

REPUBLIC OF SOUTH AFRICA

CO-OPERATIVES SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary
of Bill published in Government Gazette No. 35326 of 10 May 2012)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 18—2012]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Co-operatives Act, 2005, in order to ensure compliance with the principles of intergovernmental relations; to provide for intergovernmental relations within the co-operatives sector; and to provide for matters connected therewith.

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

Insertion of section 91D in Act 14 of 2005

1. The following section is hereby inserted in the principal Act after section 91C:

“Functions of Agency in respect of satellite offices of Agency” 5

91D. The Agency, in order to achieve its objectives in respect of satellite offices of the Agency—

(a) must enter into a memorandum of understanding with the member of the Executive Council responsible for economic development in the province or the Municipal Council, as the case may be, on the most effective delivery mechanism for co-operative support; 10

(b) in consultation with the member of the Executive Council responsible for economic development or the Municipal Council, as the case may be, may delegate some of the functions of the satellite offices to a provincial department responsible for economic development, a metropolitan municipality or a district municipality, as the case may be, subject to any conditions the Agency may impose in respect of such delegation; and 15

(c) must implement the memorandum of understanding, which must be monitored through the MINMEC structures.” 20

Insertion of Chapter 12C in Act 14 of 2005

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

**“CHAPTER 12C
INTERGOVERNMENTAL RELATIONS**

Applicability of intergovernmental relations framework policies and legislation

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

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

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

Intergovernmental structures

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

- (a) functioning at the commencement of the Co-operatives Amendment Act, 2012; or
- (b) established or recognised as contemplated in national or provincial legislation,

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

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

- (a) Intergovernmental local government structures as provided for in national legislation; and
- (b) any other intergovernmental local government structure established by the Minister after consultation with the Minister responsible for co-operative governance and traditional affairs as contemplated in—
 - (i) this Act; and
 - (ii) any other national legislation.

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

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

Functions of intergovernmental structures

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

- (a) promote co-operative governance; 5
- (b) ensure co-ordination on planning, budgeting, provisioning of services and support to and monitoring and evaluation in respect of, co-operatives; 10
- (c) advise the Minister and the members of the Executive Council responsible for economic development on any matter related to co-operatives; 15
- (d) submit copies of the approved minutes of all meetings to the Minister, members of the Executive Council responsible for economic development and the entities contemplated in section 91CC, represented in such structure; 20
- (e) perform any functions and duties in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations; and
- (f) perform any functions and duties as may be determined by the Minister by notice in the *Gazette*.

Administrative and procedural arrangements

91FF. Every structure's administrative and procedural arrangements must comply with the framework for intergovernmental relations contemplated in section 91JJ. 25

Establishment, composition and functions of Inter-Provincial Co-ordination Committee on Co-operatives

91GG. (1) The Inter-Provincial Co-ordination Committee on Co-operatives is hereby established. 30

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

- (a) One person to represent the Minister;
- (b) one person in the full-time employment of each of— 35
 - (i) the Department;
 - (ii) the national department responsible for co-operative governance; and
 - (iii) such other national departments of state identified by the Minister;
- (c) two representatives from the National Interdepartmental Co-ordination Committee on Co-operatives; and 40
- (d) one person from each provincial government, in the full-time employ of such government.

(3) The Minister must appoint from among the members of the Inter-Provincial Co-ordination Committee on Co-operatives a chairperson and a deputy chairperson. 45

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

(5) A member of the Inter-Provincial Co-ordination Committee on Co-operatives may designate an alternate to attend a meeting of the Inter-Provincial Co-ordination Committee on Co-operatives in his or her place. 50

(6) The Inter-Provincial Co-ordination Committee on Co-operatives must co-ordinate all co-operatives development programmes developed at provincial level. 55

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

Establishment of Provincial Interdepartmental and Municipal Co-ordinating Structure

91HH. (1) A Provincial Interdepartmental and Municipal Co-ordinating Structure must be established in every province by the provincial department responsible for economic development concerned, which must also outline the role of local government in the establishment of the Municipal Co-ordinating Structure. 5

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

- (a) develop provincial co-operatives strategies in consultation with all relevant stakeholders: Provided that the strategies must be guided by this Act, the national co-operative policy, the national co-operative strategy and the provincial growth and development strategy; 10
- (b) co-ordinate the co-operative development and support activities for all provincial government departments dealing with co-operatives; 15
- (c) co-ordinate the provision of support of co-operatives across departments aligned with provincial priorities and the priorities of the Department;
- (d) report to the Provincial Legislature concerned and the Department;
- (e) report to the Department on activities relating to co-operatives of the provincial departments responsible for economic development; 20
- (f) support the provincial structures of the Agency and the Provincial Co-operative Training Academies; and
- (g) collaborate and co-ordinate with all municipalities as regards the promotion of, and the provision of support for, co-operatives and submit reports as prescribed. 25

Dispute and conflict resolution

91II. Any dispute or conflict in respect of the exercise, performance and carrying out by an entity contemplated in section 91DD of its powers and functions as contemplated in this Act or any other law, must be resolved in accordance with the framework contemplated in section 91JJ. 30

Framework for intergovernmental relations

91JJ. (1) The Minister must, subject to the principles of co-operative governance referred to in section 41(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005)— 35

- (a) and after consultation with the Members of the Executive Council responsible for economic development and the entities contemplated in section 91DD, develop a framework for intergovernmental relations; and 40
- (b) publish the framework contemplated in paragraph (a) by notice in the *Gazette* within six months after commencement of the Co-operatives Amendment Act, 2012, and the Co-operatives Second Amendment Act, 2012.

(2) Every intergovernmental structure recognised or established in accordance with this Act must comply with the framework contemplated in subsection (1) in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution, the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), national and the applicable transversal provincial policies and other legislation regulating intergovernmental relations.” 50

Amendment of table of contents of Act 14 of 2005

3. The table of contents of the principal Act is hereby amended—
- (a) by the insertion after “91C. Functions of Agency” of the following:
 “**91D.** Functions of Agency in respect of satellite offices of Agency”; and
- (b) by the insertion after “91BB. Compromise between co-operative and
 creditors” of the following: 5

“CHAPTER 12C**INTERGOVERNMENTAL RELATIONS**

91CC. Applicability of intergovernmental relations framework policies and legislation	10
91DD. Intergovernmental structures	
91EE. Functions of intergovernmental structures	
91FF. Administrative and procedural arrangements	
91GG. Establishment, composition and functions of Inter-Provincial Co-ordination Committee on Co-operatives	15
91HH. Establishment of Provincial Interdepartmental and Municipal Co-ordinating Structure	
91II. Dispute and conflict resolution	
91JJ. Framework for intergovernmental relations”.	

Short title and commencement 20

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

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

1. INTRODUCTION

The Co-operatives Act, 2005 (Act No.14 of 2005) (“the Act”), came into operation on 2 May 2007, introducing a new framework for the management of co-operatives in South Africa. The Co-operatives Second Amendment Bill (“the Bill”) seeks to amend the Co-operatives Act and aim to address issues raised by various stakeholders who participated during a series of consultative workshops held by the Department of Trade and Industry (“the Department”). The Bill also seeks to amend the Act, in order to ensure compliance with the principles of intergovernmental relations; to provide for intergovernmental relations within the co-operatives sector; and to provide for matters connected therewith.

2. CLAUSE BY CLAUSE ANALYSIS

Clause 1

Clause 1 of the Bill seeks to insert section 91D in the Act to provide for the functions of the Agency in respect of the satellite offices of the Agency.

Clause 2

Clause 2 of the Bill seeks to insert Chapter 12C in the Act to provide for intergovernmental relations within the co-operatives sector. Chapter 12C consists of the following provisions:

Section 91CC: Applicability of intergovernmental relations framework policies and legislation

Section 91CC seeks to provide that all intergovernmental relations between the three spheres of government, especially the entities specified in the Act, governmental departments and structures must be interpreted in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution and applicable transversal provincial policies and legislation regulating intergovernmental relations.

Section 91DD: Intergovernmental structures

Section 91DD seeks to provide for the continued functioning of the existing intergovernmental structures and the establishment of new intergovernmental structures.

Section 91EE: Functions of intergovernmental structures

Section 91EE sets out the functions of intergovernmental structures established as contemplated in the Act.

Section 91FF: Administrative and procedural arrangements

Section 91FF seeks to provide that every intergovernmental structure’s administrative and procedural arrangements must comply with the framework for intergovernmental relations.

Section 91GG: Establishment, composition and functions of Inter-Provincial Co-ordination Committee on Co-operatives

Section 91GG seeks to provide for the establishment, composition and functions of the Inter-Provincial Co-ordination Committee on Co-operatives.

Section 91HH: Establishment of Provincial Interdepartmental and Municipal Co-ordinating Structure

Section 91HH seeks to provide for the establishment and functions of the Provincial Interdepartmental and Municipal Co-ordinating Structure.

Section 91II: Dispute and conflict resolution

Section 91II seeks to provide for the resolution of disputes or conflicts in accordance with the framework as contemplated in section 91JJ.

Section 91JJ: Framework for intergovernmental relations

Section 91JJ provides that the Minister must develop and publish a binding framework for intergovernmental relations, in accordance with the principles of co-operative governance referred to in section 41(1) of the Constitution and the provisions of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). Every intergovernmental structure recognised or established in accordance with the Act must comply with the framework for intergovernmental relations.

Clause 3

Clause 3 seeks to amend the table of contents.

Clause 4: Short title and commencement

Clause 4 provides for the short title and commencement.

3. CONSULTATION

The following departments and stakeholders were consulted:

- National Treasury;
- Department of Public Works;
- Department of Public Service and Administration;
- Department of Science and Technology;
- Department of Transport;
- Department of Agriculture, Forestry and Fisheries;
- Government Communication and Information System (GCIS);
- Department of Labour;
- Department of Higher Education and Training;
- Department of Mineral Resources;
- Department of Energy;
- Department of Human Settlements;
- Department of Social Development;
- Department of Arts and Culture;
- Department of Rural Development and Land Reform;
- Department of Environmental Affairs;
- Office of The Presidency;
- South African Revenue Services;
- All provinces, through the Cooperatives Inter-provincial Committee and provincial workshops;
- Municipalities, through provincial workshops;
- Government agencies, including Small Enterprise Development Agency (SEDA); Khula Enterprise Finance; Land Bank; the Industrial Development Corporation and the National Youth Development Agency (NYDA);
- The National Economic Development and Labour Council (NEDLAC); and
- The co-operatives' sector, through co-operative workshops.

4. FINANCIAL IMPLICATIONS FOR STATE

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

5. IMPLICATIONS FOR PROVINCES

The provincial departments responsible for economic development, which are responsible for co-operatives, will be responsible for co-ordinating and reporting all co-operative activities in the provinces involving other departments and all other stakeholders.

6. IMPLICATIONS FOR MUNICIPALITIES

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

7. PARLIAMENTARY PROCEDURE

- 7.1 The Department and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it contains no provision to which the procedure set out in section 74 or 75 of the Constitution applies.
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.