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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 783.

12 April 1985

No. 783.

12 April 1985

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

—o. 42 of 1985: Co-operatives Amendment Act, 1985.

No. 42 van 1985: Koöperasiewysigingswet, 1985.

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

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

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Co-operatives Act, 1981, so as to replace certain obsolete designations, and to further define "branch"; to delete the requirement that the schedule accompanying an application for the registration of a statute and the incorporation of a co-operative shall specify the occupations of persons who applied for membership of the co-operative; to provide that the Registrar of Co-operatives shall issue a certificate whenever the statute of a co-operative is amended to alter the name of the co-operative; to provide for the amendment of registers and documents as a result of the change of name of a co-operative; to further regulate the use and publication of the name of a co-operative; to extend the powers of co-operatives; to place further restrictions on the conclusion of transactions by an agricultural or special farmers' co-operative with persons who are not members of that co-operative; to delete the requirement that the occupations of members of certain co-operatives shall be entered in the register of members; to provide that a capital gain shall be set aside as a general reserve and that a capital loss may be written off against a general reserve; to create certain offences for contraventions of the said Act; to declare further persons incompetent to hold the office of director of certain co-operatives; to make further provision in connection with representatives of juristic persons at general meetings; to further regulate the appointment of proxies by members and the said representatives; to abolish the restriction on matters which may be disposed of at series of meetings; to further define certain duties of the auditor of a co-operative; to make further provision in connection with the special statutory pledge of co-operatives; and to increase the maximum fine which may be imposed after conviction of offences in terms of the said Act; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 26 March 1985.)

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

Amendment of
section 1 of
Act 91 of 1981.

1. Section 1 of the Co-operatives Act, 1981 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution in subsection (1) for the definition of "branch" of the following definition: 5

"'branch', in relation to a co-operative, means a place where or from where a co-operative may carry out any or all of its objects, but does not include a place used exclusively as a place where or from where a co-operative disposes of an agricultural product or any thing which was derived by it from" 10

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

an agricultural product, or of a product or thing into which it was converted by it or an article which was manufactured by it therefrom;”;

(b) by the substitution in the said subsection (1) for the definition of “director-general” of the following definition: 5

“‘director-general’ means the Director-General: **[Agriculture and Fisheries] Agricultural Economics and Marketing;**”;

(c) by the substitution in the said subsection (1) for the definition of “Minister” of the following definition: 10

“‘Minister’ means the Minister of **[Agriculture and Fisheries] Agricultural Economics;**”.

Amendment of section 4 of Act 91 of 1981.

2. Section 4 of the principal Act is hereby amended by the substitution for the words “Agriculture and Fisheries” of the words “Agricultural Economics and Marketing”. 15

Amendment of section 26 of Act 91 of 1981.

3. Section 26 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) a schedule containing the full names and addresses **[, and, in the case of a primary agricultural co-operative or a primary special farmers’ co-operative, also the occupations,]** of the persons who applied for membership of the co-operative, the date on which each of them applied, the number of shares subscribed for by each of them and the amount paid by each of them on such shares;” 20 25

Amendment of section 33 of Act 91 of 1981.

4. Section 33 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection: 30

“(8) Whenever the statute of a co-operative is amended to alter the name of the co-operative or a translation or abbreviated form thereof the registrar shall— 35

(a) enter the new name or the translation or abbreviated form thereof in the register of co-operatives in the place of the previous one; and

(b) issue a certificate to the co-operative specifying the fact that the co-operative’s name or the translation or abbreviated form thereof has been changed in accordance with this Act, and also the new name or the translation or abbreviated form thereof.” 40

Insertion of section 38A in Act 91 of 1981.

5. The following section is hereby inserted in the principal Act after section 38:

“Amendment of registers and documents as a result of change of name.

38A. (1) Whenever the name of a co-operative has been altered in terms of this Act, any registrar, or other officer, charged with the maintenance of a register in terms of any law shall, upon the mere production to such registrar or officer of the certificate contemplated in section 33 (8) (b), or a certified copy thereof, make the amendments in his register and any other document in his office or submitted to him which may be necessary on account of the alteration of the name of the co-operative. 45 50

(2) Subsection (1) shall not be construed so as to exempt the co-operative from the payment of any money which would otherwise have been payable to such registrar or officer had the co-operative applied in terms of the said law for the making of the amendment in question.” 55

Amendment of section 41 of Act 91 of 1981.

6. Section 41 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 60

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

- “(a) in a conspicuous position and in characters easily legible display its name or a translation [**or abbreviated form**] thereof as set out in its statute, on the outside of its registered office and every branch, depot and other place where business is carried on;”;
- (b) by the deletion in the said subsection (1) of the words “or abbreviated form” wherever they occur in paragraph (b) and the proviso.

Amendment of section 49 of Act 91 of 1981.

7. Section 49 of the principal Act is hereby amended— 10

- (a) by the substitution for paragraph (f) of subsection (1) of the following paragraph:
- “(f) with the approval of the Minister and on such conditions as may be determined by the Minister, in the Republic or elsewhere establish, or acquire interests or shares in, companies or other juristic persons or partnerships [**and participate in such companies, juristic persons or partnerships**] and finance them subject to the provisions of section 52;”;
- (b) by the insertion after paragraph (s) of subsection (1) of the following paragraph:
- (sA) participate in companies, other juristic persons or partnerships established by it in terms of paragraph (f) or in which it acquired interests or shares in terms of that paragraph, or in other co-operatives (including the performance of services on behalf of such companies, juristic persons, partnerships and co-operatives), as agreed with them in writing;”;
- (c) by the addition of the following subsection:
- “(3) If a co-operative performs any act for which it does not have the power under subsection (1) or (2), the co-operative and each director of the co-operative who authorized the performance of such act, or participated in the granting of such authorization or in the performance of such act, knowing that the co-operative is not empowered to perform such act, shall be guilty of an offence.”.

Amendment of section 54 of Act 91 of 1981.

8. Section 54 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: 40

- “(b) a transaction concluded by a co-operative with the consent of or through a member of such co-operative with any person who is an affiliated member of such co-operative by virtue of his membership of any agricultural co-operative or special farmers' co-operative;”.

Amendment of section 66 of Act 91 of 1981.

9. Section 66 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 50

- “(a) the names and addresses of the members [**and, in the case of a primary agricultural co-operative or a primary special farmers' co-operative, also the occupations of the members**];”.

Amendment of section 78 of Act 91 of 1981.

10. Section 78 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections: 55

- “(2A) No co-operative shall, subject to subsection (3) of this section and subsection (2) of section 81, make a repayment of paid-up share capital to a member thereof unless that repayment is caused by a reduction of share capital in accordance with this section.”

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

(2B) A co-operative which contravenes a provision of this section shall be guilty of an offence."

Amendment of section 82 of Act 91 of 1981.

11. Section 82 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) a capital gain, including a gain resulting from the re-valuation of a capital asset, shall not be applied other than for the setting aside thereof as a general reserve."

Amendment of section 83 of Act 91 of 1981.

12. Section 83 of the principal Act is hereby amended by the addition of the following subsection:

"(3) If a co-operative pays interest in contravention of the provisions of subsection (2), the co-operative and every director of the co-operative shall be guilty of an offence."

Amendment of section 84 of Act 91 of 1981.

13. Section 84 of the principal Act is hereby amended by the addition of the following subsection:

"(6) If a co-operative pays a bonus in contravention of the provisions of this section, the co-operative and every director of the co-operative shall be guilty of an offence."

Amendment of section 86 of Act 91 of 1981.

14. Section 86 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Unless authorized thereto by its statute a co-operative shall not write off a loss which is not a capital loss against its general reserve."

Amendment of section 108 of Act 91 of 1981.

15. Section 108 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) unless he is—

(i) a member or an affiliated member of the co-operative; or

(ii) a member of a company which is either itself a member of the co-operative or a member of any other company, co-operative or juristic person which is a member of the co-operative;"

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

"(aA) if such person is a member of a company referred to in paragraph (a) (ii) of which another member is a director of the co-operative and such person is not also a member or affiliated member referred to in paragraph (a) (i) of the co-operative;" and

(c) by the insertion after subsection (1) of the following subsection:

"(1A) Notwithstanding the provisions of subsection (1) a person who by virtue of his membership of a trading co-operative is an affiliated member of an agricultural co-operative or a special farmers' co-operative shall not hold the office of director of that agricultural co-operative or special farmers' co-operative unless he is a person who carries on farming operations as contemplated in section 57 (1) (a) (i)."

Amendment of section 124 of Act 91 of 1981.

16. Section 124 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The representative of a juristic person referred to in subsection (1) may be any person who is not in terms of section 108, excluding section 108 (1) (g), incompetent to be a director of the co-operative of which such juristic person is a member."

Amendment of section 125 of Act 91 of 1981.

17. Section 125 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

“A member of a co-operative or a representative referred to in section 124 may, **[unless prohibited]** if authorized thereto by the co-operative’s statute, appoint any person who is not in terms of section 108, excluding section 108 (1) (g), incompetent to be a director of the co-operative, as his proxy to attend, to speak and to vote in his stead at a general meeting of the co-operative: Provided that **[unless the statute of a co-operative otherwise provides]**—”.

Amendment of section 132 of Act 91 of 1981.

18. Section 132 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) If more than one-tenth of the members of a primary co-operative are resident further than 50 kilometres from the registered office of the co-operative a series of meetings of members may instead of a general meeting be convened and held on the basis of the different areas in which the members are resident, to dispose of any matter which shall or may be disposed of by a general meeting **[other than the winding-up of the co-operative, the conversion of the co-operative into any other kind or form of co-operative or the amalgamation of the co-operative with another co-operative]**.”.

Amendment of section 153 of Act 91 of 1981.

19. Section 153 of the principal Act is hereby amended by the substitution for paragraph (1) of the following paragraph:

“(1) satisfy himself that the co-operative has complied with the provisions of this Act, in so far as they relate to the carrying out of its objects, and the provisions of Chapter III and of its statute.”.

Amendment of section 173 of Act 91 of 1981.

20. Section 173 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph: 30

“(c) (i) all agricultural products of a class with which the co-operative deals in the normal course of business; and
 (ii) all agricultural products from which the agricultural products referred to in subparagraph (i) were or are derived; and 35
 (iii) if a State-guaranteed credit scheme is applicable in respect of that debt, also all other agricultural products,
 of which that member is the owner at the date on which the debt arose or which are produced or acquired by him after that date, shall be deemed to be pledged to the co-operative as fully and effectually as if such products were delivered to the co-operative;”;

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

“(a) require of a member referred to in subsection (1)—
 (i) to indicate the agricultural products deemed in terms of paragraph (c) of that subsection to be pledged to the co-operative, or the land on which such products are being or are to be produced, or, in the case of livestock, where such livestock are being or are to be kept; and 50
 (ii) to furnish the name of every other agricultural or special farmers’ co-operative of which he is a member and the amount and nature of his debt to such co-operative, if any, and to indicate whether that debt or any part thereof is secured by the pledging of agricultural products in terms of this section;”;

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

- (c) by the substitution for paragraph (b) of the said subsection (2) of the following paragraph:
- “(b) authorize any person to enter, **[with at least 24 hours’ notice]** at any reasonable time, any land on which such member carries on or presumably carries on farming operations and to view or inspect any agricultural products or any thing from which an agricultural product is derived;”;
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) If any particular agricultural products of any person (hereinafter referred to as the pledger) are deemed in terms of subsection (1) (c) to be pledged to more than one co-operative—
- (a) those products shall, subject to paragraph (b), be deemed as aforesaid to be pledged to those co-operatives jointly;
- (b) the powers referred to in subsection (1) (d) may be exercised by each of the said co-operatives separately from the other as if the products were pledged to such co-operative alone;
- (c) the pledger, if he disposes of those products through any one of the said co-operatives, and any other person, if he acquires those products from such co-operative, shall be deemed to have complied with the provisions of subsection (1) (e);
- (d) none of the said co-operatives shall, on account of the fact that those products are deemed to be pledged to it and the other co-operatives jointly, be entitled to a greater part of the proceeds of those products than an amount which bears the same ratio to the amount of the net proceeds of the products as the amount owing to it by the pledger as at the date on which the products are received for marketing by a co-operative in accordance with its statute or a provision of the Marketing Act, 1968, or are otherwise disposed of by the pledger, bears to the sum of the respective amounts owing by the pledger to the said co-operatives as at that date;
- (e) any one of the said co-operatives having possession of the proceeds of those products, may, at the written request of any one of the other of the said co-operatives and without the consent of the pledger, on behalf of any such last-mentioned co-operative set off against those proceeds, and pay to the said co-operative, the amount, or any part thereof, owing by the pledger to such co-operative in settlement or part settlement of the said debt.”;
- and
- (e) by the insertion after subsection (4) of the following subsection:
- “(4A) For the purposes of—
- (a) subsection (4) (d)—
- (i) any amount owing to a co-operative by the pledger which is not secured by the pledging of the agricultural products in question, shall be disregarded;
- (ii) agricultural products of which quantities are received by a co-operative mentioned therein, or disposed of by the pledger, over a period of two or more days, shall be deemed to be so received or disposed of, as the case may be, on the first day of that period; and
- (b) subsection (4) (e)—
- (i) no amount owing by the pledger to a co-operative which is not secured by the pledging of

Act No. 42, 1985

CO-OPERATIVES AMENDMENT ACT, 1985

the agricultural products in question, shall be set off in accordance with the authority contained therein and paid over to such co-operative;

- (ii) the co-operative having possession of the proceeds of the products shall accept the amount specified in the written request mentioned therein as the amount which is owed by the pledger to the co-operative making the request and which is secured by the pledging of the products in question if that request is accompanied by either a written acknowledgment by the pledger or an affidavit by an officer of the co-operative concerned to the effect that the amount so specified in the written request represents an amount which is owed by the pledger to the co-operative and secured by the pledging of the products in question;
- (iii) the co-operative having possession of the proceeds of the products shall give an account to the pledger of every payment made by him under the said subsection."

Substitution of section 239 of Act 91 of 1981.

21. The following section is hereby substituted for section 239 of the principal Act:

239. Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding ~~[R1 000]~~ R5 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment."

Short title.

22. This Act shall be called the Co-operatives Amendment Act, 1985.