub-section (1).

#### Extraordinary disposition

144.

- (1) A sale, lease or exchange of all or substantially all of the property of a co-operative, other than in the ordinary course of business, requires the approval of the members and shareholders in accordance with sub-sections (2) to (7)

#### Notice

- (2) A notice of meeting complying with sub-section (1) of section 65 must be sent to all members and shareholders and must,
  - (a) include a copy or summary of the proposed agreement of sale, lease or exchange; and
  - (b) state that a dissenting member or shareholder is entitled to bring section 143 into effect.



## Failure to make statement

- (3) Failure to make the statement referred to in paragraph (2)(b) does not invalidate the disposition.

## Right to vote

- (4) Each investment share carries the right to vote with respect to an extraordinary disposition, whether or not it otherwise carries the right to vote.  
 (5) Shareholders of investment shares are also entitled to vote.

## Approval

- (6) Subject to sub-section (5), a disposition is authorised when approved by special resolution of members and, if the co-operative has issued investment shares, by a separate special resolution of the shareholders of each class. The special resolution may authorise the directors and supervisory board to fix any terms and conditions of a sale, lease or exchange.

## Termination

- (7) The directors, if authorised by the members and shareholders approving a proposed disposition, and subject to the rights of third parties, may abandon the disposition without further approval.

## Right to dissent

145.

- (1) A member or shareholder may dissent if a co-operative resolves to -
- (a) amend its statutes in a manner that adversely affects a member's membership rights or that affects the rights of a shareholder in respect of an investment share;-
  - (b) amend its statutes to add, change or remove a restriction on the business the co-operative may carry On;
  - (c) amalgamate other than under section 137;
  - (d) apply for conversion under section 143; and
  - (e) sell, lease or exchange all or substantially all of its property under section 144.

## Further right

- (2) A holder of investment shares of any class of shares entitled to vote under sub-section (4) of section 74 may dissent if the co-operative resolves to amend its statutes in a manner described in that section.

## Dissent

- (3) A dissenting member or shareholder must send to the co-operative, at or before any meeting of members or meeting of shareholders at which a resolution referred to in sub-section (1) or (2) is to be voted on, a written objection to the resolution, unless the co-operative did not give notice to the member or shareholder of the purpose of the meeting and of the right to dissent.

## Effect of dissent

- (4) A dissenting member, is deemed to have given notice of intent to withdraw from the co-operative under this section if the resolution, is passed. A dissenting shareholder is deemed to have claimed under this section on behalf of all investment shares in a class held by the shareholder if the resolution is passed.

## Notice of resolution

- (5) The co-operative must, not later than ten days after the members and shareholders have adopted the resolution, send to each dissenting member and shareholder notice that the resolution has been adopted.

## Notice

- (6) A dissenting member or shareholder may, no later than twenty-one days after receiving the notice under sub-section (5), or if no notice is received, no later than *twenty-one* days after learning that the resolution was adopted, send to the co-operative a written notice that contains,
- (a) the person's name and address;
  - (b) if the person is a shareholder, the number of investment shares and the class or classes of the shares held; and
  - (c) a demand
    - (i) in the case of a dissenting member, for withdrawal from the co-operative, for payment of all membership shares at their fair value and for repayment of any other interest held by the member in the co-operative, fair value being determined on the day before the resolution was adopted, and
    - (ii) in the case of a dissenting shareholder, for payment of the fair market value of all investment shares of each class held by the shareholder, fair market value being determined on the day before the resolution was adopted.

## Rights of members

- (7) Despite the statutes, the by-laws or this section, a dissenting member who has sent a demand under sub-section (6) does not have the right to vote at a meeting of the co-operative after having sent the notice. Despite the statutes, the by-laws or sub-section (7) of section 53, the member is entitled to be paid the value of their membership shares in the co-operative in accordance with this section Or a court order under sub-section 20.

## Share certificates

- (8) A dissenting shareholder must, not later than thirty days after sending the notice under sub-section (7), send the certificates representing the investment shares held in the co-operative to the co-operative or to its transfer agent.

## Forfeiture

- (9) A dissenting shareholder that fails to comply with sub-section (8), has no right to claim under this section unless, the court decide differently.

#### Endorsing certificate

- (10) The co-operative or its transfer agent with a notice that the holder is a dissenting shareholder and must be returned to the shareholder must endorse each certificate sent under sub-section (8).

#### Suspension of rights

- (11) On sending a notice under sub-section (6), a member's rights as a member, and a shareholder's rights as a shareholder, other than the right to be paid in accordance with subsection (6), are suspended.

#### Reinstatement

- (12) The rights of the member or shareholder are reinstated as of the date of the notice referred to in sub-section (6) if,
- (a) the dissenting member or shareholder withdraws the demand made under sub-section (6)(c) before the co-operative makes an offer under sub-section (13);
  - (b) the co-operative fails to make an offer in accordance with sub-section (13) and the dissenting member or shareholder withdraws their notice; or
  - (c) the directors revoke a resolution to amend the statutes under sub-section (3) of section 38, terminate an amalgamation agreement under section 137 or an application for conversion under section 142(2) or abandon a sale, lease or exchange under sub-section (1) of section 141.

#### Offer to pay

- (13) A co-operative must, not later than seven days after the later of the day on which the resolution under sub-section (1) or (2) is effective or the day the co-operative receives the notice under sub-section (6), send to each dissenting member or shareholder
- (a) a written offer to pay the amount determined in accordance with sub-section (6) and a statement showing how the amount was calculated; or
  - (b) a statement that sub-section (23) or (24) applies.

#### Same terms

- (14) Every offer for membership shares must be on the same terms and every offer for the same class or series of investment shares must be on the same terms.

#### Payment

- (15) Subject to sub-section (23) or (24), a co-operative must pay to the dissenting member or shareholder the amount offered under sub-section (13) no later than ten days after acceptance, but the offer lapses if it is not accepted within thirty days after being made.

## Application to Court

- (16) If the dissenting member or shareholder fails to accept the offer, the co-operative may, not later than fifty days after the resolution is approved or any later time that the court may allow, apply to the court to fix the amount to be paid under sub-section (6).

## If no application

- (17) If the co-operative fails to make an application under sub-section (16), - or fails to make an offer under sub-section (13), within the time set out in sub-section (16), - a dissenting member or shareholder may, no later than twenty days after the end of that period, make an application for the same purpose.

## Venue

- (18) An application under sub-section (16) or (17) may be made to the court having jurisdiction where the registered office of the co-operative is located or to a court having jurisdiction where the dissenting member or shareholder resides if the co-operative carries on business in that jurisdiction.

## Parties

- (19) On an application under sub-section (16) or (17), all dissenting members and shareholders whose shares or other interests have not been purchased are joined as parties and the co-operative must notify them, advising each of them of the right to participate in, and the consequences of, the application. No dissenting member or shareholder is required to give security for costs in the application.

## Powers of Court

- (20) On an application under sub-section (16) or (17), the Court must determine who is a dissenting member or shareholder and fix the amount to be paid under sub-section (6) and may make any further order that the Court thinks fit.

## Notice if sub-section (23) or (24) applies

- (21) If sub-section (23) or (24) applies, the co-operative must, no later than ten days after the determination under sub-section (20), advise each dissenting member and shareholder that sub-section (23) or (24) applies.

## Effect if sub-section (23) applies

- (22) If sub-section (23) applies,
- (a) a dissenting member or shareholder, not later than thirty days after the notice under sub-section (21), may by notice to the co-operative withdraw the notice of demand, in which case the member is reinstated as a member or the shareholder is reinstated as a shareholder; or
  - (b) if no notice is given to the co-operative under paragraph (a), the dissenting member or shareholder retains the status of a claimant to be paid as soon as the co-operative may lawfully do so or, in liquidation, to be paid in priority to the remaining members and shareholders.

## Installments

- (23) If the directors determine that the payment to a dissenting member as member would adversely affect the financial well-being of the co-operative, payment may be made at the times that the directors determine, over a period that begins on the day on which the resolution was adopted and ends not later than
- (a) two years and six months after that day; or
  - (b) any other day that is not more than five years after the day on which the resolution was adopted and that is specified in the articles of the cooperative.

## Interest

- (24) Payments under sub-section (23) shall bear interest at the rates prescribed by or calculated in accordance with the regulations.

**CHAPTER 10**

## RE-ORGANISATION AND ARRANGEMENT

## Reorganisation

146.

- (1) This section applies to a reorganisation made pursuant to a court order under **sub-sections (3) and (4)**, a court order approving a proposal under the Insolvency Act or a court order that affects the rights among the co-operative, its members, shareholders and creditors made under any other Act of Parliament.

## Limitation

- (2) No court order for reorganisation may result in a cooperative
- (a) no longer being organised or operating or carrying on business on a co-operative basis;
  - (b) if the co-operative is one to which chapters 17 or 18 or 19 or 20 or 21 or 22 applies, not complying with the said chapters 17 or 18 or 19 or 20 or 21 or 22.

## Powers of court

- (3) If a co-operative is subject to an order referred to in sub-section (1), its statutes may be amended by the order to effect any changes that might lawfully be made by an amendment under this Act.

## Further powers

- (4) If a court makes an order referred to in sub-section (1), the court may also
- (a) authorise the issue of debt obligations that if held by members may be converted to membership shares or investment shares and otherwise may be converted to investment shares and fix the terms of them; and

- (b) appoint directors in place of or in addition to all or any of the directors then in office.

#### Statutes of reorganisation

- (5) After an order referred to in sub-section (1) has been made, statutes of reorganisation in the form that the Registrar fixes, together with, if applicable, notice of registered office and notice of change of directors and the supervisory board, must be sent to the Registrar.

#### Certificate of amendment

- (7) On receipt of statutes of reorganisation, the Registrar must issue a certificate of amendment.

#### Effect of certificate

- (7) A reorganisation becomes effective on the date shown on the certificate of amendment and the statutes of incorporation are amended accordingly.

#### No dissent

- (8) No member or shareholder is entitled to dissent under section 160 if an amendment to the statutes of re-organisation is effected under this section.

#### Definition of "arrangement"

147.

- (1) In this section, "arrangement" includes
- (a) a continuance for the purpose of amalgamation;
  - (b) an amendment to the statutes of a co-operative;
  - (c) an amalgamation of two or more co-operatives;
  - (d) an amalgamation of a body corporate with a co-operative that results in an amalgamated co-operative;
  - (e) an amalgamation of two bodies corporate to become a co-operative;
  - (f) a division of the business carried on by a co-operative;
  - (g) a transfer of all or substantially all of the property of a co-operative to another body corporate in exchange for property, money or securities of the body corporate;
  - (h) an exchange of securities of a co-operative for property, money or other securities of the co-operative or property, money or securities of another body corporate, subject to the issue or transfer of membership shares to members;
  - (i) a liquidation and dissolution of a co-operative; and
  - (j) any combination of the events set out in paragraph (a) to (i)

#### When co-operative insolvent

- (2) For the purposes of this section, a co-operative is insolvent

- (a) when it is unable to pay its liabilities as they become due and it has no prospect to pay these in the near future; or
  - (b) if the realizable value of its assets is less than the total of its liabilities and the capital of all membership shares and investment shares.
- (3) If the co-operative is insolvent the laws applicable to insolvency in the Republic will apply.

#### Application to court for approval of arrangement

- (4) If it is not feasible for a co-operative that is not insolvent to effect a fundamental change in the nature of an arrangement under any other provision of this Act, the co-operative may apply to a court for an order approving an arrangement proposed by the co-operative.

#### Powers of court

- (5) In connection with an application under this section, the court may make any order it thinks fit, including an order
- (a) respecting the giving of notice of the application, subject to sub-section (6);
  - (b) respecting the representation of the interests of members or shareholders;
  - (c) requiring meetings of the co-operative to be held;
  - (d) permitting a member or shareholder to dissent under section 160; and
  - (e) approving an arrangement in any manner the court may direct.

#### Limitation

- (6) The court may not make an order that would result in the co-operative,
- (a) no longer being organised or operating or carrying on business on a co-operative basis;
  - (b) if the co-operative is one to which chapters 17 or 18 or 19 or 20 or 21 or 22 applies, not complying with the said chapters 17 or 18 or 19 or 20 or 21 or 22.

#### Notice to Registrar

- (7) Notice of an application under sub-section (4) must be given to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

#### Statutes of arrangement

- (8) If an order is made under paragraph (4)(e), statutes of arrangement in the form that the Registrar fixes, together with, if applicable, notice of registered office and notice of change of directors and supervisory board, must be sent to the Registrar.

## Certificate of arrangement

14§.

- (1) On receipt of statutes of arrangement, the Registrar must issue a certificate of arrangement.

## Effect of certificate

- (2) An arrangement becomes effective on the date shown in the certificate of arrangement.

**CHAPTER 11****SUPERVISORY BOARD**

## Supervisory board

149. Members of the co-operative must elect directors of the supervisory board of the co-operative to supervise the executive management. The supervisory board must constitute in the minimum five directors, one of whom will be appointed in term of sub-section (3) of section 151.

## Duties and powers of the supervisory board

150.

- (1) The supervisory board is in a position of trust and therefore, it has a fiduciary duty towards a co-operative.
- (2) At all material times the supervisory board must act with care, diligence and skills in the interest of the co-operative and its members
- (3) The supervisory board has the powers to supervise the executive management of the co-operative in the management of the co-operative.
- (4) The supervisory board may have additional powers that may be set out in the by-laws of the co-operative.
- (5) The supervisory board approves the increase of the salary of the executive management of the co-operative and must seek ratification of its decision from the members, within two months from date of approval.
- (6) Failure to receive ratification of the increase of the salary of the executive management, after it was sought from the members, will not nullify not invalidate the salary increase of the directors of the cooperative, if the failure to is due to the members by not attending a meeting where the ratification was to be sought and notice of such meeting clearly stated the purpose.
- (8) The supervisory board may recommend and or propose the termination of the employment of the executive management of the co-operative for good cause or reason.
- (8) Ensure that the provisions of this Act, the statutes, by-laws and unanimous decisions are complied with.
- (9) The duties and powers referred in this section, must be exercised by the non-executive directors as supervisory board and not as individuals.
- (10) Where a member of the supervisory board is of the view that he or she is outnumbered by the votes cast, when decisions are being taken by the supervisory board, and he or she is of the bona fide view that the said



decisions are not in the interest of the co-operative and the members, he or she may request that his or her dissent be noted.

#### Election of directors of the supervisory board

151

- (1) Unless the by-laws provides differently, members of a co-operative at a members' meeting must elect amongst themselves persons who will be collectively referred to as the supervisory board and individually directors.
- (2) Despite sub-section (1), the members may appoint one or more persons with expertise to serve as a director of the supervisory board. Such number of directors appointed outside the membership of the co-operative they must not in number exceed the number of directors elected by members.
- (3) Unless the by-laws provides differently, the investment shareholders may nominate not more than twenty percent of the directors of the supervisory board, who need not be elected in terms of sub-section (1), but, will be appointed.
- (4) The by-laws of the co-operative may allow an interested person to appoint not more than two directors of the supervisory board.

#### Rules for election of directors

152,

- (1) Unless the statutes, the by-laws or a unanimous decision provides otherwise, the election of the directors must be in accordance with this section.

#### Term of office

- (2) Directors hold office for a period of not less than four years unless the statutes or by-laws provide differently.
- (3) Directors will hold office until the close of the meeting at which their successors are elected,

#### Re-election

- (4) Directors of the board may be re-elected.
- (5) No election or appointment of an individual as a director is valid unless
  - (a) the individual consents in writing before the end of the meeting.
  - (b) in the case of a director who is elected or appointed at a meeting, the individual did not refuse at the meeting to act as a director.
- (6) A consent in writing referred to in paragraph (5)(a) of this section is effective during the individual's term of office unless the consent states that it is valid until the date stated in the consent or until she or he revokes the consent.

#### Secret ballot

- (7) Directors of the board of directors are to be elected by secret ballot if the number of nominees exceeds the number of directors to be elected.

- (8) A ballot that is cast for the election of more than the number of directors to be elected is null or void.
- (9) The individual who receives the greatest number of votes at an election of directors is elected a director and the other individuals who receive, in descending order, the next greatest numbers of votes are also elected directors, until the number of directors to be elected is fulfilled. If two individuals receive an equal number of votes for the last vacancy on the board, the directors already elected to the board must determine which of the two individuals are to be elected.

#### Separate election

- (10) If investment shareholders have a right to nominate one or more directors to be appointed onto the supervisory board, they vote separately from the members, in a meeting of shareholders for that person (s).

#### Term of office of the supervisory board

153.

- (1) Unless the by-laws provides differently, directors of the supervisory board will hold office for a period of not more than four years, but may be re-elected for a further three consecutive period of four years.
- (2) Unless the by-laws provides differently, two directors of the supervisory board, will retire at every annual meeting and will qualify to be re-elected every year on rotational basis after the initial four years.
- (3) Despite sub-section (1), the re-election of the two directors referred to in sub-section (2) does not affect the directors of the supervisory board nominated by investments shareholders and appointed 'by the members according to sub-section (1 O) of Section 152.

#### Vacancy on board

154.

- (1) Subject to sub-section (2), if there is a vacancy on the supervisory board, except a vacancy because of an increase in number or minimum number of directors, or because of a failure to elect or appoint the number of directors required by the by-laws or statutes or due to the removal of a director in terms of section 158 and there is still a quorum on the supervisory board, the remaining directors may continue to fulfil their functions without filling the vacancy.

#### Special meeting

- (2) The supervisory board may call a special meeting of the persons who are entitled to vote for the purpose of electing or appointing directors to fill the vacancy.

#### Deemed directors

- (3) If all directors of the supervisory board, have resigned or have been removed without replacement, the members may appoint a person to act director of the supervisory board and delegate to him the powers of the supervisory board and he or she will manage or supervise the management of the business and affairs of the co-operative and he or she is deemed to be a director of the supervisory board the purposes of this Act.

## Exceptions

- (4) Sub-section (3) does not apply to,
- (a) an officer of the co-operative who manages the business or affairs of the co-operative under the direction or control of a member or shareholder;
  - (b) a lawyer, notary, accountant or other professional who participates in the management of the co-operative solely for the purpose of providing professional services; or
  - (c) a trustee in insolvency, secured creditor who participates in the management of the co-operative or exercises control over its **property** solely for the purpose of the realisation of security or the administration of the insolvent estate, in the case of a trustee in liquidation.

## Unexpired term

- (5) Unless the by-laws provide otherwise, a director who is elected or appointed to fill a vacancy holds office for the unexpired term of his or her predecessor in office.

## Continuation in office

155. If the election of directors does not occur at the time fixed by this Act or the by-laws or a unanimous decision, the directors of the board of directors then in office continue in office until their successors are elected.

## Reasons for termination of service of directors of the supervisory board

156. If the by-laws do not provide for termination of the services of the director of the supervisory board his or her service may be terminated for any of the following reasons -
- (a) Where he or she has become mentally incapacitated.
  - (b) If he or she does not perform his duties diligently with care, skills and good faith in the interest of the co-operative and its members.
  - (c) If he or she is negligent and reckless in his or her execution of his or her duties **contrary** to the provisions of this Act and the by-laws where they apply.
  - (d) He or she is dismissed by the investment shareholders that appointed him or her.
  - (e) He or she becomes insolvent.
  - (g) Conducts himself or herself **contrary** to good corporate governance.
  - (g) After his or her appointment he or she is convicted of fraud.

## Ceasing to hold office

157. (1) A director of the supervisory board ceases to hold office when he or she dies, resigns, is removed from office or is no longer qualified to be a director under this Act.

- (2) A resignation of a director becomes effective on the -
- (a) day a written letter of resignation is sent or submitted to the supervisory board of the co-operative, if the director so wishes, or
  - (b) the day specified in the letter of resignation.

#### Removal of directors

158.

- (1) The members may remove a director from office, with an ordinary resolution at a special meeting or general meeting of members
- (2) The vacancy created by the removal of a director in terms of sub-section (1), may be filled at the meeting at which, the director was removed.

#### Resignation statement

159.

- (1) A director who resigns is entitled to submit to the co-operative a written statement giving the reasons for the resignation.

#### Opposition statement

- (2) A director of the supervisory board who learns of
  - (a) a meeting of the co-operative called for the purpose of removing him or her as director, or
  - (b) a meeting of the co-operative at which another person is to be appointed or elected to succeed or replace the director, is entitled to attend and address the meeting, or to submit a written statement to the co-operative, giving the reasons why the director opposes any proposed action or resolution at the meeting.

#### Circulation of statement

- (3) When the co-operative receives a statement under sub-section (1) or (2), it must ensure that a copy of it is sent without delay to every person who is entitled to receive notice of the meeting.

#### Immunity for statement

- (4) No co-operative or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with sub-section (3).

#### Notice of change

160. The board of directors of a co-operative, no later than fifteen days after a change of the supervisory board and itself or of the address of any of them, must send the Registrar a notice in the form that the Registrar fixes, setting out the change.

#### Qualification of the non-executive directors

161.

- (1) The by-laws of the co-operatives may set out the qualifications of directors of the supervisory board.

- (2) Despite the provision of sub-section (1) the by-laws of the co-operative may not provide for the appointment of a person who -
- (a) is a corporate body;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of fraud;
  - (d) has misappropriated funds and found guilty thereof;
  - (e) is a minor; and
  - (f) is mentally incapacitated.

#### Action of the supervisory board

162. The directors of the supervisory board must act jointly in all matters that relate to the supervision and management of the co-operative.

#### First meeting of the board of directors and the supervisory board

- 163.
- (1) After a co-operative is incorporated, a joint meeting of the supervisory board and executive managers (if executive managers have been appointed) at which the supervisory board may,
- (a) adopt forms of security certificates and of co-operative records;
  - (b) appoint officers;
  - (c) declare their interest;
  - (d) make arrangements with an appropriate financial institution; and
  - (e) transact any other business necessary to organise the co-operative.

#### Notice

- (2) An incorporator or a director may call a meeting of the supervisory board referred to in sub-section (1) by giving not less than seven days written notice of the meeting to each director, stating the time, place and business of the meeting.

#### Procedures of the joint meetings of the supervisory board and the executive managers

For purposes of the joint meeting, executive managers of the co-operative do not have a voting right.

- 164.
- (1) The supervisory board must hold a joint meeting with executive managers, the procedures relating to the joint meeting may be provided for in the by-laws of the co-operative.
  - (2) Despite sub-section (1), the supervisory board may hold a meeting in the absence of executive managers if, it is of the opinion that it is necessary to hold the meet this way.
  - (3) If the by-laws of the co-operative do not set out the procedures in terms of sub-section (1), the provisions of this Act will prevail.

- (4) The members appoints the chairman of the supervisory board who will preside at joint meeting and members meetings.

#### Notice of the meeting

165. The directors entitled to attend the joint meeting must be given written notice of the meeting, which will include the date, time and place of the meeting not less than seven (7) days prior to the meeting.

#### Place of meetings

166. The joint meeting may be held at the office of the co-operative or any place decided upon by the joint meeting.

#### Waiver of notice

167. The directors may waive the notice period of the joint meeting by attending even if they were not given notice in terms of section 156, unless the director is attending for the purpose of objecting to the joint meeting on the ground that it was not lawfully called.

#### Adjourned meeting

168. Where the joint meeting was adjourned because of lack of a quorum, it is not necessary to give seven (7) days written notice, a letter faxed or e-mailed will suffice as long as the date of the next meeting is clearly set out. If there is no quorum at the meeting following the adjourned joint meeting the directors present can conduct a joint meeting and all the directors will be bound by the decision taken at this joint meeting.

#### Quorum

169. Unless the statutes, the by-laws or a unanimous decision provides for a greater proportion, a majority of the number of the directors of the supervisory board constitutes a quorum. A decision taken by the majority directors at a joint meeting in terms of this section is valid.

#### Electronic meeting

- 170.
- (1) Subject to the by-laws, a director may attend a joint meeting of the supervisory board by means of a telephonic, electronic or other communication facility if it permits all persons participating in the joint meeting to communicate adequately with each other during the joint meeting.
  - (2) A director participating in a joint meeting by a means referred to in sub-section (1) is deemed to be present at the joint meeting.
  - (3) Despite sub-section (1) and (2) the directors are required to sign a register of attendance. A director attending a meeting in terms of sub-section (1) must sign the register at the first opportunity at a subsequent joint meeting.

#### Minutes of joint meeting

171. The joint meeting must ensure that the minutes of the supervisory board are recorded and signed by the chairman and kept safe.

**Validity of acts**

172. No act of the director or officer is invalid by reason only of irregularity in the person's election or appointment or because he or she is not qualified unless he or she is an un-rehabilitated insolvent.

**Resolution in lieu of meeting**

173.

- (1) A resolution in writing, circulated to all the directors entitled to vote and signed by the majority of them, is as valid as if it had been passed at the joint meeting of directors.
- (2j) A copy of every resolution referred to in sub-section (1) must be kept with the minutes of the joint meetings of the directors or committee of directors.
- (3) An entry in the minutes of a co-operative of a vote taken, including one taken in a meeting held in accordance with section 168 and 170, or a resolution made under sub-section (1) in the absence of evidence to the contrary, proof of the outcome of the vote or resolution.

**Deemed assent**

174.

- (1) A director who is present at a joint meeting is deemed to have consented to any resolution made or action taken at the meeting unless,
  - (a) the director requests that a dissent is entered in the minutes of the meeting or the dissent is so entered;
  - (b) the director sends a written dissent to the secretary of the meeting before it is adjourned; or
  - (c) the director sends a written dissent by confirmed delivery service or delivers it personally, to the registered office of the co-operative immediately after the meeting is adjourned.

**Loss of right to dissent**

- (2) A director who votes for or expressly consents to a resolution or action taken at a meeting is not entitled to later dissent.

**Deemed assent of absent director**

- (3) A director who is not present at a meeting of the supervisory board is deemed to have consented to any resolution made or action taken at the meeting unless the director, within seven days after becoming aware of the resolution or action,
  - (a) causes a dissent to be entered in the minutes of the meeting; or
  - (b) sends a written dissent by confirmed delivery service or delivers it personally, to the registered office of the co-operative.

**Defence**

175. A director is not liable under this chapter if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the failure to fulfil their duties, including reliance in good

faith on financial statements of the co-operative, on the reports of experts and on information presented by officers or professionals,

#### Remuneration

176. Members of the co-operative may provide for the payment of the directors of the supervisory board in its by-laws or by an ordinary resolution or unanimous decision.

#### Indemnification

177. (1) A co-operative may indemnify an individual who is or was a director, executive manager, or officer of the co-operative, or who acts or acted at the co-operative's request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a claim, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved by reason of their association with the co-operative or entity.

#### Advance of costs

- (2) A co-operative may advance moneys to a director, executive manager, officer or other individual for the costs of a proceeding referred to in sub-section (1). The individual must repay the moneys if the court determines that the individual did not fulfil the conditions of sub-section (3), unless the members and shareholders decide, by separate resolutions, that the individual need not repay the moneys.

#### Limitation

- (3) A co-operative may not indemnify an individual under sub-section (1) unless the individual -
- (c) acted honestly and in good faith with a view to the best interests of the co-operative, or, as the case may be, to the best interests of the entity for which the individual acted as director or officer or in a similar capacity at the co-operative's request; and
  - (b) in the case of a criminal or administrative proceeding, had reasonable grounds for believing that the individual's conduct was lawful.

#### Derivative action

- (4) A co-operative may not indemnify an individual under sub-section (1) or advance costs under sub-section (2) in respect of an action by or on behalf of the co-operative or entity unless a court so orders.

#### Right to indemnity

- (5) An individual referred to in sub-section (1) is entitled to indemnity from the co-operative for the costs, charges and expenses referred to in that subsection if the individual -
- (a) was not judged by the court to have committed any fault or omitted to do anything that the individual ought to have done; and
  - (b) fulfils the conditions in sub-section (3)



### Insurance

- (6) A co-operative may purchase and maintain insurance for the benefit of an individual referred to in sub-section (1) against any liability incurred by the individual by reason of being or having been a director or officer of the co-operative, having been a director or officer of another entity or having acted in a similar capacity, if the individual acts or acted in that capacity at the co-operative's request.

### Application to court

178.

- (1) A court may, on application of a co-operative or an individual referred to in sub-section (3) of section 177, approve an indemnity under section 177, and make any further order that it sees fit,
- (2) On an application under sub-section (1), the court may order notice to be given to any person with interest and the person is entitled to appear and be heard in person or by counsel.

### Disclosure of interest

179.

- (1) A director and executive manager must according to this section, disclose to the co-operative through the joint meeting, the nature and extent of any interest that the director or executive manager, has in a material contract or transaction, or a proposed material contract or transaction, with the co-operative, and any material change to any such interest, if the director or executive,
- (a) is a party to the contractor transaction;
- (b) is a director or officer - or an individual acting in a similar capacity - of a party to the contract or transaction; or
- (c) has a material interest in a party to the contractor transaction.

### Exemption

- (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.

### Manner of disclosure

- (3) The director and executive manager must make the disclosure in writing to the co-operative or request to have it entered in the minutes of the meetings of the supervisory board

### Time of disclosure for a director

- (4) A director and executive manager must make the disclosure,
- (a) before the meeting or at the meeting of the supervisory board at which the proposed contract or transaction is first considered;
- (b), if the director or, executive manager was not interested in the proposed contract or transaction at the time of the meeting referred

to in paragraph (a), at the first meeting after the director acquires an interest in it;

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

#### Access

- (5) The members and shareholders may examine the portions of minutes of joint meetings of directors, other documents that contain disclosures under this section and of the general notice referred to in section 185 during the usual business hours of the co-operative.

#### Voting

180.

- (1) A director who is interested in a contract or transaction referred to in sub-section (1) of section 179, may not be present for the vote or vote on any resolution to approve the contract or transaction.
- (2) Sub-section (1) does not apply to,
  - (a) a contract or transaction that relates primarily to the director's remuneration as a director, officer, employee or agent or mandatory of the co-operative or of one of its subsidiaries; or
  - (b) contract for indemnity or insurance under sub-section (6) of section 177.

#### Continuing disclosure

- 181. For the purposes of section 179, a general notice to the directors declaring that the director is a director of an entity or acting in a similar capacity, or has a material interest in an entity, or that there has been a change in the nature of their interest in the entity, and that the director is therefore, to be regarded as interested in a contract or transaction made with that entity, as declared in the notice, is a sufficient declaration of interest in a contractor transaction.

#### Effect of disclosure

- 182. A contract or transaction for which disclosure must be made under sub-section of section 179, is not invalid, and the director or executive manager is not accountable to the co-operative, its members or its shareholders for any profit realised from the contract or transaction, by reason only of the interest of the director or executive manager in the contractor transaction, if

- (a) disclosure of the interest was made in accordance with this Act; or
- (b) disclosure of the interest was not made in accordance with this Act but
  - (i) disclosure of the interest was made,
  - (ii) the contract **OR** transaction **IS** approved by a majority of the members of the co-operative or a majority **OF** the members present at a meeting of the members, and
  - (iii) the contract **OR** transaction was reasonable and fair to the co-operative at **the time it was** approved.

#### Court order

183. If a director of a co-operative fails to disclose an interest in a material contract or transaction in accordance with section 179, or otherwise fails to comply with sub-section (4) of section 179, a court may, on the application of the co-operative or a member or shareholder, set aside the contract or transaction on any terms that it thinks fit or order that the director account to the co-operative, its members or its shareholders for any profit realised from the contract or transaction.

#### Declaration of interest

- (1) The directors of the supervisory board must declare their interest to the co-operative according to section 179 of the Act.

#### Voting

- (2) The restriction 'on **voting** by director of the supervisory board with interest must be subject to section 180.

#### Restrictions on the power and liability of the supervisory board

184. Restrictions on the powers of the supervisory board and the executive managers of the co-operative must be provided in the by-laws of the co-operative.

#### Directors' liability

185.

- (1) Directors who vote for or consent to a resolution authorizing the issue of a membership share or an investment share in exchange for a thing or service other than money are jointly and severally, or solely, liable to the co-operative to make good any amount by which the thing *or service* received is less than the fair equivalent of the money that the co-operative would have received if the membership share or investment share had been issued for money on the date of the resolution.
- (2) A director is not liable under sub-section (1) if the director proves that he or she did not know and could **not** reasonably have known that the membership share or investment share was issued for a thing or service less than the fair equivalent of the money that the co-operative would have received if the membership share or investment share had been issued for money on the date of the resolution.
- (3) Directors who vote for" or consent to resolutions authorizing any of the following matters are jointly and severally, or **solely**, liable to restore, to the co-operative any amounts so distributed or **paid** and not **otherwise** recovered by the co-operative:

- (a) redemption or other acquisition of shares or the repayment of member loans contrary to this Act;
  - (b) a commission contrary to this Act;
  - (c) a payment of a dividend, a patronage returns or interests contrary to this Act;
  - (d) financial assistance contrary to this Act;
  - (e) a payment of an indemnity contrary to this Act; or
  - (g) any other payment contrary to this Act.
- (4) A director who satisfies a judgment for a debt owed under this section is entitled to contribution from the other directors who were liable for the debt.
- (5) A director who is liable under sub-section (3) may apply to a court for an order to recover any money or property referred to in paragraph (3)(a) to (f).
- (6) A court may, on application under sub-section (5), if it is satisfied that it is equitable to do so,
- (a) order any person to pay or deliver to the director any money or property referred to in paragraphs (3)(a) to (g) that was paid or distributed to that person;
  - (b) order a co-operative to return or issue membership shares or investment shares to a person from whom the co-operative redeemed or otherwise acquired membership shares or investment shares;
  - (c) order any person to repay to the co-operative the amount of a member loan that was repaid; or
  - (d) make any further order that it sees fit.
- (7) An action to enforce a liability imposed by this section may not be commenced more than two years after the date of the resolution authorising the, action complained of.

#### When no notice given

- (4) If notice is not given to the purchaser or transferee and they are not aware of the existence of unanimous decision, the purchaser or transferee may, no later than thirty days after they become aware of its existence, rescind the transaction by which they acquired the investment shares.

#### Rights of members

- (5) To the extent that a provision in the statutes of the co-operative, or in by-laws or a unanimous decision, restricts the discretion or powers of the directors to manage, or supervise the management of, the business and affairs of the co-operative, members who are given that power to manage or supervise the management of the business and affairs of the co-operative have all the rights, powers, duties and liabilities of directors, whether they arise under this Act or otherwise, including any defences available to the directors, and the directors are relieved of their rights, powers, duties and liabilities, including their liabilities under section 176, to the same extent.

#### Dissolution of the supervisory board

186. The supervisory board may be dissolved as a result of the dissolution of the co-operative, amalgamation, re-organisation or arrangement or business recovery scheme or in any manner provided for in the by-laws of the co-operative.
187. The effect of the dissolution of the supervisory board is that, the supervisory board is no longer in existence and cannot exercise duties and powers it has in terms of this Act or by-laws or statutes.

#### Indemnity of the supervisory board

188. The supervisory board must be indemnified for actions and decisions taken on behalf of the co-operative as long as such decisions were taken in good faith and not negligently, The by-laws may set out additional basis for the indemnification of the supervisory board which, it deems necessary in addition to the one referred to in this section.

#### Cooperative basis

189. The supervisory board must ensure that the business of a co-operative is being conducted on co-operative basis.

#### Notice of directors

- 190.
- (1) At the time of sending statutes of incorporation, the incorporators must send the Registrar a notice of directors, in the form that the Registrar fixes.
  - (2) When a co-operative is incorporated the individuals identified in the notice have all the powers and duties of directors until the first meeting of members referred to in section 163.

#### Liability for wages

- 191.
- (1) Subject to this section and any other applicable law, each director is jointly and severally, or solidarity, liable to the employees of the co-operative for all debts payable to them for services performed while the director held office.
  - (2) A director is not liable under this section for any amount in respect of statutory or contractual termination of employment, for severance pay or for any punitive damages related to termination of employment.
  - (3j) The amount of the liability under this section may not exceed six months wages in the case of each employee.

#### Exception

- (4) Despite sub-sections (1) to (3) the director is not liable under this section unless the director hired the employee in the co-operative contrary to the requirements set out in the by-laws or unanimous decisions or in any improper manner.

#### Limitation period

- (5) A director is not liable under this section unless he or she is sued while holding office or no later than two years after ceasing to be a director.

## Subrogation

- (6) If a director pays a debt owed under this section and the debt is proven in liquidation and dissolution or insolvency proceedings, the director is entitled to any preference that the employee would have been entitled to and, if judgment is obtained, is entitled to an assignment of the judgment.

## Contribution

- (7) A director who pays a debt owed under this section is entitled to contribution from the other directors who were liable for the debt.

## CHAPTER 12

## CO-OPERATIVE ADVISORY BOARD

## Establishment of Co-operatives Advisory Board ("advisory board")

192. The Co-operatives Advisory Board may be established in terms of this Act.

## Functions of advisory board

193.

- (1) The functions of the advisory board may include such investigations as it may deem necessary, and to advise the Minister generally or in respect of any particular matter, and to make recommendations to him or her, in relation to -
- (a) an appeal lodged in terms of section 315 with the Minister against a decision or order of the Registrar;
  - (b) any dispute between, on the one hand, a co-operative or proposed co-operative, the board of a co-operative or supervisory board of a co-operative or a member of a co-operative and, on the other hand, the Registrar;
  - (c) the policy which may be followed in relation to co-operative development in the Republic, and the manner in which such policy is or may be implemented;
  - (d) the amendment or application of provisions of this Act or any other law on matters relating to co-operatives;
  - (e) any matter referred to the advisory board by the Minister under subsection (2).
  - (f) In addition to functions referred to in paragraph (a) to (e), the advisory board may act as ombudsman of co-operatives with the necessary authority to ensure that co-operatives conduct themselves in a manner that promotes the development of co-operatives.
- (2) Where the Minister is required to exercise or perform any power, duty or function or to take any decision under or for the purpose of this Act, the Minister may, before doing so, request the advisory board to advise him or her in relation to the exercise or performance of such power, duty or function or the taking of such decision.
- (3) The expenditure incidental to the performance of the functions of the advisory board will be defrayed out of moneys appropriated for that purpose by Parliament.

## Members of advisory board

194.

- (1) The advisory board may comprise -
  - (a) a person designated by the Minister;
  - (b) eight persons selected and appointed by the Minister from persons nominated by co-operatives in the Republic, by virtue of an invitation made in terms of sub-section (2), and of whom -
    - (i) one represents the interests of workers' co-operatives;
    - (ii) one represents the interests of marketing and supply co-operatives;
    - (iii) one represents the interests of consumer co-operatives;
    - (iv) one represents the interests of housing co-operatives;
    - (v) one represents the interests of savings and credit co-operatives;
    - (vi) one represents transport co-operatives;
    - (vii) one represents agricultural or farming co-operatives; and
    - (viii) two represent any type of co-operative and co-operatives in general;
  - (c) six persons designated by Ministers of departments with vested interest in co-operatives and actively involved in the development of co-operatives.
  - (d) two persons selected by the Minister from persons nominated by development corporations established by or under any law, by virtue of an invitation made in terms of sub-section (2).
- (2) For purposes of the nomination of persons referred to in sub-section (1) or to fill any casual vacancies which may have occurred in the membership of the advisory board, the Minister must by notice in writing invite any co-operatives, organisations and corporations referred to in that subsection to make such nominations as may be specified in such notice within such period as may be so specified.
- (3) If no such cooperative, organisation or corporation exists, ceases to exist or fails to comply with any invitation referred to in sub-section (2) within the period referred to in that sub-section, the Minister may, with due regard to the provisions of sub-section (1), appoint as member of the advisory board a person who in his or her opinion represents the interest of co-operatives.
- (4) The advisory board may, with the concurrence in writing of the Minister and on such conditions as may on the recommendation of the advisory board be determined by the Minister, co-opt any other person in an advisory capacity, as an additional member or members of the advisory board, whether for a particular period or in relation to a particular matter dealt with by the advisory board, and such an additional member or members may participate in the proceedings of the advisory board during any such period or in relation to such matter, but will not be entitled to vote on any matter.

- (5) The Minister may *on* the recommendation of the advisory board appoint a member as chairperson and a member as vice-chairperson from the members referred to in paragraphs (a), (b) and (c) of sub-section (1).

#### Committees of advisory board

195.

- (1) The advisory board may from time to time establish committees to advise or assist it in the performance of any of its functions.
- (2) A committee established under sub-section(1) -
- (a) must consist of such members or other persons appointed by the advisory board as the advisory board may deem fit, to be members of such committee, and of whom one shall be designated by the advisory board to be the chairperson of the committee;
- (b) must meet at such times and places as may be determined by the chairperson of that committee.
- (3) A member of a committee established under sub-section (2) who is not a member of the advisory board or is not employed in the public service on a full-time basis shall be paid directors fees from money appropriated, by Parliament.

#### Terms of office and conditions of service of members of advisory board

196.

- (1) Subject to section 193, a member of the advisory board referred to in paragraph (b) to (d) of sub-section (1) of section 193, will hold office for a period not exceeding three years, but may, if nominated as provided for in sub-section (2) of section 193, be re-appointed at the expiration of that period.
- (2) A member of the advisory board who is not employed in the Public Service on a full-time basis, must be paid out of moneys appropriate by Parliament.
- (3) The remuneration and allowances determined under sub-section (2) may differ according to the office on the advisory board held by a member of the advisory board concerned, or the functions performed by him or her.

#### Vacation of offices by members of advisory board

197.

- (1) A member of the advisory board must vacate his or her office, if -
- (a) such member is by reason of his or her physical or mental illness or for any other reason incapable of acting as a member of the advisory board;
- (b) such member is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (c) such member, in writing under his or her hand addressed and delivered to the chairperson of the advisory board, resigns from his or her office as a member of the advisory board;
- (d) such member has absented himself or herself from three consecutive meetings of the advisory board without the leave of the chairperson of the advisory board.



- (2) Any casual vacancy on the advisory board caused by the death or vacation of office by any member of the advisory board may, with due regard to the provisions of section 194, be filled for the unexpired portion of the period of office of the member of the advisory board who has died or vacated his or her office, as the case may be.

#### Meetings of advisory board

198.

- (1) Subject to sub-section (2), a meeting of the advisory board must be held at such time and place as may be determined by the chairperson of the advisory board.
- (2) The chairperson of the advisory board must at the request of the Minister or on a reasoned request in writing of at least four members of the advisory board convene a special meeting of the advisory board.
- (3) The majority of the members of the advisory board must form a quorum for a meeting of the advisory board.
- (4) The chairperson of the advisory board shall preside at all meetings of the advisory board at which he or she is present.
- (5) When the chairperson of the advisory board is absent from a meeting of the advisory board the members of the advisory board present shall elect a person from amongst their number to act as chairperson at that meeting, and while such member so acts he or she shall have all the powers and shall perform all the duties and functions of the chairperson.
- (6) The decision of a majority of members of the advisory board present at the meeting of the advisory board shall be a decision of the advisory board: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.
- (7) The person presiding at a meeting of the advisory board shall cause -
  - (a) any decision of the advisory board and the reasons for such decision; and
  - (b) upon the request of any member who has voted against such decision, his or her reasons for voting against such decision,to be conveyed to the Minister.
- (8) No decision taken by the advisory board or act performed under the authority of the advisory board shall be invalid by reason only of a vacancy on the advisory board, or by reason only that any person who is not entitled to sit as a member of the advisory board sat as a member of the advisory board when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the advisory board who were present at the time and were entitled to sit as such members.
- (9) The advisory board must ensure that minutes of its meetings are kept.
- (10) The advisory board may make rules in relation to the holding of, and procedure at, meetings of the advisory board.

## Performance of administrative functions of advisory board

- 199.
- (1) Employees who are appointed by or seconded to it, from the Public Service Commission may perform the administrative work relating to the functions of the advisory board.
  - (2) The Director General may designate a staff member referred to in subsection (1) as secretary of the advisory board.
  - (3) The advisory board may, after consultation with the Director General and on such conditions as may be mutually agreed upon, obtain the services of such persons as it may deem necessary to advise it in connection with the performance of its functions,

## Expenses in connection with functions of advisory board

200. The expenditure incidental to the performance of the functions of the advisory board will be defrayed from moneys appropriated by Parliament.

## CHAPTER 13

## LIQUIDATION AND DISSOLUTION

## Definition of "court"

201. In this chapter, "court" means a court having jurisdiction in the place where the co-operative has its registered office.

## Application of the chapter

- 202.
- (1) This chapter, does not apply to a co-operative that is insolvent within the meaning of the Insolvency Act or that is a insolvent within the meaning of this Act.

## Staying of proceedings

- (2) Any proceedings taken under this chapter to dissolve or to liquidate a co-operative are stayed if the co-operative is at any time found, in a proceeding under the Insolvency Act, to be insolvent within the meaning of that Act.

## Revival

- 203.
- (1) When a co-operative is dissolved under this chapter, any interested person, or any person who would be an interested person if a certificate of revival is issued under this section, may apply to the Registrar to have the co-operative revived under this Act.

## Statutes of revival

- (2) Statutes of revival in the form that the Registrar fixes must be sent to the Registrar, together with a declaration of the directors to the same effect as one referred to in paragraph (c) and (d) of section 20.

**Certificate of revival**

- (3) On receipt of statutes of revival, the Registrar must issue a certificate of revival, unless the Registrar is of the opinion that issuing the certificate,
- (a) would result in the co-operative
    - (i) no longer being organised or operating or carrying on business on a co-operative basis,
    - (ii) if the co-operative is one to which chapter 17 or 18 or 19 or 20 or 21 or 22 applies, not complying with 17 or 18 or 19 or 20 or 21 or 22.
  - (b) would not be advisable for any other valid reason.

**Reliance on declarations**

- (4) For the purpose of sub-section (3), the Registrar may rely on the statutes of revival and the declarations referred to in sub-section (2).

**Date of revival**

- (5) A co-operative is revived under this Act on the date shown on the certificate of revival.

**Rights preserved**

- (6) In the same manner and to the same extent as if it had not been dissolved, but subject to any reasonable terms that may be imposed by the Registrar and to the rights acquired by any person after its dissolution, the revived co-operative is,
- (a) restored to its previous position in law, including the restoration of all its property whether acquired before its dissolution or after its dissolution and before its revival, and any rights and privileges whether arising before its dissolution or after its dissolution and before its revival; and
  - (b) liable for the obligations that it would have had if it had not been dissolved whether they arise before its dissolution or after its dissolution and before its revival.

**Legal actions**

- (7) Any legal action respecting the affairs of a revived co-operative, other than those with its affiliates, taken between the time of its dissolution and its revival is valid and effective.

**Dissolution if no property and no liability**

204.

- (1) A co-operative that has no property and no liabilities may be dissolved by a special resolution of the members and, if the co-operative has issued investment shares, by a separate special resolution of the investment shareholders of each class, whether or not they are otherwise entitled to vote.

- (2) The Registrar may after giving an inactive co-operative notice thirty days written notice dissolve if does not have property.

#### Dissolution if property disposed of

- (3) A co-operative that has property or liabilities, or both, may be dissolved by a special resolution passed by two thirds majority of members and, if the co-operative has issued investment shares, by a separate special resolution two thirds majority of the shareholders of each class, whether or not they are otherwise entitled to vote, if
- (a) by the special resolution or resolutions they authorise the directors and supervisory board to cause the co-operative to distribute property and discharge liabilities; and
  - (b) the co-operative has distributed property and discharged liabilities before it sends statutes of dissolution to the Registrar under subsection (4),

#### Statutes of dissolution

- (4) Statutes of dissolution in the form that the Registrar fixes must be sent to the Registrar.

#### Certificate of dissolution

- (5) On receipt of statutes of dissolution, the Registrar must issue a certificate of dissolution.

#### Effect of certificate

- (6) The co-operative ceases to exist on the date shown in the certificate of dissolution.

#### Proposing liquidation and dissolution

205.

- (1) The directors of the supervisory board, or a member may propose, in accordance with section 71, the voluntary liquidation and dissolution of a co-operative.

#### Notice of meeting

- (2) Notice of any meeting of the co-operative at which voluntary liquidation and dissolution is to be proposed must set out the terms of the proposal.

#### Approval

- (3) A co-operative may liquidate and dissolve by a special resolution of two thirds majority of members and, if the co-operative has issued investment shares, by a separate special resolution of two thirds majority the shareholders of each class, whether or not they are otherwise entitled to vote.

#### Statement of intent to dissolve

- (4) A statement of intent to dissolve in the form that the Registrar fixes must be sent to the Registrar.

#### Certificate of intent to dissolve

- (5) On receipt of a statement of intent to dissolve, the Registrar must issue a certificate of intent to dissolve,

#### Effect of certificate

- (6) On the issue of a certificate of intent to dissolve, the co-operative must cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution.

#### Liquidation

- (7) After the issue of a certificate of intent to dissolve, the co-operative must, without delay,
- (a) cause a notice to be sent to each known creditor of the co-operative;
  - (b) proceed to collect its property, dispose of properties that are not to be distributed in kind to its members or shareholders, discharge all its obligations and do all other acts required to liquidate its business; and
  - (c) after giving the notice required under paragraph (a) and adequately providing for the payment or discharge of all its obligations, but subject to the statutes distribute its remaining property among its members and shareholders, if any, according to their respective rights.

#### Supervision by court

- (8) Any interested person may, at any time during the liquidation of a co-operative, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this chapter, and on the application the court may so order and make any further order it thinks fit.

#### Notice to Registrar

- (9) An applicant under this section must give the Registrar notice of the application.

#### Revocation

- (10) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending the Registrar a statement of revocation of intent to dissolve in the form that the Registrar fixes, if the revocation is approved in the same manner as the resolution under sub-section(3).

#### Certificate of revocation of intent to dissolve

- (11) On receipt of a statement of revocation of intent to dissolve, the Registrar must issue a certificate of revocation of intent to dissolve.

#### Effect of certificate

- (12) On the date shown in the certificate of revocation of. intent to dissolve, the revocation is effective and the co-operative may continue to carry on its business or businesses.

## Statutes of dissolution

- (13) If a certificate of intent to dissolve has not been revoked and the co-operative has complied with sub-section (7), statutes of dissolution in the form that the Registrar fixes must be sent to the Registrar.

## Certificate of dissolution

- (14) On receipt of statutes of dissolution, the Registrar must issue a certificate of dissolution.

## Effect of certificate

- (15) The co-operative ceases to exist on the date shown in the certificate of dissolution.

## Dissolution by Registrar

206,

- (1) Subject to sub-sections (2) to (3), the Registrar may dissolve a co-operative by issuing a certificate of dissolution under this section if the co-operative,
- (a) has not commenced business within three years after the date shown in its certificate of incorporation;
  - (b) has not carried on its business for three consecutive years;
  - (c) is in default for a period of three years in sending the Registrar any fee, notice or document required by this Act; or
  - (d) is in the situation described in sub-section (1) of section 207.

## Publication

- (2) The Registrar may not dissolve a co-operative under this section until,
- (a) one hundred and twenty days have elapsed since notice of intent to dissolve has been given to the co-operative and to each of its directors; and
  - (b) notice of intent to dissolve the co-operative has been published in a publication generally available to the public,

## Certificate of dissolution

- (3) Unless cause to the contrary has been shown or a court under sub-section 3 of section 207 has made an order, the Registrar may, after the end of the one hundred and twenty days referred to in sub-section (2), issue a certificate of dissolution. The Registrar must publish in the publication generally available to the public the certificate of dissolution of the co-operative:

## Effect of certificate

- (4) The co-operative ceases to exist on the date shown in the certificate of dissolution.

### Grounds for dissolution

207.

- (1) Any interested person may apply to a court for an order dissolving a co-operative if the co-operative has,
  - (a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of **annual** meetings of members and shareholders;
  - (b) contravened sections 12, 24, 30, 31, section 35, sub-section (1) to (2) and (4) of section 43, and sub-sections (1) to (2) of section 44;
  - (c) procured any *certificate* under this Act by misrepresentation; and
  - (d) not carried on business or is no longer organised or not operating on a co-operative basis.

### Notice to Registrar

- (2) An applicant under this section must give the Registrar notice of the application.

### Dissolution order

- (3) On an application under this section, the court may order that the co-operative be dissolved or that it be liquidated and dissolved under the supervision of the court, and the court may make any other order it thinks fit.

### Certificate

- (4) On receipt of an order under this section *or* section 212, the Registrar must,
  - (a) if the order is to dissolve the co-operative, issue a certificate of dissolution;
  - (b) if the order is to liquidate and dissolve the co-operative under the supervision of the court, issue a certificate of intent to dissolve in the form that the Registrar fixes and publish notice of the order in a publication generally available to the public.

### Effect of certificate

- (5) The co-operative ceases to exist on the date shown in the certificate of dissolution.

### Further grounds

208.

- (1) A court may order the liquidation and dissolution of a co-operative or any of its **affiliates** on the application of a member or a shareholder if the court is satisfied,
  - ( a ) that an act *or* omission of the co-operative or any of its affiliates effects a result, that the business or affairs of the co-operative *or* any of its affiliates are or have been carried on or conducted in a manner, or that the powers of the directors of the co-operative or any of its affiliates are or have been **exercised** in a manner, that is oppressive or "unfairly prejudicial to, *or* that unfairly disregards the interests of, a member, shareholder, security holder, creditor, director or officer; *or*

- (b) that events have occurred that entitle a member or shareholder, in accordance with a unanimous decision, to demand that the co-operative be dissolved or that it is just and equitable that the co-operative be liquidated and dissolved.

#### Alternate order

- (2) On an application under this section, a court may make any order under this section or section 207 that it thinks fit.

#### Application of section 207

- (3) Section 207 applies to an application under this section.

#### Application for supervision

209.

- (1) An application to a court to supervise a voluntary liquidation and dissolution under sub-section (8) of section 204 must state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation and dissolution.

#### Court supervision

- (2) If a court makes an order applied for under sub-section (8) of section 204, the liquidation and dissolution of the co-operative continues under the supervision of the court in accordance with this Act.

#### Application to court

210.

- (1) An application to a court under sub-section (1) of section 207, must state the reasons, verified by an affidavit of the applicant, why the co-operative should be liquidated and dissolved.

#### Shows cause order

- (2) On an application under sub-section (1) of section 208, the court may make an order requiring the co-operative and any person who has an interest in it or claim against it to show cause, at a specified time and place, not less than four weeks after the date of the order, why the co-operative should not be liquidated and dissolved.

#### Powers of court

- (3) On an application under sub-section (1) of section 209, the court may order the directors and officers of the co-operative to provide the court with all material information known to or reasonably ascertainable by them, including,
- (a) financial statements of the co-operative;
  - (b) the name and address of each member and shareholder and ;
  - (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the co-operative has a contract.



## Publication

- (4) A copy of an order made under sub-section (2) must be
- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a publication generally available to the public; and
  - (b) served on the Registrar and each person named in the order.

## Person responsible

- (5) Publication and service of an order under this section must be effected by the co-operative or by any other person and in any manner that the court may order.

## Powers of Court

- 211 In connection with the liquidation and dissolution of a co-operative, the Court may, if it is satisfied that the co-operative is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including an order
- (a) to liquidate;
  - (b) appointing a liquidator, with or without security, and fixing their remuneration, or replacing a liquidator;
  - (c) appointing inspectors or referees, specifying their powers and fixing their remuneration, or replacing inspectors or referees;
  - (d) determining the notice to be given to any interested person, or dispensing with notice to any person;
  - (e) determining the validity of any claim made against the co-operative;
  - (f) at any stage of the proceedings, restraining the directors and supervisory board from
    - (i) exercising any of their powers, or
    - (ii) collecting or receiving any debt or other property of the co-operative, and from paying out or transferring any property of the co-operative, except as permitted by the court;
  - (g) determining and enforcing the duty or liability of any present or former director, supervisory board, officer, member or shareholder,
    - (i) to the co-operative, or
    - (ii) for an obligation of the co-operative;
  - (h) approving the payment, satisfaction or compromise of claims against the co-operative and the retention of assets for those purposes, and determining the adequacy of provisions for the payment or discharge of obligations of the co-operative, whether liquidated, unliquidated, future or contingent;
  - (i) disposing of or destroying documents and records of the co-operative;

- (j) on the application of a creditor, the inspectors or the liquidator, giving directions on any matter arising on the liquidation;
- (k) after notice has been given to all interested parties, relieving a liquidator from an omission or default on any terms that the court thinks fit and confirming any act of the liquidator;
- (l) disposing of any **property** that belongs to creditors, members or shareholders who cannot be found;
- (m) on the application of a director, officer, member, shareholder or creditor or the liquidator,
  - (i) staying the liquidation on any terms and conditions that the court thinks fit,
  - (ii) continuing or discontinuing the liquidation proceedings, or
  - (iii) to the liquidator, to restore to the co-operative all its remaining property; and
- (n) after the liquidator has rendered a final account to the court, dissolving the co-operative.

#### Effect of order

212. The liquidation of a co-operative commences when a court makes an order for liquidation.

#### Cessation of business and powers

213. If a court makes an order for liquidation of a co-operative,
- (a) the co-operative continues in existence but must cease to carry on business, except the business that is in the liquidator's opinion required for an orderly liquidation; and
  - (b) the powers of the directors, members and shareholders cease and vest in the liquidator, except as specifically authorised by the court.

#### Unknown claimants

214. (1) On the dissolution of a co-operative under this Act, the portion of the property to be distributed to a creditor, member or shareholder who cannot be found must be converted into cash, and paid to the Guardians Fund referred to in Administration of Estates Act of 1965 (Act No. 66 of 1965).

#### Deemed satisfaction

- (2) A payment under sub-section (1) is deemed to be in satisfaction of a debt or claim of the creditor, member or shareholder.

#### Recovery

- (3) If at any time a person establishes their entitlement to any money paid to the Guardian Fund for the benefit of claimant under this Act, after liquidation, the money must be claimed from the said Guardian Fund by the person entitled to it.

## Vesting in the Minister

215.

- (1) Property of a co-operative that has not been disposed of at the date of its dissolution under this Act or which has not been realised by the liquidator vests in the Minister.

## Return of property on revival

- (2) If a co-operative is revived as a co-operative under section 202, any property, other than money, that vested in the Minister under sub-section (1) and that has not been disposed of must be returned to the co-operative, and there must be paid to the co-operative out of the account it was paid into by the Minister,

- (a) an amount equal to any money received by Minister under sub-section (1); and

- (b) if property other than money vested in Minister under sub-section (1) and the property has been disposed of, an amount equal to the lesser of,

- (i) the value of the property at the date it vested in Minister, and

- (ii) the amount realised by Minister from the disposition of the property.

- (3) A vesting of land under sub-section (1) is not effective against a purchaser for value of the land if the vesting occurred more than twenty years before the document evidencing the purchase is registered in the proper registry office.

216. If at the date of coming into operation of this Act, there are still liquidation process on going in terms of the repealed Act, where a liquidator has been appointed, the winding up of those co-operatives will continue as if that Act has not been repealed.

## CHAPTER 14

## INVESTIGATIONS

## Investigation by the Registrar

217. The Registrar may order an investigation into the business of the co-operative if he or she suspects that the financial affairs of the co-operative and or that the co-operative business is not carried on co-operative basis and or the co-operative contravenes any provision of this Act.

## Investigation by the Registrar at the request of a person with interest

218.

- (1) Any person with interest may in writing request the Registrar to investigate the affairs of the co-operative. This person must explain the reasons for his or her request for the investigation, and the Registrar will take the necessary decision which includes,

- (a) investigate the allegations of the applicant;
  - (b) Dismiss the allegation and refuse to investigate.
- (2) If the Registrar decides to investigate the affairs of the co-operative, he will appoint a person within his office as an inspector or if there is a need for specialised expertise, appoint an expert to be the investigator and give him the necessary powers to effect the investigation.
- (3) The Registrar after the investigation report is given to him will do what needs to be done and advise the applicant of his findings.

Application to court for investigation

219.

- (1) Any person with interested and any person who made the request to the Registrar, may apply, without notice or on any notice that the court may require, to a court having jurisdiction in the place where the co-operative has its registered office for an order directing an investigation to be made of the co-operative and any of its affiliates.

Grounds

- (2) The court may order an investigation to be made of the co-operative and any of its affiliates if, on an application under sub-section (1), it appears to the court that the application is neither frivolous nor vexatious or that,
- (a) the co-operative is not organised, operated or carrying on business on a co-operative basis;
  - (b) the business or the affairs of the co-operative are not being carried out or conducted in accordance with,
    - (i) the restrictions contained in its statutes,
    - (ii) its by-laws,
    - (iii) a unanimous decision, or
    - (iv) this Act;
  - (c) the business of the co-operative or any of its affiliates is or has been carried on with intent to defraud a person;
  - (d) the business or affairs of the co-operative or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, a member or a security holder;
  - (e) the co-operative or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
  - (f) persons concerned with the formation, business or affairs of the co-operative or any of its affiliates have, in connection with the formation, business or affairs of the co-operative, acted fraudulently or dishonestly.

**No security for costs**

- (3) An applicant under this section is not required to give security for costs.

**Powers of court**

220.

- (1) In connection with an investigation under this chapter, the court may make any order it thinks fit, including an order
- (a) to investigate;
  - (b) appointing an inspector, who may be the registrar, and fixing their remuneration, or replacing an inspector;
  - (c) determining the notice to be given to any interested person, or dispensing with notice to any person;
  - (d) authorizing an inspector to enter any premises in which the court is satisfied there might be relevant information and to examine any thing and make copies of any document found on the premises;
  - (e) requiring any person to produce documents to an inspector;
  - (g) authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and setting out rules for the conduct of hearings;
  - (g) requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
  - (h) giving directions to an inspector or any other interested person on any matter arising in the investigation;
  - (i) requiring an inspector to make an interim or final report to the court;
  - (j) determining whether a report of an inspector should be published and, if so, ordering its publication in whole or in part or that copies of it be sent to any person the court designates;
  - (k) requiring an inspector to discontinue the investigation;
  - (l) if the co-operative is incorporated with membership capital, requiring the co-operative to be continued by being converted into a close corporation or company in terms of the Close Corporations Act and Companies Act respectively, or if it is incorporated without membership capital, requiring it to be dissolved;
  - (m) determining any matter that relates to the relationship between a member and the co-operative; and
  - (n) requiring the co-operative to pay the costs of the investigation.

**Copy of report**

- (2) An inspector must send the Registrar a copy of every report made by the inspector under this chapter.

## Powers of inspector

221.

- (1) An inspector appointed under this chapter has the powers set out in that order appointing the inspector.

## Exchange of information

- (2) In addition to the powers set out in the order appointing an inspector, the inspector may provide information to, or exchange information and otherwise co-operate with, any public official in the Republic or elsewhere who,
  - (a) is authorised to exercise investigatory powers; and
  - (b) is investigating, in respect of the *co-operative*, any allegation of improper conduct that is the same as or similar to the conduct described in sub-section (2) of section 219.

## Court order

- (3) An inspector must, on the request of an interested person, produce a copy of any order made under sub-section 222.

## Hearing in private

222.

- (1) Any interested person may apply to the court for an order that a hearing under this chapter be heard in private and for directions on any matter arising in the investigation.

## Right to legal representation

- (2) A person whose conduct is being investigated or who is being examined at a hearing conducted under this chapter has the right to legal representation.

## Incriminating statements

223, No person is excused from attending and giving evidence and producing documents to an inspector under this chapter by reason only that the evidence tends to incriminate the person or subject the person to a proceeding or penalty, but no such evidence may be used or is receivable against the person in any later proceeding instituted under an Act of Parliament, other than a prosecution for perjury in giving the evidence.

## Privilege

224. Any oral or written statement or report made by an inspector or other person in an investigation under this chapter has absolute privilege.

## Membership shares included

225.

- (1) For the purposes of this section, a security includes a membership share or an interest in one.

## Information respecting ownership and control

- (2) If the Registrar is satisfied that, for the purposes of chapter 3 or section 9 for the purposes of enforcing any regulation made under section 11, there is reason to inquire into the ownership or control of a security of a co-operative or any of its affiliates. the Registrar may require any person that the Registrar **reasonably believes has or has had** an interest in the security or acts or has acted on behalf of a person with such an interest to report to the Registrar or to any designated person,
- (a) information that the person has or can reasonably be expected to obtain as to present and past interests in the security; and
- (b) the names and addresses of the persons so interested and of any person who acts or has acted in relation to the security on behalf of the persons so interested.

#### Deemed interest in securities

- (3) For the purposes of sub-section (2), a person is deemed to hold an interest in a security if
- (a) in the case of a membership share, the person is *or* is entitled to be entered in the records of the co-operative as the owner of the membership share; and
- (b) in the case of an investment share,
- (i) the person has a right to vote or to acquire or dispose of the investment share or an interest in it,
- (ii) the person's consent is necessary for the exercise of the rights or privileges of any other person interested in the investment share, or
- (iii) any other person interested in the investment share can be required or is accustomed to exercise rights or privileges attached to it in accordance with that person's instructions.

#### Publication

- (4) The Registrar must publish, in a publication generally available to the public, the particulars of information obtained under this section if the particulars,
- (a) are required by this Act or the regulations to be disclosed; and
- (b) have not previously been so disclosed.

#### Attorney and client privilege

226. Nothing in this chapter may be construed as affecting the privilege that exists in respect of lawyers and notaries and their clients.

#### inquiries

227. The Registrar may make inquiries of any person relating to compliance with this Act.

## CHAPTER 15

### REMEDIES, OFFENCES AND PUNISHMENT

#### Definitions

228. The definitions in this section apply in this chapter.

- (a) “action” means an action taken under this Act.
- (b) “complainant” means
  - (i) a member or former member;
  - (ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a co-operative or any of its affiliates;
  - (iii) a director or an officer, or a former director or officer, of a co-operative or any of its affiliates;
  - (iv) a creditor of a co-operative; or
  - (v) any other person who, in the opinion of the court, is a proper person to make an application under this chapter.
  - (vi) the supervisory board or a director of the supervisory board.
  - (vii) a directive or director(s).

#### Commencement of derivative action

229.

- (1) Subject to sub-section (2), a complainant may apply to the court for leave to bring an action in the name and on behalf of a co-operative or any of its subsidiaries, or to intervene in an action to which the co-operative or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the co-operative or subsidiary.

#### Condition precedent

- (2) No person may bring an action and no person may intervene in an action brought under sub-section (1) unless the court is satisfied that,
  - (a) if the **directors and** supervisory board of the co-operative or its subsidiary do not bring, diligently prosecute, defend or discontinue the action, the complainant has given reasonable notice to the directors and supervisory board of the co-operative or its subsidiary of the complainant's intention to apply to the court under sub-section (1);
  - (b) the complainant is acting in good faith; and
  - (c) it appears to be in the interests of the co-operative or its subsidiary to bring, prosecute, defend or discontinue the action.



### Powers of court

- (3) In an action brought or intervened in under this section, the court may make any order it considers appropriate, including an order
- (a) authorizing the complainant or any other person to control the conduct of the action;
  - (b) giving directions for the conduct of the action;
  - (c) directing that an amount adjudged payable by a defendant in the action be paid, in whole or in part, directly to a former or present member or to a former or present security holder of the co-operative or its subsidiary instead of to the co-operative or its subsidiary; or
  - (d) requiring the co-operative or its subsidiary to pay reasonable costs incurred by the complainant in connection with the action.

### Application to court re oppression

230.

- (1) A complainant may apply to the court for an order, including an alternate order, under this section.

#### Grounds

- (2) If the court receives an application under sub-section (1) and is satisfied that an act or omission of a co-operative effects a result, that the business or affairs of the co-operative are or have been carried on or conducted in a manner, or that the powers of the director and or the supervisory board are or have been exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a member or other security holder, creditor, director or officer of the co-operative, the court may order the rectification of the matters complained of.

### Types of order

- (3) For the purpose of sub-section (2), the court may make any order that it considers appropriate, including an order
- (a) restraining the conduct complained of;
  - (b) appointing a trustee or manager;
  - (c) requiring the co-operative to amend an agreement with members generally or with a member;
  - (d) regulating the affairs of the co-operative by amending its statutes or by-laws or creating or amending a unanimous decision;
  - (e) directing an issue or exchange of securities;
  - (f)** directing changes in the directors;
  - (g) determining whether a person is or is qualified to be a member;
  - (h) determining any matter in regard to the relations between the co-operative and a member;

- (i) subject to paragraph (6)(c) of section 160, directing the co-operative or any other person to purchase shares of the shareholder (including investment shares);
- (j) subject to paragraph (6)(c)(ii) of section 160, directing the co-operative or any other person to pay to a security holder any part of the money paid by the security holder for securities;
- (k) subject to paragraph (6)(c)(1) of section 160, directing the co-operative to redeem membership shares, repay member loans or to pay to a member any other amount standing to the member's credit in the records of the co-operative;
- (l) varying or setting aside a transaction or contract to which the co-operative is a party and compensating the co-operative or any other party to the transaction or contract;
- (m) directing the production and delivery within a specified time of financial statements of the co-operative;
- (n) directing an audit of the books of the co-operative;
- (o) compensating an aggrieved person;
- (p) directing rectification of the registers or other records of the co-operative under section 232;
- (q) liquidating and dissolving the co-operative;
- (r) directing a special auditor an investigation under section 219; or
- (s) requiring the trial of an issue.

#### Duty of directors, supervisory board and members

- (4) If an order made under this section directs an amendment of the statutes or by-laws of a co-operative,
  - (a) the directors, supervisory board, members and shareholders must comply with paragraph (3)(c) of this section; and
  - (b) no other amendment to the statutes or by-laws may be made without the consent of the court, until the court orders otherwise.

#### Exclusion

- (5) A member or shareholder is not entitled to dissent under section 160 if an amendment to the statutes is effected under this section.

#### Alternate order

- (6) An applicant under this section may apply for an order under section 232 instead of the order under this section.

#### Evidence of member or shareholder approval not decisive

231.

- (1) No application made and no action brought or intervention under this chapter is to be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the co-operative or any of its subsidiaries has been or may be approved by the members or shareholders, but evident,

Of approval by the members or shareholders must be taken into account by the court in making an order under section 232 or this chapter.

**Court approval to discontinue**

- (2) No application made and no action brought or intervened in under this chapter is to be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the court given on any terms that the court considers appropriate.

**Notice**

- (3) If the court determines that a stay, discontinuance may substantially affect the interests of a complainant, settlement or dismissal mentioned in subsection (2), the court may order any party to the application or action to give notice of the application or action to the complainant.

**No security for costs**

- (4) A complainant is not required to give security for costs in an application made or action brought or intervened in under this chapter.

**Interim costs**

- (5) In an application made or an action brought or intervened in under this chapter, the court may at any time order the co-operative or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for any interim costs so paid on the final disposition of the application or action.

**Application to court to rectify records**

232.

- (1) If the name of a person is alleged to be or to have been wrongly entered or retained in or wrongly deleted or omitted from the registers or other records of a co-operative, the co-operative, a security holder of the co-operative or any aggrieved person may apply to the court for an order that the registers or records be rectified.

**Power of Court**

- (2) On an application made under this section, the court may make any order it considers appropriate, including an order,
- (a) requiring the registers or records of the co-operative to be rectified;
  - (b) restraining the co-operative from calling or holding a meeting or allocating or paying a dividend or interest on shares or a patronage refund before rectification of the registers or records;
  - (c) determining the right of a party to the proceedings to have the party's name entered or retained in or deleted or omitted from the registers or records of the co-operative, whether the issue arises between two or more members or security holders, or alleged members or security holders, or between the co-operative and a member or security holder or alleged member or security holder; or
  - (d) compensating a party who has incurred a loss by reason of the wrongful entry, retention, deletion or omission.

## Application for directions

233. The Registrar may apply to a court for directions in respect of any matter concerning the Registrar's duties under this Act and, on the application, the court may give any directions that it thinks fit.

## Notice of refusal by Registrar

234. (1) The Registrar must file all documents that are required to be sent to him or her under this Act. If the Registrar refuses to file any of those documents, the Registrar must, no later than twenty one (21) days, after the later of the receipt of the document and the receipt of any approval that may be required under any other law, give written notice of the refusal to the person who sent the document, giving reasons for the refusal.

## Deemed refusal

- (2) If the Registrar does not file or give written reasons of refusal to file the documents within the twenty one (21) days provided for in sub-section (1), the Registrar is deemed to have refused to file the document.

## Appeal from Registrar

235. A person who feels aggrieved by a decision of the Registrar referred to in any of paragraphs (a) to (9) may apply to a court for an order, including an order requiring the Registrar to change the decision:
- (a) to refuse to file in the form submitted any statutes or other documents required by this Act to be sent;
  - (b) to give a name, change or revoke a name or refuse to reserve, accept, change or revoke a name under this Act;
  - (c) to refuse to grant an exemption that may be granted under this Act and the regulations;
  - (d) to refuse to issue a certificate of discontinuance;
  - (e) to issue, or refuse to issue, a certificate of revival or the decision with respect to the terms for revival imposed by the Registrar; or
  - (f) to dissolve a co-operative under sub-section (4) of section 204.

## Restraining or compliance order

236. If a co-operative or any director, officer, employee, agent, auditor, trustee, liquidator of a co-operative does not comply with the Act, the regulations, the statutes, the by-laws or a unanimous agreement, a complainant or the Registrar may, in addition to any other right, apply to a court for an order directing any such person to comply with or restraining them from acting in breach of it. On the application, the court may order compliance and make any further order it thinks fit.

## Summary application to court

237. When this Act states that a person may apply to a court, the application may be made in any summary manner by petition, originating notice of motion or otherwise as the rules of court provide and subject to any order respecting notice to interested parties or costs or any other order the court thinks fit.

## Appeal of final order

238.

- (1) An appeal lies to the court of appeal of a province from any final order made by a court of that province under this Act.

## Appeal on leave

- (2) An appeal lies to the court of appeal according to the legal processes in the Republic.

## Offences with respect to this Act

239.

- (1) Every person who knowingly contravenes section 12, 24, or 30, 31, 35, section 44, 45, sub-section(5) of section 46, or any other provision of this Act, or does not fulfil a duty imposed under this Act is guilty of an offence punishable on summary conviction.

## Offences with respect to the regulations

- (2) Every person who, without reasonable cause, contravenes a provision of the regulations or does not fulfil a duty imposed by the regulations is guilty of an offence punishable on summary conviction.

## Offences with respect to reports

- (3) A person is guilty of an offence punishable on summary conviction if the person knowingly makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar or to any other person that,
  - (a) contains an untrue statement of a material fact; or
  - (b) omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made.

## Order to comply

240.

- (1) If a person is guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order the person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

## Limitation period

- (2) A prosecution of an offence under this Act may be instituted at any time within but not later than two years after the time when the subject matter of the complaint arose.

## Civil remedy not affected

- (3) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

## Alternative resolution

241. The Minister may, in accordance with any regulations, provide assistance with respect to the alternative resolution of any dispute relating to the affairs of a co-operative,

**CHAPTER 16**

## GUARANTEE FUND

## The Fund

242. A Guarantee Fund may be established in terms of this Act.

## The objectives of the Fund

243. The objectives of the Fund is to,
- (a) protect the deposits of members and the public;
  - (b) to assist co-operatives which experience capitalisation problems after registration if, they qualify in terms of the criteria set out in the by-laws of the Fund; and
  - (c) to provide for business recovery or administration in terms of section in accordance with the criteria set out by the Fund.

## Appointment of the chief executive officer and personnel

- 244.
- (1) The Minister, in consultation with **stakeholders** must appoint the first chief executive officer of the Fund.
  - (2) The chief executive officer may appoint a person or persons who will assist him realise the objectives and purpose of the Fund.

Amongst persons appointed by the chief executive officer, there must be a financial manager or financial director with the **necessary** qualifications and experience to look after the finance of the Fund and answerable to the chief executive officer.

## Purpose of a Guarantee Fund

245. The purpose of Guarantee Fund is the following:
- (1) To receive money from participating co-operatives as a contribution by co-operatives and keep it for and on behalf of participating co-operatives incorporated under this Act.
  - (2) To invest such moneys for and on behalf of participating co-operatives, which was contributed into the Fund.
  - (3) To keep accounts and records of all contributions made by participating co-operatives whose money is in its possession.
  - (4) To provide financial assistance to co-operatives which needs it by making funds available to the extent of that co-operative's contribution or more depending on the by-laws of the Fund.

- (5) To provide security for cash deposits made by members of village financial co-operatives to the co-operative,
- (6) To provide surety or guarantee for co-operatives which qualify in terms of the by-laws of the Fund to the extent of their contribution whenever it is necessary to do so, following the criteria set in the by-laws of the Fund.

#### Accounting and audit

246.

- (1) The chief executive officer must ensure that proper account of the finances of the Fund is kept.
- (2) Co-operatives must be furnished with audited annual financial statement within six months from the date of the financial year-end of the Fund,
- (3) The chief executive office must ensure that the books of the Fund as well as other areas of management are audited annually.
- (4) The chief executive officer must ensure that the Fund has an internal auditor who may work on full-time or part-time basis for the Fund.

#### Qualifications of an auditor

247.

- (1) An auditor must be independent,
- (2) Have no relationship whatsoever, with the chief executive officer or the members of the board of directors of the Fund.
- (3) An auditor must have the necessary experience and professional qualifications and be registered according to the applicable regulations of chartered accountants.
- (4) A firm of chartered accountant can be auditors of the Fund,
- (5) Any other qualifications which, the Fund may believe are required and necessary in the interest of good governance of the Fund.

#### Appointment of an auditor

248. An auditor of the Fund must be appointed by the meeting of co-operatives, which contribute to the Fund, at an annual meeting.
249. The auditor must remain in office for one financial year and may be re-appointed at the end of the financial year, in terms of sub-section (1).

#### Remuneration of auditors

250. The auditor will be remunerated by the Fund,

#### Report of the auditor

251. The auditor must report on the following -
- (1) The finances of the Fund.
  - (2) The decision making process of management.
  - (3) Corporate governance within the Fund.

- ( 4 ) Risk management within the Fund.
- (5) The capacity of the employees of the Fund.
- (6) Any other matter that is necessary to report on including, but not limited to irregularities if any.

#### Report to the audit committee

252,

- (1) The board of directors of the Fund may appoint an audit committee, and the chairman of that audit committee must have financial qualification and experience.
- (2) The auditor must report on its audit to the audit committee before the finalisation of the annual financial statement.
- (3) The audit must be done according to the Generally Accepted Auditing Practice.
- (4) The auditor must have the right to report directly to the board of directors of the Fund on any irregularity if,
  - (a) it initially discussed the matter with the chief executive officer and the financial director;
  - (b) the persons referred to in paragraph (a) failed to give adequate explanations or attend to the matter;
  - (c) the audit committee was informed in a meeting and despite this information failed to take necessary steps to correct the situation;
  - (d) three months after the report as explained in paragraphs (a) to (c), the situation remains unattended even when advise was given by the auditor to resolve the issues or to prevent repetition of the irregularities; and
  - (e) there appear to be mismanagement of funds or failure to invest funds contributed by co-operatives efficiently in the interest of Fund for the benefit of the co-operatives, even where there are no negative market forces impacting on investment generally.

#### Financial report to co-operatives

253. Co-operatives must be furnished with six monthly reports on the performance of their contributions received and invested by the Fund.

#### Board of Directors of the Fund

254. Co-operatives must in response to the request by the Minister, nominate persons who can serve on the board, taking into account the required skills and qualifications for appointment to the board set out in the invitation.
255. The first board of directors of the Fund, will be appointed by the Minister as set out in sub-section (1) and subsequent boards may be appointed according to the provisions of the by-laws of the Fund.
256. Principles applicable to the non-appointment of certain persons to the board of directors of the Fund, will be similar to those applicable to non-appointment of certain persons to the supervisory board and the executive managers of the co-operatives found in chapters 11 and 6 of this Act.



### Meetings of the board

257. The board must meet at least once every three months. The meetings can be held at the Office of the Fund or by telephone conference if the directors are unable to attend the meeting in person,
258. The board must ensure that -
- (1) Minutes of the meetings of the board of directors are prepared and kept.
  - (2) Those who attend the meeting, and are directors of the board sign a register.
  - (3) Conflicts of interest are disclosed at the earliest possible time before the board considers a matter in which there is conflict and before it takes a decision a matter.
  - (4) A director who has an interest in an issue before the board for consideration does **not** participate in the deliberations or decision making process regarding that **particular** matter.
  - (5) Directors do not fail to attend meetings without prior notice to the chairman and secretary of the board.
  - (6) It works as a collective and the duty of care, good faith, skills and trust prevails in the board.
  - (7) Executive employees **furnish** financial reports and other written reports with regard to the management of the Fund.
  - (8) At all times the interest and success of the Fund is paramount,
259. The by-laws of the Fund may set out the procedures of the meetings of the Fund, on condition that that meetings of directors of the board are not held less than the number of times referred to in section 261.

### Contributions by co-operatives

260. Co-operatives must contribute to the Fund every month or in a lump sum for its annual contribution.
261. The contribution of co-operatives referred to in chapter 18 will be equal to 1% of the risk bearing assets to **protect** the deposit and investments of members in addition it will contribute an amount to be determined in the by-laws of the Fund for the capital contribution of the said co-operatives by members.
262. The contribution of other co-operatives will be equal to 0,5% per annum of its actual annual turnover unless specifically provided for in the by-laws of the Fund.

### Initial capital of the Fund

264. The Minister must ensure that the initial capitalisation of the Fund is paid into the account of the Fund at the establishment of the Fund.
264. The initial capital of the Fund will be an amount allocated to the Fund by the Minister with the approval of the Minister of Finance.
265. The Fund will be obligated to repay the money advanced to it as soon as the Fund is financially able to do so, unless the government decides otherwise.

**Salary expenditure of the Fund**

266. Management must ensure that not more than — of the initial capital provided and the contributions of the Fund are used for salaries including the fees payable to the directors of the Fund,
267. The board will draw a contract with the chief executive officer and the financial manager ("executive employees") which, will set out the following -
- (1) The terms and conditions of their employment with the Fund, include their salary and duration of such employment.
  - (2) Performance measurements which, will be used to determine the performance of the executive employees.
  - (3) Salary increase(s) and bonus(es) of the executive employees of the Fund depend on the performance of the Fund in any financial year. The percentage will be measured by the real rate of returns.
  - (4) The board of directors, upon consultation with the Minister will do salary increase of executive employees.

**Directors fees**

268. The first directors fees payable per meeting attended will be determined by the Minister; and
- (1) no director will receive a fee if he fails to attend a meeting.
  - (2) directors will be reimbursed for their travel costs.
  - (3) the increase of director fees will be linked to the performance of the Fund.
  - (4) the sub-committee must make recommendations to the board, for formula to be used to determine such increases, which will make recommendations to the Minister.
  - (5) Fees payable will be commensurate to that payable in the market.

**Financial assistance to co-operatives**

- 269.
- (1) A co-operative, which needs collateral for working capital, may apply to the Fund requesting the Fund to stand it surety to any person who is providing it with finance to the extend of its contribution.
  - (2) A business plan and proposal must accompany the application.
  - (3) Submit its income statement and annual financial statement of the year preceding or during the year of application.
  - (4) The Fund must not give a loan to a village financial co-operative from the funds contributed for risk bearing assets.
  - (5) Upon receipt of the loan the co-operative must utilise the money lent to it for the purposes it was required and the Fund may oversee the use of this money,

- (6) A co-operative may not apply for more than 50% of the money standing in their credit in its account with the Fund unless the by-laws of the Fund provide differently.
- (7) The Fund may set out the lending and guarantee criteria from time to time depending on the prevailing circumstances, which will ensure that it remains financially viable.

#### Avoiding insolvency

270. In cases of liquidation of a co-operative because of insolvency –

- (a) Where the co-operative has applied for business administration or business recovery administration or re-organisation the Fund must if it is satisfied with information it received and from the auditors of the co-operative (including those appointed by the advisory board) assist the co-operative.
- (b) The Fund must monitor progress made by the co-operative through financial information furnished to it monthly and its own investigation of the co-operative.
- (c) The Fund must have the right to access the books of the co-operative and any documents it deems necessary to enable it to evaluate the position of the co-operative.

271. The assistance given the co-operative does not give the Fund the right to control and administer the co-operative.

#### Other criteria

272. Despite the provisions of this chapter, the Fund may set out its own criteria to provide financial assistance and any other assistance to co-operatives.

#### Dissolution of the Fund

273.

- (1) Before the Fund can be dissolved a meeting of all co-operatives contributing to the Fund must be called in which the Minister will be present or represented. The co-operatives must be given notice and the agenda for discussion must be included in the notice.
- (2) The co-operatives must -
  - (a) be advised of the reasons to dissolve;
  - (b) furnished with all the relevant information which will enable them to make value judgment; and
  - (c) be furnished with the valuation certificate of the Fund.
  - (d) vote on whether or not to dissolve the Fund. A decision taken by two-thirds majority of those present at the meeting and entitled to vote is binding on all co-operatives.
  - (e) ensure that there are no creditors owed by the Fund. If there are any creditors they are advised of the plans to dissolve and liquidate.
- (3) Any co-operative or co-operatives which applies to court to stop or opposes the application to confirm the dissolution of the Fund referred to in paragraph

(2)(b) will bear the legal costs and related costs of those in favour of dissolution unless the court decide differently.

- (4) The co-operatives may -
- (a) Appoint a liquidator or liquidators from the list of liquidators recommended by the Master of the High Court.
  - (b) Apply to the High Court to confirm the decision taken by them to liquidate the Fund to give the liquidator the necessary authority.
  - (c) Elect a committee, which will oversee the liquidation process.
  - (d) Give the committee the power to take legal actions if necessary to ensure that the liquidation process is finalised without delay.
- (5) The liquidator must -
- (a) invite all creditors of the Fund to submit their claims to him, which may have to be proved, should the liquidator so request, pending the dissolution and liquidation of the Fund.
  - (b) divide the liquidated assets of the Fund equitably amongst the co-operatives taking into consideration their contribution to the Fund and any surpluses.
  - (c) ensure that the liquidation costs are kept to the minimum and there is sufficient money to cater for his fees.
  - (d) ensure that all creditors entitle to be paid are paid.
  - (e) Abides by the highest standard of a person in his profession and is transparent in the process.

#### Insolvency

274. In case of the insolvency of the Fund, the applicable law will be the prevailing law of insolvency of the Republic.

## CHAPTER 17

### AGRICULTURAL AND FARMERS CO-OPERATIVES

275. This chapter is an additional requirement applicable to co-operatives, which carry on business in agriculture and farming activities. In this chapter manufacture means to produce and vice versa,

#### **Agricultural cooperative**

276. In addition to the requirements of statutes of co-operatives in section 21-

- (1) The statutes of an agricultural co-operative must state that the co-operative may carry out one or more of the following objects –
- (a) to undertake the marketing of any agricultural product, anything that is derived from agricultural product, and for such purposes acquire, or acquire control over, any agricultural product or any such thing or dispose of it, or to process it or manufacture any article from it and is dispose of it;

- (b) to hire, buy, produce, sell or supply services or things required for purposes of farming,
  - (e) to hire, buy, acquire, produce any article for consumption,
  - (d) to hire, establish, use or make facilities available for use in connection with farming,
  - (e) to render services which are necessary and useful in farming,
  - (f) to render any other services, including services which relate to buying, selling and hiring of fixed agricultural property,
  - (g) to farm and dispose of farming products, process products or manufacture articles and dispose of them,
  - (h) to undertake insurance business which relates to farming risks for farmers.
- (2) Secondary and agricultural co-operatives may carry out any of the objects of primary agricultural co-operatives, and also -
- (a) engage in insurance business in respect of all risks despite section 5,
  - (b) establish and administer pension funds, provident funds and medical aid schemes.

### Other objects

277.

- (1) A farmers co-operative may carry out one or more of the objectives referred to in paragraphs 2(1) (a) to (h).
- (2) A secondary and federal farmers co-operative may carry out any of the objects of a federal agricultural co-operative.

278. The Insurance Act will not apply to federal agricultural co-operatives and federal farmers co-operative with regard to a scheme of arrangements.

### Membership

279.

- (3) The minimum number of members of an agricultural co-operatives and farmers co-operative (including a primary agricultural or special farmers co-operatives) must not be less than two.
- (4) The minimum number of members of a secondary and federal agricultural or farmers co-operative must not be less than two.

### Security for production credit and loans

280. As long as a co-operative has a claim on its member as a result of a debt owing to it for farming or agricultural purposes including fuel, spare parts, fertilisers, plants materials, agricultural remedies, packing materials, livestock, feeding stuff supplied by the co-operative, fumigating, spraying or cleansing operations or repair services provided by the co-operative, electricity supplied by the co-operative, or money advanced to him for purposes of production, ownership in the things referred to herein remains that of the co-operative despite delivery.

281.

- (1) The products produced or acquired by the farmer or member after the assistance given him by the co-operative, are deemed pledged to the co-operative as if they were delivered to the co-operative, under the principles applicable in the law of pledge in the Republic. The farmer or member is prohibited from selling these products or using them as security to a third party without the co-operative's written consent.
- (2) The farmer or member of the co-operative referred to in sub-section (1) will be required to indicate to the co-operative the agricultural products deemed pledged or the land on which such products are being produced or where the livestock is which is the subject of the deemed pledge, furnish names of other co-operatives in which he a member and the extent of his debt to other co-operatives and other third parties and whether or not the products and livestock referred to herein are pledged.
- (3) A farmer or member of a co-operative will be required to explain to the co-operative or its representative what became of the products if they cannot be found on inspection by the co-operative,
- (4) If the products and / or livestock pledged to a co-operative are found to be pledged to other co-operatives these will be deemed to be pledged to the co-operatives jointly to the extent of the indebtedness by the farmer or member and have to share the proceeds of these products and / or livestock proportionate to their claims irrespective of who has possession of them.
- (5) The affected co-operatives must send notice to the other co-operative advising it of its interest and will be entitled to divide the proceeds accordingly provided that the affected co-operative has proof of its claim,
- (6) The farmer or member and the third party from whom he intends requesting finance or who provides him with finance for purposes of farming operations must ask the co-operative which has a deemed pledge over the farmer or member's products to waive its rights, which, must not be refused unless the estimated value of the products on the farm are insufficient to cover its debts and that of the third party.
- (7) If there is a dispute regarding the estimated value of the products the insurer of products must be requested to evaluate and the value given by him or her will be final and binding to all parties as an expert. The request and valuation must be completed within seven (7) working days.
- (8) If the co-operative agreed to waive its rights in terms of sub-section (6), the third party may only sell in execution (pursuant to a court order) agricultural products or livestock referred to in this section, with the written consent of the co-operative and pay to the co-operative what is due to it.
- (9) If however, the co-operative is of the view that the sale in execution will prejudice its claim for the debt owing and secured by the deemed pledge it may refuse to give permission to sell.

282. The farmer or member may use the products referred to in this section for consumption with his workers and family within reason.

283. Any one who contravenes this sub-sections (1), (2) and (3) of section 286, is guilty of an offence which is punishable in terms of this Act or in terms of the prevailing laws of the Republic for the offence.

## CHAPTER 18

### FINANCIAL SERVICES CO-OPERATIVES

**284.** This chapter is an additional requirement applicable to co-operatives, which carry on business of credit unions, co-operative banks, savings and credit co-operatives, village banks and other financial service co-operatives,

**Credit unions, co-operative banks, savings and credit co-operatives, village banks, and other financial services co-operative**

**285.** In addition to the requirements of statutes of co-operatives in section 21:

- (1) The statutes of a credit union, village bank, co-operative bank and other financial services must state that its business relates to the following -
  - (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,
  - (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 unless the by-laws of the co-operative provides differently;
  - (e) to render any other banking and financial services.
- (2) A co-operative which is engaged in the business of a credit union, savings and credit, village bank, co-operative bank and other financial services business, must register and be a member of a self regulating body in terms of the requirement of the exemption of the Banks Act.
- (3) The co-operative must comply with all the requirements of the self regulating bodies as well as the exemption given self regulating bodies by the Registrar of Banks signed by the Minister of Finance in government gazettes from time to time.
- (4) The co-operative must ensure that it keeps abreast with any and all developments that may arise which relate to the exemptions of self regulating bodies.
- (5) The statutes may provide for investment and savings instrument, which are known by terms, which are in conflict with the terms used in this Act. Such terms must be interpreted bear the meaning in this Act.

Name

- (6) The statutes of a credit union, co-operative bank, savings and credit co-operative, village bank and other financial services co-operative must provide that the name include the words "co-operative limited" or "co-op limited or ltd".

Deposit from the public

**286.** The co-operative undertakes not to receive deposits from the general public except from its members.

## Appointment of directors

287. No person who has been found guilty of misappropriation of funds or corruption can be appointed a director or manager of the co-operative,

## Interest

288. When charging interest to non-members to whom money has been lent the co-operative must observe the provisions of the Usury Act of 1968.

Establishment of a **self-regulatory** body for all co-operatives in this chapter

289.

- (1) The Registrar has the authority and power to register a national self-regulatory body which comply with and operates in line with the framework of exemptions of the Banks Act provided for by the Minister of Finance.
- (2) All self-regulatory bodies currently in place established with the approval of the Registrar of Banks must within five years from coming into operation of this Act dissolve and form part of the national self-regulatory body established with the permission of the Registrar.
- (3) The national self-regulatory body referred to in this Act, will be regulated in terms of the regulations made in terms of this Act.

## CHAPTER 19

### HOUSING CO-OPERATIVES

290. This chapter is an additional requirement applicable to co-operatives, which carry on business of building houses, providing housing, hiring houses, selling houses and materials or products that relate to housing to their members.

**Statutes** of a housing co-operative

291. In addition to the requirements of statutes of co-operatives in section 21-

- (1) The statutes of housing co-operative must state the following -
  - (a) The name of a housing co-operative must include the following words, "Housing co-operative" or "Housing co-op".
  - (b) The purpose and objectives of the co-operative.
  - (c) Despite section 19, members of housing co-operative may not be less than ten.
  - (d) The business of the co-operative is primarily to provide housing for its members including hiring, buy and sell houses.
  - (e) The co-operative may acquire land, develop land for purposes of housing, and manage building,
  - (f) The secondary business of a co-operative is to acquire and/or to produce or manufacture products which, can be used for building or erecting houses including walls or fences. The manufactured products may be sold, to members and the public.
  - (g) co-operative must conduct at 40% of its business with its members.



**Members of a not for gain housing co-operative**

- (2) Members of housing co-operatives need not provide the initial capital of the co-operative.

**Termination of membership**

- (3) Upon termination of membership of a member, and the member does not owe the co-operative for the house, the member must be paid any additional contribution or investments he or she he may have made and which is due to him or her under the statutes and by-laws,

**Housing co-operatives not for gain**

- (4) In the case where a housing co-operative is a co-operative not for gain it must state, a co-operative not for gain or does not make distributable profit, if the house is still owed by member upon termination of membership the member must return the house to the co-operative.

**Property of housing co-operatives for gain**

- (5) The statutes must state that in the case of a co-operative referred to in subsection (3), upon dissolution of a co-operative and its liquidation, any surplus after paying the creditors of the co-operative remaining must be transferred to a co-operative with similar objectives and which does not distribute profit or is not a co-operative for gain.

**Name**

292.

- (1) The statutes of a housing co-operative must provide that the name of the housing co-operative must include the words "housing co-operative limited", or "housing co-op limited or ltd",

**Statutory reserves**

293. Housing co-operative must ensure that it has a statutory reserve equal to at least half of its share capital.

## **CHAPTER 20**

### **WORKER CO-OPERATIVES**

294. This chapter is an additional requirement applicable to workers co-operatives, which carry on business of providing work to their members.

**Definition of "worker co-operative"**

295,

- (1) For the purposes of this Chapter, "worker co-operative" means a co-operative whose prime objectives are to provide employment to its members and to operate an enterprise in which control rests with the members.

**Requirements of statutes**

- (2) The statutes of a worker co-operative must provide that
- (a) no person may be admitted to membership unless the person is an individual and an employee of the co-operative; and
  - (b) the maximum membership investment payable by a person to be a member may not be more than fifty per cent of their expected annual salary during the first year of their membership, unless any amount in excess of that amount is also paid equally by all persons who are members.
- (3) The statutes of workers co-operative must provide that membership is restricted to natural persons only.

**Non-member employees**

- (4) Despite sub-section (2), a worker co-operative may provide employment to non-members if, not later than five years after the incorporation of the co-operative or the acquisition of a business by the co-operative, not less than seventy-five per cent of its permanent employees, those of any entity controlled by it are members.

**Permanent employees**

- (4) For the purpose of sub-section (3), the following persons are not permanent employees:
- (a) a person who is employed on a probationary period of less than one year; or
  - (b) a person who is under contract for a period of less than two years.

**By-laws**

296.

- (1) The by-laws of a worker co-operative in addition to the general provision on co-operatives under section 25, must include -
- (a) any obligation of a member to provide capital to the co-operative, which capital, if required, must be applied fairly to all members;
  - (b) subject to sub-sections (2) and (3), the manner in which the membership of a member may be terminated;
  - (c) the procedure for allocating, crediting or distributing any surplus earnings of the co-operative, including that not less than fifty per cent of those earnings 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;
  - (d) the period of probation of an applicant for membership, which may not be longer than three years;
  - (e) how work is to be allocated;
  - (9) a provision for the laying off or suspending of members when there is a lack of work; and

(9) a provision for the recall of members to work.

Termination of membership

- (2) If the by-laws authorise and gives the directors of the supervisory board the powers to terminate membership of a member, the provision must state that such termination must be based on good reason, and it must include the right of the affected member to appeal to the members,
- (3) Despite sub-section (4) section 53, the by-laws may require that an appeal from the decision of the supervisory board may be launched within seven days after the member receives notice of the termination of membership.

Laid-off member

- (4) A temporary lay-off of a member does not result in termination of their 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 or the members may, in accordance with the by-laws, terminate the membership of the member.

Confirmation on appeal

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

Deemed confirmation

- (6) If a meeting of the members is duly called to consider the appeal of a terminated member and a quorum of members is not available for the meeting, the directors must call a second meeting to be held, not later than seven days after the first meeting, despite any provision in this Act, which set out the procedures for a meeting. If, at the second meeting, there is no quorum of members, the decision of the directors is deemed to have been confirmed.

Name

297.

- (1) The statutes of a worker co-operative must provide that the name of the worker co-operative must include the words "worker co-operative limited", or "worker co-op limited or ltd",

Directors

298. Despite anything in this Act,

- (a) not less than eighty per cent of the directors of a worker co-operative must be members that are employees of the co-operative; and
- (b) the managing director of a worker co-operative will be an executive director of the board of the co-operative.

Reorganisation

299. A worker co-operative may not be a party to a fundamental change to its business unless the change is authorised by a vote of not less than seventy five per cent of the members present at the meeting.

### Dissolution

300. The workers' co-operative may be dissolved in the same way as provided for in chapter 13, of this Act.

## CHAPTER 21

### TRANSPORT CO-OPERATIVES

301. This chapter is an additional requirement applicable to co-operatives, which carry on the business of taxis or other land transport and acquisition of vehicle parts, fuel and related products used in transportation.

#### Application of other Acts

302. All land transport co-operatives must in addition to the provisions of this Act comply with the provincial and national laws relating to land related transportation, unless the said provisions are contrary to this Act and will result in the transport co-operative not operating its business on co-operative principles.

#### Name

- 303.
- (1) The name of a taxi co-operative must include "taxi co-operative limited" or "taxi co-op limited or ltd" at the end.
  - (2) Other transport co-operatives' names must include "transport co-operative" or "transport co-op" or similar names describing the nature of its business.
  - (3) Any person or body corporate or entity which is not registered as a co-operative referred to in this chapter, must not use names referred to in subsection (1) and (2).

#### Membership

304. Despite paragraph (1)(a) of section 17, taxi owners, bus owners and other public transport owners who apply to be members of a co-operative, may not be accepted as members of a co-operative, if they do not comply with Acts referred to in section 302.

#### General

- 305.
- (1) The Registrar of co-operatives may reject applications of incorporators whose members do not comply with the laws or Act referred to in section 302.
  - (2) If following the registration of a transport co-operative, this co-operative permits the admission of members contrary to section 308, the said co-operative is guilty of an offence and the Registrar may de-register it.
  - (3) Statutes and by-laws of a co-operative must provide for non-acceptance of members who do not comply with laws and Acts referred to in section 302.
  - (4) The Registrar may require the applicant(s) to prove compliance with the laws and Acts referred to in section 302.

**By-laws**

306. The by-laws of the co-operative referred to in this chapter must **not** provide for anything **contrary** to the provision on by-laws **set out in chapter 2**.

**CHAPTER 22****MEDICAL CO-OPERATIVES**

307. This chapter **applies** to co-operatives, whose members carry on business of medical practitioners or "any other medical profession including medical specialist, medical doctors, nurses, radiographers, psychologists, medical technologists, physiotherapists and other related services in medical care, in addition to the provisions of this Act.

**Application of other Acts**

308. All persons referred to in section 307 must in addition to the provisions of this Act comply with the laws, Acts and professional regulations, which regulates them.

**Name**

309. The name of the co-operative referred to in this chapter, must include the descriptive name of members profession in addition to the word "co-operative" or "co-op" at the end.

**Membership**

310. Despite paragraph (l)(a) of section 17, only persons described in section 307, who apply to be members of a co-operative, may be accepted as members if, they are registered as such under their professional regulatory body.

**General**

- 311.
- (1) The Registrar of co-operatives must reject applications of incorporators whose members do not comply with the laws or Act or regulations regulating professionals referred to in section 308.
  - ( 2 ) If following the registration of a medical co-operative, this co-operative permits the admission of members contrary to section 310, the said co-operative is guilty of an **offence** and the Registrar may de-register it.
  - (3) Statutes and by-laws of a co-operative must provide for non-acceptance of members who do not comply with **laws** or Acts or regulations regulating professionals referred to in section 308.
  - (4) The Registrar may require the applicant(s) to prove compliance with the laws and Acts referred to in section 308.

**By-laws**

- 312, By laws of the co-operatives referred to in this chapter must not provide for anything contrary to this chapter.

## CHAPTER 23

### MISCELLANEOUS PROVISIONS

#### False statements

313. Any person who in any application or return, report or other document under this Act wilfully furnishes information or makes a statement which will be guilty of an offence.

#### Penalties for offences

314. Any person convicted of an offence under this Act will be liable to a fine not exceeding R50 000.00 or imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment.

#### Appeal to the Minister

315. Co-operatives, members of co-operatives, federations and supervisory boards may appeal to the Minister any decision of the Registrar.

#### Closed co-operation

316. The Registrar may in his sole discretion declare a co-operative that does not do **business** with non-members a closed co-operative "and issue it with a close co-operative certificate,
317. If after issuing a closed co-operative certificate under section 319, the Registrar is no longer satisfied that the closed co-operative is not doing business with members only, he or she must revoke the close co-operative certificate and the co-operative **will** cease to be a closed co-operative.

#### Exclusion of Insurance Act

318. The provision of the Insurance Act does not apply to all co-operatives in respect of its activities in so far as they relate to a scheme or arrangement in terms of the statute 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.

#### Submission of returns to the Registrar electronically

319. Co-operatives may submit returns to the Registrar electronically.

#### Repeal of laws and savings

- 320.
- (1) Subject to the sub-sections (2) the laws specified in Schedule 1 are repealed by this Act.
  - (2) Anything done under the provisions of the law repealed by sub-section (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

321. This Act is named the Co-operatives Act --of 2000, and will come into operation on a date fixed by the State President by proclamation in the Gazette.