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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2293.

14 October 1987

No. 2293.

14 Oktober 1987

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:—

No. 80 of 1987: Co-operatives Amendment Act, 1987.

No. 80 van 1987: Koöperasiewysigingswet, 1987.

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CO-OPERATIVES AMENDMENT ACT, 1987

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 further define "agricultural product"; to extend the objects of primary agricultural co-operatives so as to include certain insurance business; to provide for the marketing of agricultural products from self-governing territories and independent states in the Republic as well as aid from the Republic's agricultural co-operatives to such territories and states; to further regulate the membership of certain co-operatives; to provide for the attendance of the registrar at meetings of co-operatives; to further regulate the liability of directors and officers; to provide that certain co-operatives may prescribe in their statutes the number of persons that may request a vote by ballot paper at general meetings; to repeal the requirement that the registrar approve the appointment of a co-operative's auditor; to provide for co-operatives to make compromises and arrangements; to provide for the registration by the registrar of deeds of any conversion, amalgamation, compromise or arrangement, the registration, if necessary, of property other than fixed property, and the exemption of the payment of certain registration fees; to provide that members of co-operatives under liquidation do not have to bring claims against members' funds; to provide for the judicial management of co-operatives; to further regulate the amendment, substitution and repeal of certain notices and proclamations, and to provide for contraventions of those notices and proclamations; and to repeal Schedule 1; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 30 September 1987.)*

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, as amended by section 1 of Act 42 of 1985.

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 "agricultural product" of the following definition: 5

"agricultural product" means any article **[specified in Part A of Schedule 1 or]** derived from farming operations, and in relation to an agricultural co-operative or a special farmers' co-operative also any product derived from the processing or manufacturing of that article, and declared to be an agricultural product **[under subsection (2) of this section] from time to time by the Minister by notice in the Gazette;** and 10

(b) by the deletion of subsection (2). 15

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Amendment of
section 21 of
Act 91 of 1981.

2. (1) Section 21 of the principal Act is hereby amended by the addition to paragraph (g) of subsection (1) of the following subparagraph:

“(iii) an agent or intermediary in connection with insurance business referred to in section 49 (1) (s).”

(2) Anything done by a primary agricultural co-operative or a primary special farmers' co-operative from the date of commencement of the principal Act and which could have been done if subparagraph (iii) of section 21 (1) (g) of the principal Act, as inserted by subsection (1), was in operation shall be deemed to have been done in terms of that subparagraph.

(3) A primary agricultural co-operative or primary special farmers' co-operative which existed immediately prior to the date of commencement of the principal Act, and which had as one of its objects the object referred to in subparagraph (iii) of section 21 (1) (g) of the principal Act, as inserted by subsection (1), shall be deemed to have that object from the said date as one of its objects.

Amendment of
section 54 of
Act 91 of 1981,
as amended by
section 8 of
Act 42 of 1985.

3. Section 54 of the principal Act is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) 20 of the following paragraph:

“(c) subsection (1) (f) or (g) (iii) or (2) (a) of that section, does insurance business with such a person;”;
and

(b) by the substitution for paragraph (c) of subsection (4) 25 of the following paragraph:

“(c) subsection (1) (f) or (g) (iii) or (2) (a) of that section, means the amount of insurance premiums received by a co-operative during a financial year;”.

Amendment of
section 57 of
Act 91 of 1981.

4. Section 57 of the principal Act is hereby amended—

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

“(v) undertakings approved by the Minister which have been incorporated outside the Republic or in an area within the Republic where this Act is not applicable and which carry out [according to co-operative practice] an object for which an agricultural co-operative may be formed under this Act;”;
and

(b) by the addition to paragraph (a) of subsection (1) of the following subparagraph: 40

“(vi) a trustee of a trust carrying on farming operations on behalf of the trust in an area where this Act is applicable;”.

Amendment of
section 58 of
Act 91 of 1981.

5. Section 58 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (v) of paragraph (a) of the following subparagraph: 45

“(v) undertakings approved by the Minister which have been incorporated outside the Republic or in an area within the Republic where this Act is not applicable and which carry out [according to co-operative practice] an object for which a special farmers' co-operative may be formed under this Act;”;
and

(b) by the addition to paragraph (a) of the following subparagraph: 55

“(viii) a trustee of a trust carrying on farming operations on behalf of the trust in an area where this Act is applicable;”.

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Amendment of section 112 of Act 91 of 1981.

6. Section 112 of the principal Act is hereby amended by the addition of the following subsection:

- “(4) (a) A co-operative shall at the written request of the registrar notify him and forward to him the agenda and relevant documents of any meeting of its board of directors or of a committee of that board on the same day as the directors or members of such committee are notified of any such meeting. 5
- (b) The registrar may attend any meeting of which he was notified in terms of paragraph (a) and shall have the right to take part in the proceedings thereof but shall not have the right to vote, and his participation shall be noted in the minutes referred to in section 113 (1). 10
- (c) If default is made in complying with any requirement of paragraph (a) the co-operative and every director and officer of the co-operative who knowingly are parties to such default shall be guilty of an offence.”. 15

Substitution of section 116 of Act 91 of 1981.

7. The following section is hereby substituted for section 116 of the principal Act:

“Liability of directors and officers. 116. (1) A director or officer of a co-operative shall not be liable to any person in his personal capacity for any loss or damage which may occur in or in connection with the performance of his duties, unless— 20

- (a) the loss or damage is due to his wilful misconduct, dishonesty or gross negligence or to the fact that he wilfully contravened or that he refused to comply with a provision of this Act or the statute of the co-operative and such loss or damage is not covered by a fidelity guarantee policy or any other similar policy taken out by the co-operative; or 25 30
- (b) the loss or damage is due to his reckless conduct, or conduct which is or was intended to defraud any person or for any other fraudulent purpose, 35

in which case he shall be liable in his personal capacity without any limitations of liability.

(2) Without prejudice to any other criminal liability incurred, where any business of a co-operative is carried on in any manner contemplated in subsection (1), every director or officer who is knowingly a party to the carrying on of the business in any such manner shall be guilty of an offence.”. 40

Amendment of section 122 of Act 91 of 1981.

8. Section 122 of the principal Act is hereby amended by the addition of the following subsection: 45

“(5) The provisions of section 112 (4) shall *mutatis mutandis* apply to any annual general meeting of a co-operative.”.

Amendment of section 123 of Act 91 of 1981.

9. Section 123 of the principal Act is hereby amended by the addition of the following subsection: 50

“(4) The provisions of section 112 (4) shall *mutatis mutandis* apply to any extraordinary general meeting of a co-operative.”.

Amendment of section 129 of Act 91 of 1981.

10. Section 129 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 55

“(2) A vote by ballot shall not be held unless it is demanded, in the case of a general meeting of a primary co-operative, by at least five persons present at the meeting and entitled to vote in a vote by ballot or, in the case of a

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general meeting of a central or federal co-operative, by [at least two] the number of [such] persons prescribed in the statute of the co-operative."

Repeal of section 148 of Act 91 of 1981.

11. Section 148 of the principal Act is hereby repealed.

Substitution of heading of Chapter VIII of Act 91 of 1981.

12. The following heading is hereby substituted for the heading of Chapter VIII of the principal Act: 5
"CONVERSIONS [AND], AMALGAMATIONS, COMPROMISES AND ARRANGEMENTS".

Insertion of sections 169A, 169B and 169C in Act 91 of 1981.

13. The following subheading and sections are hereby inserted in the principal Act after section 169: 10

"Compromises and arrangements"

Compromise and arrangement between co-operative, its members and creditors.

169A. (1) If any compromise or arrangement is proposed between a co-operative and its creditors or any class of them or between a co-operative and its members, the court may, on the application of the co-operative or any creditor or member of the co-operative or, in the case of a co-operative being wound up, of the liquidator, or if the co-operative is subject to a judicial management order, of the judicial manager, order a meeting of the creditors or class of creditors or of the members of the co-operative, as the case may be, to be summoned in such manner as the court may direct. 15 20

(2) If a compromise or arrangement is agreed to by— 25

(i) a majority in number representing three-fourths in value of the creditors or class of creditors present and voting either in person or by proxy at the meeting; or

(ii) a special resolution, 30
as the case may be, such compromise or arrangement shall, if sanctioned by the court, be binding on all the creditors or the class of creditors or on the members, as the case may be, and also on the co-operative or on the liquidator if the co-operative is being wound up, or on the judicial manager if the co-operative is subject to a judicial management order. 35

(3) No such compromise or arrangement shall affect the liability of any person who is a surety for the co-operative. 40

(4) (a) An order by the court sanctioning a compromise or arrangement shall have no effect until a certified copy thereof has been lodged with the registrar and registered by him.

(b) A copy of such order of court shall be annexed to every copy of the statute of the co-operative. 45

(5) If a co-operative fails to comply with the provisions of subsection (4) (b) the co-operative and every director and officer of the co-operative who are parties to the failure shall be guilty of an offence. 50

Information as to compromises and arrangements.

169B. (1) If a meeting of creditors or any class of creditors or of members is summoned under section 169A (1) for the purpose of agreeing to a compromise or arrangement, there shall, with every notice summoning the meeting which is sent to a creditor or member, be sent also a statement— 55

(i) explaining the effect of the compromise or arrangement;

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Provisions
facilitating
reconstruction or amal-
gamation.

(ii) stating all relevant information material to the value of the shares and debentures concerned in any arrangement.

(2) If a co-operative fails to comply with any requirement of this section the co-operative and every director or officer of the co-operative who are parties to the failure shall be guilty of an offence, and for the purpose of this subsection any judicial manager of the co-operative shall be deemed to be an officer of the co-operative.

169C. (1) If an application is made to the court under section 169A for the sanctioning of a compromise or an arrangement proposed between a co-operative and any such persons as are referred to in that section, and it is shown to the court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any co-operative or co-operatives or the amalgamation of any two or more co-operatives, and that under the scheme the whole or any part of the undertaking or the property of any co-operative concerned in the scheme (in this section referred to as the 'transferor co-operative') is to be transferred to another co-operative (in this section referred to as the 'transferee co-operative'), the court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- (a) The transfer to the transferee co-operative of the whole or any part of the undertaking and of the property or liabilities of any transferor co-operative;
- (b) the allotment by the transferee co-operative of any shares or other like interests in that co-operative which under the compromise or arrangement are to be allotted by that co-operative to the members of the transferor co-operative;
- (c) the continuation by or against the transferee co-operative of any legal proceedings pending by or against any transferor co-operative;
- (d) the dissolution without winding-up of any transferor co-operative;
- (e) the provision to be made for any persons who within such time and in such manner as the court may direct dissent from the compromise or arrangement;
- (f) such incidental, consequential and supplementary matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no order for the dissolution without winding-up of any transferor co-operative shall be made under this subsection prior to the transfer in due form of all the property and liabilities of the said co-operative.

(2) If an order under this section provides for the transfer of property or liabilities, that property shall by virtue of the order vest in, subject to transfer in due form, and those liabilities shall become the liabilities of, the transferee co-operative.

(3) If an order is made under this section every co-operative in relation to which the order is made shall within 30 days after the making of the order cause a copy thereof to be lodged with the registrar for registration, and if default is made in complying with this subsection the co-operative shall be guilty of an offence.

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(4) In this section the expression 'property' includes property, rights and powers of every description, and the expression 'liabilities' includes "duties".

Amendment of section 171 of Act 91 of 1981.

14. Section 171 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 5

"(1) (a) The registrar of deeds concerned shall on submission to him of—

(i) a certificate referred to in section 158 (3) (b), 163 (3) (b) or 166 (3) (b); or 10

(ii) an order of court, or a certified copy thereof, referred to in section 169A (4) (a) or 169C (3),

make such entries and endorsements in or on any relevant register, title deed or other document in his office or laid before him as he may deem necessary in order to register any fixed property or real right vested in a co-operative in terms of a provision of this Chapter in the name of such co-operative. 15

(b) If any property or right other than that contemplated in paragraph (a) is vested in a co-operative as a result of a conversion, amalgamation, compromise or arrangement in terms of this Act, and such property or right is required by any law to be registered, the person by whom such registration is to be done shall, on submission to him of a certificate referred to in paragraph (a), make such entries or endorsements in or on any relevant register or document in his office or laid before him as he may deem necessary to effect the registration of such property or right in the name of the co-operative." 20 25 30

Amendment of section 215 of Act 91 of 1981.

15. Section 215 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person who has a claim against a co-operative being wound up, excluding a claim against a members' fund, shall within 90 days after the date of publication of the notice referred to in section 197 lodge with the liquidator a sworn or solemn statement specifying the amount of the claim and the prescribed particulars relating to the claim together with the supporting documents (if any): Provided that if a member for any reason whatsoever does not want his claim against a members' fund to proceed he shall inform the liquidator in writing thereof." 35 40

Amendment of section 217 of Act 91 of 1981.

16. Section 217 of the principal Act is hereby amended by the insertion after paragraph (c) of subsection (1) of the following paragraph: 45

"(cA) of the amount standing to the credit of each member in the members' fund of the co-operative;"

Amendment of section 219 of Act 91 of 1981.

17. Section 219 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) thereafter in paying all other claims admitted or proved in terms of section 215, including any unpaid portions of secured claims contemplated in section 218 (3) and any credit amounts in the members' fund, or, if the balance of the said proceeds is insufficient to satisfy the said claims, [and] portions of claims and credit amounts in full, in paying a proportionate share of each;" 50 55

Insertion of Chapter XA in Act 91 of 1981.

18. The following Chapter is hereby inserted in the principal Act after Chapter X:

“CHAPTER XA

JUDICIAL MANAGEMENT

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

237A. (1) When any co-operative by reason of mismanagement or for any other cause—
 (a) is unable to pay its debts or is probably unable to meet its obligations; and
 (b) has not become or is prevented from becoming a successful concern,
 and there is a reasonable probability that, if it is placed under judicial management, it will be enabled to pay its debts or to meet its obligations and become a successful concern, a competent court may, if it appears just and equitable, grant a judicial management order in respect of that co-operative.

(2) An application to a competent court for a judicial management order in respect of a co-operative may be made—
 (a) by a co-operative voluntarily after a special resolution to that effect;
 (b) by any interested person; or
 (c) by the Minister on the recommendation of the registrar.

(3) When an application for the winding-up of a co-operative is made in terms of section 181 to a competent court and it appears to that court that if the co-operative concerned is placed under judicial management the grounds for its winding-up may be removed and that it will become a successful concern, and that the granting of a judicial management order would be just and equitable, such court may grant such an order in respect of that co-operative.

Provisional judicial management order.

237B. (1) A court may, on an application made under section 237A, grant a provisional judicial management order stating the return day or dismiss the application or make any other order that it deems fit.

(2) A provisional judicial management order shall contain—
 (a) directives that the co-operative named therein shall be under the management and control, subject to the supervision of the registrar, of a provisional judicial manager appointed as hereinafter provided, and that any person vested with the management and control of the co-operative's affairs shall from the date of the order be divested thereof;
 (b) such other directives as the court may deem necessary as to the management and control of the co-operative, or any matter incidental thereto, including directives conferring upon the provisional judicial manager the power, subject to the rights of the creditors, to raise money in any way without the authority of the members of the co-operative as the court may deem necessary, and may contain instructions that while the co-operative is under judicial management, all actions, legal proceedings and the execution of all writs, summonses and other legal process against the co-operative be stayed and not be proceeded with without the leave of the court.

(3) The court which has granted a provisional judicial management order may at any time and in any manner on the application of the applicant, the co-operative, a creditor or a member of the co-operative, the provisional judicial manager or the Minister

	on the recommendation of the registrar, vary the terms of such order or discharge it.	
Custody of property and appointment of provisional judicial manager on granting of judicial management order.	237C. (1) When a provisional judicial management order is granted—	
	(a) all persons who immediately prior to the commencement of the provisional judicial management order of the co-operative hold office as director, manager or secretary of the co-operative shall jointly and severally be responsible for the custody of all the assets of the co-operative under the co-operative's control until a provisional judicial manager is appointed and has assumed office;	5
	(b) the registrar shall without delay appoint a provisional judicial manager, who shall give such security for the proper performance of his duties in his capacity as such as the registrar may direct, and who shall, subject to the provisions of subsection (2), hold office until discharged by the court as provided in section 237G (3) (a).	10
	(2) The registrar may at any time and for reasons which he deems fit dismiss a provisional judicial manager from his office and appoint another person in his place.	15
Effect of provisional judicial management order.	237D. (1) When a provisional judicial management order is granted—	20
	(a) no shares in the co-operative or amount of money from a members' fund shall be refunded to any member or to any member whose membership was terminated within six months prior to the granting of the provisional judicial management order; and	25
	(b) the statute of the co-operative shall remain in force in so far as it is not in conflict with the directives of the provisional judicial management order, unless the registrar is of the opinion that the application of any provision of the statute is not in the interests of the members or creditors during the provisional judicial management, and he notifies the provisional judicial manager in writing that such provision shall be suspended.	30
	(2) The registrar may at any time terminate the suspension referred to in subsection (1) (b) and notify the provisional judicial manager in writing thereof.	35
Functions of provisional judicial manager.	237E. A provisional judicial manager appointed under section 237C (1) (b) or (2) shall—	40
	(a) assume the management and control of the co-operative and recover and take into his possession all the assets of the co-operative;	45
	(b) convene within 60 days, or such longer period as the registrar may determine at the written request of the provisional judicial manager, joint or separate meetings of the creditors and members of the co-operative for the purposes referred to in section 237F;	50
	(c) prepare and lay before the meetings convened under paragraph (b) a report containing—	55
	(i) an account of the general state of the affairs of the co-operative;	60
	(ii) a statement of the reasons why the co-operative is unable to pay its debts or is probably unable to meet its obligations or has not become or is prevented from becoming a successful concern;	65
	(iii) a statement of the assets and liabilities of the co-operative;	

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- (iv) a complete list of creditors of the co-operative, including contingent and prospective creditors, and of the amount and the nature of the claim of each creditor;
- (v) particulars as to the source from which money has been or is to be raised for the purposes of carrying on the business of the co-operative and the conditions on which it shall be repaid; and
- (vi) the considered opinion of the provisional judicial manager as to the prospects of the co-operative becoming a successful concern and of the removal of the facts or circumstances which prevent the co-operative from becoming a successful concern.

Purpose of meetings convened under section 237E (b).

- 237F. (1) (a)** Any meeting convened under section 237E (b) shall be presided over by the registrar or a magistrate having jurisdiction in the area where the meeting is held.
- (b)** Any meeting referred to in paragraph (a) shall be convened—
- (i) in the case of a meeting of the members of the co-operative concerned, in the manner prescribed in the statute of that co-operative for the convening of a general meeting; and
 - (ii) in the case of a meeting of creditors, by a notice in the *Gazette* and in one or more newspapers circulating in the area in which the registered office of the co-operative is situated, not less than seven days prior to such meeting.
- (2)** At the meeting the report of the provisional judicial manager under section 237E (c), and the desirability or not of placing the co-operative finally under judicial management, shall be considered, taking into account the prospects of the co-operative becoming a successful concern.
- (3)** The chairman of any such meeting shall prepare and lay before the court a report of the proceedings of such meeting, including a summary of the reasons for any conclusion arrived at under subsection (2).

Return day of provisional judicial management order, and powers of court.

- 237G. (1)** Any return day fixed under section 237B (1) shall not be later than 60 days after the date of the provisional judicial management order but may be extended by the court on good cause shown.
- (2)** On such return day the court may after consideration of—
- (a) the opinion and wishes of creditors and members of the co-operative;
 - (b) the report of the provisional judicial manager under section 237E (c);
 - (c) the report referred to in section 237F (3); and
 - (d) a report of the registrar if he does not preside at the meeting referred to in section 237F (1),
- grant a final judicial management order if it appears to the court that the co-operative will, if placed under judicial management, be enabled to become a successful concern and that it is just and equitable that it be placed under judicial management, or the court may discharge the provisional order or make any other order it may deem fit.
- (3)** A final judicial management order shall contain—
- (a) directives for the vesting of the management and

control of the co-operative, subject to the supervision of the registrar, in the final judicial manager, the handing over of all matters and the accounting by the provisional judicial manager to the final judicial manager, and the discharge of the provisional judicial manager, where necessary;

(b) such other directives as to the management and control of the co-operative, or any matter incidental thereto, including directives conferring upon the final judicial manager the power, subject to the rights of the creditors of the co-operative, to raise money in any way without the authority of the members of the co-operative, as the court may consider necessary.

(4) (a) When a final judicial management order is granted, the registrar shall without delay appoint a final judicial manager, who shall give such security for the proper performance of his duties in his capacity as such as the registrar may direct, and who shall hold office until he is discharged in terms of paragraph (b) or until the judicial management order is withdrawn or is deemed to be withdrawn in terms of section 237M.

(b) The registrar may at any time for reasons which he deems fit dismiss a final judicial manager from his office and appoint another person in his place.

(5) The court which has granted a final judicial management order may at any time and in any manner vary the terms of such order on the application of the registrar, the final judicial manager, or a representative acting on behalf of the creditors or members of the co-operative concerned by virtue of a resolution passed, in the case of creditors, by a majority in value and number of such creditors at a meeting of those creditors or, in the case of members, by a majority of members present at a general meeting.

Effect of final judicial management order. 237H. The provisions of section 237D shall *mutatis mutandis* apply when a final judicial management order is granted.

Functions of final judicial manager. 237I. A final judicial manager shall, subject to the provisions of the statute of the co-operative concerned in so far as they are not inconsistent with any directive contained in the relevant judicial management order or suspended by the registrar in writing—

(a) take over the management and control of the co-operative from the provisional judicial manager;

(b) conduct such management and control, subject to the orders of the registrar, in such manner as he may deem most economic and most promotive of the interests of the members and creditors of the co-operative in order to restore the co-operative as a successful concern;

(c) comply with any directive of the court made in the final judicial management order or any variation thereof;

(d) keep such accounting records and have such annual financial statements prepared as the co-operative would have been obliged to keep or have prepared if it had not been placed under judicial management;

(e) convene the annual general meeting and other meetings of members of the co-operative pro-

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vided for by this Act, and in that regard comply with all the requirements with which the directors of the co-operative would in terms of this Act have been obliged to comply if the co-operative had not been placed under judicial management; 5

(f) convene meetings of the creditors of the co-operative by notices issued separately on the dates on which the notices convening annual general meetings of the co-operative are issued or on which any interim report is sent out to members, and submit to such meetings reports showing the assets and liabilities of the co-operative, its debts and obligations as verified by the auditor of the co-operative, and all such information as may be necessary to enable the creditors to become fully acquainted with the co-operative's position as at the date of the end of the period covered by any such interim report; 10 15

(g) lodge with the registrar copies of all the documents submitted to the meetings as provided for in paragraphs (e) and (f); 20

(h) examine the affairs and transactions of the co-operative before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the co-operative has contravened or appears to have contravened any provision of this Act or has committed any other offence which gave rise to the circumstances referred to in section 237A (1); 25 30

(i) examine the affairs and transactions of the co-operative before the commencement of the judicial management in order to ascertain whether any director, past director, officer or past officer of the co-operative is or appears to be personally liable for damages or compensation to the co-operative or for any debts or liabilities of the co-operative; 35 40

(j) if at any time he is of the opinion that the continuation of the judicial management will not enable the co-operative to become a successful concern, apply to the court after not less than 14 days' notice by registered post to all members and creditors of the co-operative for the cancellation of the relevant judicial management order and the issue of an order for the winding-up of the co-operative. 45 50

Application of assets during judicial management.

237J. (1) A judicial manager shall not without the leave of the court sell or otherwise dispose of any of the co-operative's assets save in the ordinary course of the co-operative's business. 50

(2) Any money of the co-operative becoming available to the judicial manager shall be applied by him in paying the costs of the judicial management and in the conduct of the co-operative's business in accordance with the judicial management order and so far as the circumstances permit in the repayment of debts of the co-operative incurred before the date of the provisional judicial order. 55 60

Position of auditor in judicial management.

237K. Notwithstanding the granting of a judicial management order in respect of any co-operative and for so long as the order is in force, the provisions of this Act relating to the appointment and re-

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appointment of an auditor and the rights and duties of an auditor shall continue to apply as if any reference in the said provisions to the directors of the co-operative were a reference to the judicial manager.

Application to judicial management of certain provisions on winding-up.

237L. In every case in which a co-operative is placed under judicial management the provisions of sections 210, 211, 212, 213 and 235 shall apply as if the co-operative under judicial management were a co-operative being wound up and the judicial manager were the liquidator.

Cancellation of judicial management order.

237M. (1) If at any time on application by the judicial manager or any person having an interest in the co-operative it appears to the court which granted a judicial management order that the purpose of such order has been fulfilled or that for any reason it is undesirable that such order should remain in force, that court may cancel such order, and thereupon the judicial manager shall be divested of his functions.

(2) In cancelling any such order the court shall give such directives as may be necessary for the resumption of the management and control of the co-operative by a board of directors referred to in section 107 (1), including directives for the convening of a general meeting of members for the purpose of electing such directors.

(3) When a co-operative under judicial management amalgamates with another co-operative it shall be deemed that the judicial management order is cancelled with effect from the date on which the first-mentioned co-operative ceased to exist in terms of section 167.

Remuneration of provisional and final judicial manager.

237N. The registrar shall determine the basis of the remuneration of a provisional or final judicial manager, and may at any time decrease or disallow such remuneration if in his opinion there is good cause for doing so."

Amendment of section 241 of Act 91 of 1981.

19. Section 241 of the principal Act is hereby amended—

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

"(b) A notice or proclamation referred to in paragraph (a) may at any time be amended, substituted or withdrawn by the Minister by notice in the *Gazette*."; and

(b) by the addition of the following paragraphs:

"(c) An amendment, substitution or withdrawal of a notice or proclamation referred to in paragraph (a)—

(i) shall take place at the request of the agricultural co-operative or special farmers' co-operative to which that notice or proclamation relates as a result of a resolution passed at a general meeting of that co-operative;

(ii) shall relate to the agricultural product contemplated in that notice or proclamation, or shall pertain to an agricultural product from which the agricultural products contemplated in that notice or proclamation originate; and

(iii) is limited to the area referred to in that notice or proclamation.

(d) A producer who, when he is by virtue of a notice or proclamation referred to in paragraph (a) compelled to sell or otherwise dispose of the agricultural product to which such notice or proclamation relates through the co-operative stated in such notice or proclamation, sells or disposes of the said

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agricultural product otherwise than through the said co-operative, and any person who buys or otherwise obtains that agricultural product except through the said co-operative, shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment." 5

Repeal of
Schedule 1 to
Act 91 of 1981.

20. Schedule 1 to the principal Act is hereby repealed.

Short title and
commencement.

21. (1) This Act shall be called the Co-operatives Amendment Act, 1987, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. 10

(2) Different dates may be so fixed in respect of the different provisions of this Act.