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GENERAL NOTICE

NOTICE 33 OF 2011**MINISTRY OF TRADE AND INDUSTRY****PUBLICATION OF CO-OPERATIVES AMENDMENT BILLS FOR PUBLIC COMMENTS**

1. Interested parties are invited to submit comments on two Co-operative Amendment Bills (Section 75 and Section 76), within a period of sixty (60) days from the date of this publication.
2. Comments and enquiries can be directed to:

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DR. ROB DAVIES

MINISTER OF TRADE AND INDUSTRY

DATE: 11/11/2010

REPUBLIC OF SOUTH AFRICA

CO-OPERATIVES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official text
of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B - 2010]

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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.
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B I L L

To amend the Co-operatives Act, 2005, so as to provide for the substitution and addition of certain definitions; to confirm alignment of this Act to the International Labour Organization (ILO) Recommendation 193 of 2002 and the Co-operative statement of identity as adopted by the International Co-operative Alliance (ICA) in 1995; including co-operative definition, values and principles; remove references to listed beneficiaries; to provide for tertiary co-operatives and co-operative apex organisation and their registration; to provide for the status of associate members of co-operatives; to make provision for the restrictions on functions of co-operatives; to regulate further the annual return relating to members and record keeping; to substitute provisions relating to the reserve fund for members; to further regulate the audit of and financial reporting by co-operatives; to further regulate the dissolution and deregistration of co-operatives through the winding-up and judicial management processes; to provide for government responsibilities in respect of co-operatives; to provide for the substitution of the Co-operatives Advisory Board by Advisory Council; to provide for the establishment of the Co-operative Development Agency; to provide for the establishment of the National Co-operative Training Academy and Provincial Co-operative Training Academies; to provide for the Co-operative Tribunal; to provide for matters connected therewith; and to provide for the substitution of the Long title and the Preamble.

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

Amendment of section 1 of Act 14 of 2005

1. Section 1 of Co-operatives Act, 2005 (hereinafter referred to as the principal Act), is hereby amended by—

- (a) the substitution for the definition of "**Advisory Board**" of the following definition:
" '**Advisory [Board] Council**' means the Co-operatives Advisory **[Board] Council** established **[by] in terms of** section 85 of this Act;";
- (b) the insertion after the definition of "**Advisory Board**" of the following definitions:
" '**Agency**' means the Co-operative Development Agency established in terms of section 91A;

'agricultural co-operative' means a co-operative that produces, processes or markets agricultural products and supplies agricultural inputs and services to its members;

'associate member' means the person contemplated in section 14A;"

- (c) the insertion after the definition of "audit" of the following definitions:

"'Board' means the Board of the Agency established in terms of section 91G;

'category A, B and C co-operatives' means the categories of primary co-operatives referred to in section 15A;

'closed co-operative' means a co-operative that does not conclude transactions with persons who are not members of the co-operative;

"'Closed transaction' means a transaction with co-operative members only"

'chief executive officer' means the person appointed in terms of section 91DD(1);

'Commission' means the Co-operative Conflict Resolution Commission contemplated in section 91PP";

"'Community development' means a set of values and practices which plays a special role in overcoming poverty and disadvantage, knitting society together at the grass root level, while developing the power, skills, knowledge and experience of people as individuals and in groups, thus enabling them to undertake initiatives of their own to combat social, economic, political and environmental problems, and enabling them to fully participate in a truly democratic process in line with the 7th Co-operative principle as outlined in the pre-amble".

- (d) the deletion of the definition of "agricultural co-operative";

- (e) the insertion after the definition of "consumer co-operative" of the following definitions:

"'Constitution' means the Constitution of the Republic of South Africa, 1996.";

"'Co-operative values' means values upon which co-operatives are based as outlined in the pre-amble".

"'Co-operative principles' means guidelines by which co-operatives put their values into practice as outlined in the pre-amble."

"'Counter transaction' means a transaction by a co-operative with non-members or third parties"

- (f) the insertion after the definition of "deputy registrar" of the following definitions:

" 'Chief Directorate: Co-operatives' means the departmental entity responsible for co-operatives' development as contemplated in section 94B;"

- (g) the insertion after the definition of "Director-General" of the following definition:

" 'dual co-operative' means a co-operative that is partly a closed co-operative and partly an open co-operative;"

- (h) the substitution for the definition of "**financial services co-operative**" of the following definition:
" **'financial [services] co-operative'** means a primary co-operative whose main objective is to provide financial services to its members or a secondary co-operative that provides financial services to a primary co-operative;"
- (i) the insertion after the definition of "**housing co-operative**" of the following definition:
"**'juristic person'** includes incorporated entities or other bodies that have legal personalities separate from their members".
- (j) the insertion after the definition of "**Minister**" of the following definition:
" **'National Co-operative Training Academy'** means the National Co-operative Training Academy established in terms of section 91Z;"
- (k) the insertion after the definition of "**nominal value**" of the following definitions:
" **'open co-operative'** means a co-operative that concludes transactions with both members and non-members of that co-operative;
"**'operational primary co-operative'** means a primary co-operative that has held annual general meeting and has submitted its annual returns to the registrar in a financial year or more and is not liable for winding-up as outlined in section 72B".
- (l) the insertion after the definition of "**primary co-operative**" of the following definitions:
" **'Provincial Co-operative Training Academy'** means the Provincial Co-operative Training Academy established in terms of section 91BB;
'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act No. 1 of 1999);"
- (m) the substitution for the definition of "**social co-operative**" of the following definition:
" **'social co-operative'** is a **[non-profit]** co-operative which engages in the provision of social services to its members, such as care for the elderly, children and the sick;"
- (n) the insertion after the definition of "**social co-operative**" of the following definitions:
" **'special purpose vehicle'** means the incorporated entity established in terms of legislation for the purposes of furthering the objects of this Act;"

"**Statement on the Co-operative Identity**" includes the definition of a co-operative; co-operative values and co-operative principles as outlined in the pre-amble"
- (o) the insertion after the definition of "**special resolution**" of the following definition:
" **'supervisory committee'** means a committee contemplated in section 27(3)(b);"
- (p) the substitution for the definition of "**surplus**" of the following definition:
" **'surplus'** means the economic result which emanates as a form of a surfeit of products or services overcharges arising from closed and counter transactions of a co-operative in a financial year, and may be re-invested in the co-operative or distributed amongst its members in proportion to their transactions with the co-operative after provision has been made for the reserves contemplated in section 46;"
- (q) the deletion of the definition of "**supervisory committee**";

- (r) the insertion after the definition of "**surplus**" of the following definition:
 "**'target groups'** means groups, in respect of category A and category B primary co-operatives, identified to receive beneficial support as determined by the Minister by notice in the *Gazette*";
- (s) the substitution for the definition of "**tertiary co-operative**" of the following definition:
 "**'tertiary co-operative'** means a co-operative whose members are secondary co-operatives and whose object amongst others is to advocate and engage organs of state, the private sector and stakeholders on behalf of its members [**and may also be referred to as a co-operative apex**];
- (t) the insertion after the definition of "**this Act**" of the following definitions:
 "**'Tribunal'** means the Co-operatives Tribunal established in terms of section 91GG;" and
- (u) the substitution for the definition of "**worker co-operative**" of the following definition:
 "**'worker co-operative'** means a type of co-operative, in which the members pursue the objective of making best possible use of their labour by building up a jointly-owned and self-managed enterprise".

Amendment of section 2 of Act 14 of 2005

2. Section 2 of the principal Act is hereby amended by —
- (a) the substitution for paragraph (f) of the following paragraph:
 "(f) facilitate the provision of support programmes that target emerging co-operatives, specifically those co-operatives that consist of [**black persons, women, youth, disabled persons or persons in the rural areas**] persons from previously disadvantaged communities as determined by the Minister by notice in the *Gazette* and that promote equity and greater participation by its members;"
- (b) the substitution for paragraph (g) of the following paragraph:
 "(g) ensure the design and implementation of the co-operative development support programmes by all the relevant agencies of national departments [**including but not limited to Khula, NEF, NPI, SEDA, IDC, SAQI, SABS, CSIR, PIC, DBSA, SALGA and SETA's, and**], provinces and other special purpose vehicles in compliance with uniform norms and standards prescribed by this Act;" and
- (c) the addition of the following paragraph:
 "(j) promote the establishment of public private partnerships as contemplated in the Public Finance Management Act, the Municipal Finance Management Act, 2003 (Act No. 56 of 2003); and the Treasury Regulations."

Amendment of section 3 of Act 14 of 2005

3. Section 3 of the principal Act is hereby amended by—
- (a) the substitution for subsection (3) of the following subsection:
 "(3) The constitution of a secondary or tertiary co-operative may provide that the members have more than one vote [**Provided that in the case of a secondary co-operative no member shall have more than**

fifteen per cent of the vote of all the members of the co-operative]
unless if a co-operative has—

- (a) two members, no member has voting rights in excess of 55 percent;
- (b) three members, no member has voting rights in excess of 40 percent;
- (c) four members, no member has voting rights in excess of 30 percent;
- and
- (d) five or more members, no member has voting rights in excess of 25 percent."; and

(b) the addition of the following subsections:

(4) Voting rights in respect of any category C primary co-operatives, secondary or tertiary co-operative registered in terms of applicable legislation prior to the commencement of this Act, are regulated by the provision on voting rights contained in its constitution as it was immediately prior to the commencement of this Act.

(5) The principles of corporate governance applies to all co-operatives to which this Act is applicable."

Substitution of section 4 of Act 14 of 2005

4. The following section is hereby substituted for section 4 of the principal Act:

"(1) This Act provides for the registration of the following forms of co-operatives:

- (a) a primary co-operative;
- (b) a secondary co-operative; **[and]**
- (c) a tertiary co-operative[.]; and
- (d) a co-operative apex organisation.

(2) Without limiting the number and variety of different kinds of co-operatives, a co-operative registered in terms of this Act may be, but is not limited to, a—

- (a) housing co-operative;
- (b) worker co-operative;
- (c) social co-operative;
- (d) agricultural co-operative;
- (e) co-operative burial society;
- (f) financial **[services]** co-operative;
- (g) consumer co-operative;
- (h) marketing and supply co-operative; and
- (i) service co-operative."

Amendment of section 5 of Act 14 of 2005

5. Section 5 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 6 of Act 14 of 2005

6. Section 6 of the principal Act is hereby amended by—
 (a) the substitution for subsection (1) of the following subsection:

- "(1) An application to register a co-operative must be made by—
- (a) a minimum of five persons in the case of a primary co-operative;
 - (b) a minimum of two or more operational primary co-operatives in the case of a secondary co-operative **[or]**
 - (c) a minimum of two or more secondary co-operatives in the case of a tertiary co-operative[.]; or
 - (d) a minimum of three tertiary co-operatives in the case of a co-operative apex organisation.;
- (b) the substitution for subsection (2) of the following subsection:
- "(2) An application referred to in subsection (1) must be submitted to the registrar in the prescribed form and must be accompanied by—
- (a) the constitution of the co-operative drafted in accordance with section 13(5) and signed by the founder members;
 - (b) a list of the founder members and proof of their identity;
 - (c) a list of directors;
 - (d) the prescribed fee or proof of payment thereof[.];
 - (e) a request to reserve the proposed name of the co-operative; and
 - (f) the business plan of the co-operative drafted in accordance with section 13(5)."

Amendment of section 8 of Act 14 of 2005

7. Section 8 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (c).

Amendment of section 9 of Act 14 of 2005

8. Section 9 of the principal Act is hereby amended by—
- (a) the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) a person who originally entered into the contract ceases to be personally bound by it"; and
 - (b) the substitution for subsection (4) of the following subsection:

"(4) If a co-operative does not ratify the contract, the person who originally entered into the contract continues to be personally bound by the contract, unless the contract expressly provides otherwise."

Amendment of section 10 of Act 14 of 2005

9. Section 10 of the principal Act is hereby amended by—
- (a) the substitution for subsection (2) of the following subsection:

"(2) A co-operative must have the **[words]** word—

 - (a) "co-operative" or "co-op" as part of its name **[;]** and in respect of co-operatives registered after commencement of the Co-operatives Amendment Act, only the abbreviation "co-op"; and;
 - (b) **[the word]** "limited" or the abbreviation "Ltd" as the last word of its name,
 - (b) the deletion of subsection (3);
 - (c) the substitution for subsection (6) of the following subsection:

- "(6) If the name of a [secondary or tertiary] co-operative indicates a restriction on the business that may be carried on by a co-operative, the constitution of that co-operative may not be amended to remove that restriction unless its name is also amended."; and
- (d) the addition of the following subsection:
- "(7) A co-operative may use a trademark name followed by the abbreviation "co-op" (Ltd)" if the constitution of the co-operative authorises the use of such trademark name."

Amendment of section 12 of Act 14 of 2005

- 10 Section 12 of the principal Act is hereby amended by—
- (a) the substitution for the heading to section 12 of the following heading:
"Unlawful use of word "co-operative", " co-op Ltd";
- (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 " (b) use or authorise the use of the words "co-operative", "co-op", Ltd, "co-operative limited", "co-operative ltd" as part of its name."; and
- (c) the addition of the following subsection:
"(2) Any entity that violates the above will be subject to a penalty to be determined by the Minister by notice in the Gazette."

Amendment of section 13 of Act 14 of 2005

11. Section 13 of the principal Act is hereby amended by—
- (a) the substitution for subsections (1), (2) and (3) of the following subsections, respectively:
- (1) A co-operative registered in terms of this Act must **[adopt] have** a constitution that complies with section 14.
- (2) A co-operative where the members are required to hold shares must **[adopt] have** a constitution that complies with sections 14 and 15.
- (3) Secondary and tertiary co-operatives must **[adopt] have** a constitution that complies with sections 14 and 16."
- (b) the deletion of subsection (5); and
- (c) the addition of the following subsection:
- "(6) (a) Every emerging co-operative must submit its constitution, business plan and the prescribed forms in the prescribed format to the registrar for registration.
- (b) After registration of the constitution in accordance with this Act, the business plan of the co-operative concerned must be forwarded to the Agency for evaluation and the provision of support so as to facilitate the implementation thereof as contemplated in Chapter 12A or to the Directorate Co-operatives as may be determined by the Minister."

Amendment of section 14 of Act 14 of 2005

12. Section 14 of the principal Act is hereby amended by—
- (a) the substitution for the heading of the following heading:
"Minimum requirements for all co-operative constitutions";
- (b) the insertion in subsection (1) of the following paragraphs after paragraph (b):

- "(bA) whether it is an open co-operative, a closed co-operative or a dual co-operative;
- (c) the substitution in subsection (1) for paragraph (e) of the following paragraph:
"(e) a provision stipulating [that each member has one vote in all meetings of the co-operative except in the case of secondary or tertiary co-operatives] the voting rights of each member, as contemplated in section 3;"
- (d) the substitution in subsection (1) for paragraph (i) of the following paragraph:
"(i) the term of office of directors, which may not be more than four years, and whether a director may be reappointed for a [second or further] consecutive term of office: Provided that the manner for rotation of directors is stipulated in the constitution of the co-operative."
- (e) the insertion in subsection (1) of the following paragraph after paragraph (l):
"(lA) a provision relating to the extension of the period for the repayment of the nominal value of membership shares in the event of the death of a member;"
- (f) the deletion in subsection (1) of paragraph (cc);
- (g) the deletion in subsection (2) of paragraph (g); and
- (h) the substitution in subsection (2) for paragraph (j) of the following paragraph:
"(j) provision for the settlement of disputes between members of the co-operative, [or] between a member of the co-operative and the co-operative itself or between the co-operative and other role players."
- (g) the addition in subsection (2) of the following paragraph:
"(k) whether the co-operative allows for appointment of non-executive independent directors"

Insertion of section 14A in Act 14 of 2005

13. The following section is hereby inserted in the principal Act after section 14:

"Associate members

- 14A. (1) The constitution of a co-operative may provide for persons—
- (a) who want to provide support to the co-operative without becoming members of the co-operative, to be appointed as associate members; and
- (b) who may benefit from a co-operative without becoming members of the co-operative, to be appointed as associate members.
- (2) Associate membership is temporary for a period of 12 months.
- (3) After the period of 12 months—
- (a) associate members have the choice to become full members of a co-operative subject to approval by the current members of the co-operative; or
- (b) their associate membership may be renewed on approval by the members of the co-operative.
- (4) Co-operatives that have associate members must indicate in their financial reporting system the full members of the co-operative and associate members.
- (5) Associate members do not have any voting rights."

Insertion of section 15A in Act 14 of 2005

14. The following section is hereby inserted in the principal Act after section 15:

"Categories of primary co-operatives

15A. (1) Primary co-operatives consist of the following categories—

- (a) a category A primary co-operative which is a small primary co-operative that has an annual revenue or projected annual revenue of a small size with a minimum of five members;
- (b) a category B primary co-operative which is a small to medium primary co-operative that has annual revenue or projected annual revenue of medium size with a minimum of five members; and
- (c) category C primary which is a medium to large co-operative that has annual revenue or projected annual revenue of a large size with a minimum of five members.

(2) The Minister must determine the monetary threshold applicable to each size of the annual revenue per category of the primary co-operative.

Amendment of section 16 of Act 14 of 2005

15. Section 16 of the principal Act is hereby amended by the deletion of subsection (1).

Insertion of sections 16A and 16B in Act 14 of 2005

16. The following sections are hereby inserted in the principal Act after section 16:

"Tertiary co-operatives

16A. (1) (a) Two or more multi-sectoral secondary co-operatives may form a tertiary co-operative to—

- (i) develop and provide support to its members;
- (ii) encourage and facilitate best practices between its members;
- (iii) promote co-operation between its members and other role players;
- (v) liaise with and provide advice to government in relation to co-operatives, all entities established or recognised in terms of this Act, the private sector and civil society in relation to matters pertaining to a particular sector and or geographic location as the case may be; and
- (vi) advocate, engage organs of state, the private sector and stakeholders and to voluntarily join a co-operative apex organisation on behalf of its members.

(b) Every tertiary co-operative must comply with the provisions of this Act.

(2) A tertiary co-operative may perform the following functions—

- (a) provide professional advice to its members;
- (b) assist its members in order to improve their effectiveness, efficiency and sustainability as a co-operative;
- (c) conduct and participate in awareness campaigns relating to the main objectives of the co-operative;

- (d) undertake research relevant to the needs and growth of member co-operatives;
- (e) promote the interests of its members, whenever there are dealings and required engagements that affect co-operatives, with civil society, organs of state and the private sector through advocacy, lobbying and activism;
- (f) provide education and training to its members; and
- (g) provide legal and other related services to its members.

Co-operative apex organisations

16B. (1) (a) Three or more tertiary co-operatives sharing similar objectives may form a co-operative apex organisation, which will be fully-funded by its members as a national organisation representing its member co-operatives to—

- (i) serve as a collaborative forum in order to promote the affiliated tertiary co-operatives;
- (ii) develop and provide support to its members;
- (iii) encourage and facilitate best practices between its members;
- (iv) promote co-operation between its members and other role players; and
- (v) liaise with and provide advice to government, , the private sector and civil society.

(b) A co-operative apex organisation must comply with the provisions of this Act.

(2) In the event where there are no existing tertiary co-operatives, a secondary co-operative may join the co-operative apex organisation.

(3) A co-operative apex organisation may establish relations with other co-operative organisations at national and international level.

(4) A co-operative apex organisation may perform the following functions—

- (a) provide professional advice to its members;
- (b) establish a guarantee fund to be used by its members in order to acquire funds to carry out economic activities of the co-operatives;
- (c) set up a solidarity fund after consultation with its members and subject to proper financial prerequisites, which may be used as capital by its members in times of financial distress;
- (d) assist its members in order to improve their effectiveness, efficiency and sustainability;
- (e) assist and annually provide information in respect of its members to the Agency regarding all matters relating to the establishment and effective functioning of co-operatives in the Republic of South Africa;
- (f) conduct and participate in awareness campaigns;
- (g) undertake research relevant to the needs and growth of the co-operative movement;
- (h) play an advocacy role by activism, lobbying and promoting the interests of its members, to civil society, organs of state and the private sector;
- (i) advise its members on developments, both nationally and internationally, relating to or impacting on, its members in particular and the co-operative movement in general;
- (j) provide education and training to its members; and
- (k) provide legal and other related services to its members."

Amendment of section 19 of Act 14 of 2005

17. Section 19 of the principal Act is hereby amended by—
- (a) the substitution for the heading of the following heading:
"Restrictions on functions of co-operatives";
 - (b) the substitution for subsection (2) of the following subsection:
"(2) A co-operative must not carry out an objective or perform an action not authorised by its constitution."; and
 - (c) the addition of the following subsections:
"(3) Subject to subsections (1) and (2), a co-operative must indicate all business transactions concluded with non-members in the co-operative's financial statements.
(4) Any co-operative or director of a co-operative which contravenes the provisions of subsection (1) or (2) will be subject to a fine to be determined by the Minister."

Amendment of section 21 of Act 14 of 2005

18. Section 21 of the principal Act is hereby amended by—
- (a) the insertion in subsection (1) of the following paragraph after paragraph (c):
"(cA) the minutes of meetings of the supervisory committee in a minute book;"
 - (b) the substitution in subsection 1 for paragraph (f) of the following paragraph:
"(f) a register of directors' interests in contracts or undertakings, envisaged in section [38] 37;"; and
 - (c) the substitution for subsection (2) of the following subsection:
"(2) Every co-operative must retain its accounting records for a period of seven years after the end of the financial year to which they relate, after which period such records must be archived for historical purposes as prescribed by the Minister by notice in the Gazette."

Amendment of section 22 of Act 14 of 2005

19. Section 22 of the principal Act is hereby amended by the addition of the following subsection:
- "(4) (a) An inspector appointed by the registrar or the Tribunal as contemplated in this Act may, in accordance with this Act and national legislation that regulates access to information, examine the records of a co-operative during the normal business hours of that co-operative.
 - (b) Members of the Board of directors of a co-operative who fail to disclose information or provide access to the records of the co-operative, to the inspector referred to in paragraph (a) will be subject to a penalty to be determined by the Minister."

Amendment of section 23 of Act 14 of 2005

20. Section 23 of the principal Act is hereby amended by the addition of the following subsection:

"(2) In instances where members do not hold shares, members are excluded from liability".

Amendment of section 24 of Act 14 of 2005

21. Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Despite any provisions contained in its constitution, if a co-operative determines that the repayment of membership shares would adversely affect its financial well-being, the co-operative may direct that the repayment be deferred for a period not exceeding two years after the effective date of the notice of withdrawal."

Substitution of section 25 of Act 14 of 2005

22. The following section is hereby substituted for section 25 of the principal Act:

"Transfer of membership, member loan or membership share

25. Despite any provisions contained in its constitution, if a co-operative determines that the repayment of the nominal value of [a member's shares,]—

(a) membership shares;

(b) all other amounts held to the member's credit including any member loan; and

(c) any interest accrued on those amounts up to the date of the payment, would adversely affect its financial well-being, the co-operative may direct that repayment, after the death of a member of the co-operative, may be deferred for a period not exceeding [two years after the date of death of a member of the co-operative] the period as determined in the constitution of the co-operative."

Insertion of section 26A in Act 14 of 2005

23. The following section is hereby inserted in the principal Act after section 26:

"Annual return relating to members

26A. The Minister must, by notice in the *Gazette*, determine—

(a) the form, manner and the time period for the submission of information regarding membership; members of a co-operative; nature and value of the contribution made by each member; and

(b) the annual fees payable by co-operatives based on the categories of co-operatives."

Amendment of section 27 of Act 14 of 2005

24. Section 27 of the principal Act is hereby amended by—

- (a) the insertion of subsection (3) paragraph (b) (i) – (iii) as follows:
- "**(b)** The supervisory committee—
- (i) must be elected at the same meeting where the board of directors is elected as contemplated in section 32(3);
- (ii) must consist of members who are not directors;
- (iii) may be established for every co-operative if the constitution of the co-operative concerned provides for such committee."; and
- (b) the addition of the following subsections:
- "(4) A supervisory committee as contemplated in subsection (3)(b)—
- (a) is responsible for supervising the board of directors, by representing the interest of its members;
- (b) must, if a fair and reasonable suspicion exists that any act or omission by the board of directors may impact negatively on the co-operative or a member or members thereof, call a special meeting of all its members to discuss such act or omission; and
- (c) must, in writing—
- (i) inform the Tribunal within seven days after a special meeting contemplated in this section of the outcome of such meeting; and
- (ii) inform the board of directors and the member affected or concerned of its decision and reasons for the decision.
- (5) If a member suspects that the supervisory committee has not complied with subsection (4)(c), such member may report the matter to the Tribunal."

Amendment of section 28 of Act 14 of 2005

25. Section 28 of the principal Act is hereby amended by the addition of the following subsections:

"(3) At any time, a member of a co-operative may appoint another member of the co-operative as a proxy to participate in and vote at, a general or special meeting on behalf of the member concerned: Provided that the member may not appoint more than one proxy to exercise voting rights.

(4) A proxy appointment—

(a) must be in writing, dated and signed by the member; and

(b) remains valid for—

(i) one year after the date on which it was signed; or

(ii) any longer or shorter period expressly set out in the appointment, unless it is revoked by the member concerned.

(5) The number of proxies that a member may carry on behalf of another member or other members as contemplated in subsection (3), may not exceed five percent of the total membership of the co-operative concerned."

Substitution of heading to Chapter 5 of Act 14 of 2005

26. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

"[MANAGEMENT] GOVERNANCE OF CO-OPERATIVES".

Amendment of section 32 of Act 14 of 2005

27. Section 32 of the principal Act is hereby amended by—
- (a) the substitution for subsection (3) of the following subsection:
 "(3) The board of directors must be elected for such **[period] term** as **[may] must** be set out in the constitution of the co-operative, which **[period] term** may not be more than four years[.]; Provided that the manner for rotation of directors is stipulated in the constitution of the co-operative."; and
- (b) the addition of the following subsections:
 (5) All other issues relating to the Board, must be determined by the constitution of the co-operative.
 (6) The members of a co-operative may by a resolution of two thirds of the members present at the special meeting—
 (a) convened by the supervisory committee in accordance with section 27(3)(b); and
 (b) called by at least 25 percent of members where such co-operative does not have a supervisory committee, dissolve the board of directors if such members find that the board is dysfunctional or has acted contrary to any law."

Amendment of section 36 of Act 14 of 2005

28. Section 36 of the principal Act is hereby amended by the addition of the following subsection:
 "(4) Delegation of a function by a member of the board does not divest or relieve the board member from any liability in respect of delegated functions."

Amendment of section 38 of Act 14 of 2005

29. Section 38 of the principal Act is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection:
 "(1) A director **[or]**, manager or employee of a co-operative may not accept any commission, remuneration or reward from any person for, or in connection with, any transaction to which the co-operative is a party **[unless such commission, remuneration or reward is paid or given in the course of the usual business or profession of the [director or employee and the director or employee has disclosed his or her interest to the co-operative] of the co-operative**"; and
- (b) the substitution for subsection (2) of the following subsection:
 "(2) A director, manager or employee who contravenes **[a provision of]** subsection (1) is guilty of an offence.

Amendment of section 39 of Act 14 of 2005

30. Section 39 of the principal Act is hereby amended by the addition of the following subsection:
 "(4) The Minister must, by notice in the *Gazette*, determine—

- (a) the form, manner and the time period for the submission of information regarding the board of directors and all individual directors of a co-operative; and
- (b) the annual fees payable by co-operatives based on the categories of co-operatives."

Amendment of section 41 of Act 14 of 2005

31. Section 41 of the principal Act is hereby amended by the substitution for subsections (3), (4) and (5) of the following subsections, respectively:

"(3) The constitution may permit additional membership shares to be issued to members.

(4) All membership shares issued must be of the same class and ranking.

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

Amendment of section 44 of Act 14 of 2005

32. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) A co-operative may provide in its constitution that the whole or a part, of the patronage proportion of a member, determined by the board in respect of a financial year, must be applied to purchase membership shares in [a] the co-operative for the member."

Substitution of section 46 of Act 14 of 2005

33. The following section is hereby substituted for section 46 of the principal Act:

"Reserves for co-operatives

46. (1) A co-operative must set aside reserves that are indivisible amongst its members.

(2) Every co-operative must retain at least five percent of the surplus during a financial year in its reserves.

(3) If a co-operative retains an amount that is equivalent to 5% of its gross assets in its reserves, subsection (2) does not apply.

- (4) The Minister—
- (a) must, by notice in the *Gazette*, annually determine—
- (i) the manner in which records in respect of the reserves must be kept;
 - (ii) the purposes for which the reserves or parts thereof, may be lawfully used; and
 - (iii) the manner in which a co-operative must report on the purposes for which the reserves or parts thereof, has been used and the manner and the extent of disbursements; and
- (b) may determine different purposes and different criteria for disbursements for category A, category B and category C primary co-operatives, secondary co-operatives, tertiary co-operatives and co-operative apex organisations."

Substitution of section 47 of Act 14 of 2005

34. The following section is hereby substituted for section 47 of the principal Act:

"Annual audit

47. (1) Every co-operative must conduct an annual audit of its affairs in respect of each financial year.

(2) Different requirements may apply to—

- (a) category A primary co-operatives;
- (b) category B primary co-operatives; and
- (c) all other co-operatives.

(3) The Minister must—

- (a) by notice in the *Gazette*, publish a co-operative reporting system framework containing detailed requirements with which the annual audits as contemplated in this section must comply; and
- (b) within three months after the commencement of this Act, publish the notice contemplated in paragraph (a)."

Substitution of section 48 of Act 14 of 2005

35. The following section is hereby substituted for section 48 of the principal Act:

"[Approval of auditor's report and financial] Financial statements and consideration of auditor's report

48. (1) **[A]** Every co-operative [may] must circulate draft financial statements to all its members at least two weeks prior to an annual general meeting.

(2) The annual general meeting must consider [approval of], discuss, express an opinion on, and accept or reject the auditor's report and financial statements.

(3) The chairperson of the board or the person who acted as such in a meeting where—

- (a) the auditor's report and financial statements were [approved,] considered and discussed;
- (b) an opinion was expressed on such report and statements; and
- (c) such report and statements were accepted,

must [sign] countersign the auditor's report and financial statements to confirm [their approval] that they have been discussed and accepted or rejected as contemplated in subsection (2).

(4) A co-operative may not issue, publish or circulate copies of the financial statements and the auditor's report unless the statements and reports [are— approved]—

- (a) have been accepted by the annual general meeting and [signed] countersigned in accordance with subsection [(2)] (3); and
- (b) are accompanied by [a report of the auditor] the auditor's report as contemplated in this section.

(5) The auditor's report and financial statements must be made available for inspection by any member of the co-operative at the registered office

of the co-operative for at least 21 days after **[approval]** acceptance of such report and financial statements.

(6) The board of directors must—

- (a) submit a copy of the financial statements and auditors' report and its acceptance thereof to the registrar within 15 days of its **[approval]** acceptance; or
- (b) if for any reason the annual general meeting fails to **[approve]** accept the financial statements and auditor's report, notify the registrar within 15 days of the reasons for such failure and of the action the co-operative intends to take in order to address the situation.

(7) The registrar may, after receiving the financial statements, the auditor's report, the view expressed by the annual general meeting and the acceptance thereof, take appropriate steps as he or she may deem fit.

Amendment of section 49 of Act 14 of 2005

36. Section 49 of the principal Act is hereby amended by the insertion of the following paragraph after paragraph (a):

"(aA) if that person does not—

- (i) satisfy fully the requirements for registration as an auditor contemplated in Chapter III of the Auditing Profession Act, 2005 (Act No. 26 of 2005); and
- (ii) act in accordance with the prescribed norms pertaining to the conduct and liability of registered auditors as contemplated in Chapter IV of the said Act."

Amendment of section 50 of Act 14 of 2005 as amended by section 90 of Act 40 of 2007

37. Section 50 of the principal Act is hereby amended by—

- (a) the insertion after subsection (2) of the following subsection:
"(2A) If a co-operative fails to appoint an auditor in accordance with subsections (1) and (2), the members of the Board will be subject to a penalty to be determined by the Minister.";
- (b) the deletion of subsections (3) and (4); and
- (c) the substitution for subsection (5) of the following subsection:
"(5) An auditor of a co-operative ceases to hold office when the auditor **[dies,]** resigns or is removed in terms of section 51 or is struck from the roll of auditors in terms of the laws of the Republic."

Amendment of section 53 of Act 14 of 2005

38. Section 53 of the principal Act is hereby amended by—

- (a) the addition of the following subsections:
"(3) The auditor has the right of access at all times to all accounting records, books and documents of the co-operative, and is entitled to require from the directors or officers of the co-operative any information and explanations necessary for the performance of the auditor's duties."

(4) A co-operative, member, director, officer, employee, agent or mandatory who fails to comply with subsections (1) and (2) is guilty of an offence.

(5) A director or officer of the co-operative who fails to comply with subsection (3) is guilty of an offence.

(6) The auditor may apply to a court for an appropriate order to enforce the rights set out in subsections (1), (2) or (3) and a court may—

- (a) make any order that is just and reasonable to prevent frustration of the auditor's duties by the co-operative or any of its directors, officers or employees; and
- (b) make an order of costs personally against any director or officer whom the court has found to have wilfully and knowingly frustrated or attempted to frustrate, the performance of the auditor's functions."

Amendment of section 54 of Act 14 of 2005

39. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) An auditor or former auditor of a co-operative who is notified of[,] or in any other manner becomes aware of [a material error or misstatement in] a matter or event as contemplated in International Standards on Auditing (ISA 560) subsequent events relating to, a financial statement on which [they have] the auditor has reported, must—

- (a) act in accordance with the International Standards on Auditing (ISA 560) subsequent events; and
- (b) inform the board of directors accordingly."

Repeal of section 55 of Act 14 of 2005

40. Section 55 of the principal Act is hereby repealed.

Amendment of section 56 of Act 14 of 2005

41. Section 56 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) if any membership share of an amalgamating co-operative is not to be converted into membership shares or other securities of the amalgamated co-operative, the amount of money that the holders of those membership shares are to receive in addition to or instead of shares of the amalgamated co-operative;"

Amendment of section 60 of Act 14 of 2005

42. Section 60 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) After the members of the co-operative have approved the division, the constitutions of the co-operatives to be constituted by the division must be submitted to the registrar for approval together with a notice of their registered

offices, **[and]** a notice of the directors of the co-operatives in question and the prescribed fee."

Amendment of section 62 of Act 14 of 2005

- 43.** Section 62 of the principal Act is hereby amended by —
- (a) the substitution in subsection (1) for paragraph (a) of the following paragraph:
- "(a) convert —
- (i) into any other kind of co-operative; or
- (ii) into a company as contemplated in the Companies Act, 2008 (Act No. 71 of 2008),
in accordance with the notice published by the Minister in the Gazette; or
- (iii) into any form of corporate or unincorporated body other than a co-operative or a company, in accordance with the applicable legislation."; and
- (b) the substitution for subsection (4) of the following subsection:
- "(4) A declaration by the **[board of]** directors of the co-operative must be attached to an application in terms of subsection (1), establishing—
- (a) compliance with the relevant provisions of this Act and the constitution of the co-operative; and
- (b) that the interests of creditors will be protected in accordance with section 64."; and
- (c) the substitution for subsection (6) of the following subsection:
- "(6) If the registrar is satisfied that there has been compliance with the provisions of this Act and after payment of the prescribed fees, the registrar must—
- (a) cancel the registration of the co-operative; **[and]**
- (b) remove its name from the register of co-operatives[.]; and
- (c) register another kind of co-operative."

Repeal of section 63 of Act 14 of 2005

- 44.** Section 63 of the principal Act is hereby repealed.

Substitution of section 64 of Act 14 of 2005

- 45.** The following section is hereby substituted for section 64 of the principal Act:

"Protection of creditors

64. (1) The registrar may not register any amalgamation, division [,] or conversion **[or transfer]** in terms of this Chapter unless the registrar is satisfied that—

- (a) written notice of at least three months of the proposal has been given to each known creditor who has a claim exceeding one thousand rand or such other amount as the Minister may **[from time to time]** prescribe;

- (b) any creditors who have demanded payment of any amount due to them have been paid in full or will be paid before the amalgamation, division[,] or conversion [or transfer] is effected; and
- (c) no creditor will be prejudiced by the amalgamation, division[,] or conversion [or transfer].

(2) It is an offence for any director to make a false declaration in terms of this section."

Amendment of section 66 of Act 14 of 2005

- 46.** Section 66 of the principal Act is hereby amended by—
- (a) the substitution in subsection (2) for paragraphs (d) and (e) of the following paragraphs:
 - "(d) two certified copies of the company's **[memorandum and articles of association] memorandum of incorporation**;
 - (e) two copies of either a proposed new constitution in terms of this Act or a proposed amendment of the **[memorandum and articles of association] memorandum of incorporation** of the company bringing the **[memorandum and articles] memorandum of incorporation** into line with the provisions of this Act;"
 - (b) the substitution for subsection (3) of the following subsection:

"(3) A company may instead of a document referred to in subsection (2)(e) give the registrar an undertaking in writing that if it is converted into a co-operative it will, within one year of its conversion, replace its **[memorandum and articles of association] memorandum of incorporation** with a constitution in terms of this Act or will otherwise amend its **[memorandum and articles of association] memorandum of incorporation** so as to bring **[them]** it into line with the provisions of this Act."

Amendment of section 67 of Act 14 of 2005

- 47.** Section 67 of the principal Act is hereby amended by—
- (a) the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) the company's **[memorandum and articles of association] memorandum of incorporation**,"
 - (b) the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) the **[memorandum and articles of association] memorandum of incorporation** or new constitution, as the case may be, are registered conditionally or unconditionally, and a certificate is issued in duplicate that the company has been incorporated as a co-operative in terms of this Act and that the **[memorandum and articles of association] memorandum of incorporation** or new constitution, as the case may be, have been submitted in the manner contemplated in this Act;"

and
 - (c) the substitution for subsection (4) of the following subsection:

"(4) One copy of the certificate and of the **[memorandum and articles of association] memorandum of incorporation** or new constitution, as the case may be, must be sent to the applicant and the other copy must be retained within the office of the registrar."

Amendment of section 68 of Act 14 of 2005

- 48.** Section 68 of the principal Act is hereby amended by—
- (a) the substitution for paragraph (c) of the following paragraph:
 "(c) if a new constitution was not substituted, the [**memorandum and articles of association**] memorandum of incorporation of the company [**are**] is considered to be the constitution of a co-operative;"; and
- (b) the substitution for paragraph (f) of the following paragraph:
 "(f) the constitution or the [**memorandum and articles of association**] memorandum of incorporation, as the case may be, bind the co-operative and each member to the same extent as if it had been signed by each member, subject to this Act."

Insertion of section 70A in Chapter 9 of Act 14 of 2005

49. The following section is hereby inserted in Chapter 9 of the principal Act after the heading preceding section 71:

"Definitions

70A. In this Chapter, unless the context otherwise indicates—
'**contribution**' means a contribution made by a contributory in terms of a contribution account towards the payment of the debt of the co-operative or any portion thereof;
'**contribution account**' means an account contemplated in item 44 of Schedule 1A to the Act;
'**contributory**' means any person liable to contribute to the assets or debts of the co-operative or any portion thereof in the event of the co-operative being wind up;
'**disposition**', in relation to property, means any transfer or waiver of a right to property and includes a sale, donation, exchange, lease, hypothecation or pledge of property, and '**dispose**' shall have a corresponding meaning;
'**distribution account**' means an account contemplated in item 42 of Schedule 1A to the Act;
'**liquidation account**' means an account contemplated in item 35 of Schedule 1A to the Act;
'**liquidator**', in relation to a co-operative being wound up, means a person appointed under sub-item (1) of item 13 of Schedule 1A to the Act to carry out the winding-up of the co-operative and includes a provisional liquidator contemplated in sub-item (2) of Schedule 1A;
'**security**', in relation to a creditor's claim, means property over which the creditor has a preferent right for the payment of his or her claim; and
'**trading account**' means an account contemplated in item 41 of Schedule 1A to the Act."

Substitution of section 71 of Act 14 of 2005

50. The following section is hereby substituted for section 71 of the following section:

"Modes of winding-up"

71. A co-operative may be wound up—
- (a) voluntarily under section 71A;
 - (b) by an order of the court under section 72; or
 - (c) by an order of the registrar or Tribunal under section 72B."

Insertion of section 71A in Act 14 of 2005

51. The following section is hereby inserted in the principal Act after section 71:

"Voluntary winding-up"

71A. A co-operative may be wound up voluntarily by special resolution of its full members."

Substitution of section 72 of Act 14 of 2005

52. The following section is hereby substituted for section 72 of the principal Act:

"Winding-up by order of court"

72. (1) A High Court may on application by any interested person order that a co-operative be wound up if it appears to the court that it is just and equitable that the co-operative must be wound up.
- (2) The court considering an application in terms of subsection (1) may adjourn the hearing thereof conditionally or unconditionally or before granting or refusing such application, make any provisional or other order it may deem fit."

Insertion of sections 72A, 72B and 72C in Act 14 of 2005

53. The following sections are hereby inserted in the principal Act after section 72:

"Application for declaratory order"

72A. The registrar may approach the court for a declaratory order that the liquidation process is deemed to have been finalised by the registrar if the liquidator concerned has not complied fully with the provisions of the Act and Schedule 1A.

Winding-up by order of registrar or Tribunal

- 72B. The registrar or Tribunal may order that a co-operative be wound up if—
- (a) the co-operative has twice or more times been convicted of an offence in terms of section 19(4);
 - (b) the co-operative has not transacted business; not submitted annual returns; and not held annual general meetings for a continuous period of two years;
 - (c) the co-operative was formed for a particular period or until the occurrence of a particular event and that period has expired or that event has occurred;

- (d) after an investigation, in respect of the co-operative concerned, the registrar or Tribunal has reasonable knowledge that the incorporation of the co-operative was obtained through fraud and is not fully in compliance with this Act; and
- (e) after receiving written affidavits from members of the co-operative or conducting an investigation, the registrar or Tribunal has reasonable knowledge that the co-operative does not carry out its objectives according to co-operative principles as required by this Act.

Related matters regulated by Schedule 1A

72C. Any matter related to the winding-up or deregistration of co-operatives contemplated in this Chapter must comply with the provisions of Schedule 1A."

Repeal of sections 73, 74, 75 and 76 of Act 14 of 2005

54. Sections 73, 74, 75 and 76 of the principal Act are hereby repealed.

Substitution of section 77 of Act 14 of 2005

55. The following section is hereby substituted for section 77 of the principal Act:

"Procedure relating to judicial management

77. (1) In any matter relating to the functioning of a co-operative as identified by the Tribunal as having the potential to result in an order of provisional judicial management being issued in respect of such co-operative, the Tribunal must provide every form of support that is within its mandate as is set out in Chapter 12C to the co-operative concerned.

(2) In the event of the Tribunal not being able to transform the co-operative concerned into an operational co-operative, the provisions relating to judicial management as contained in Schedule 1B apply.

(3) The Minister may transfer any or all of the powers, functions and duties relating to judicial management as vested in the registrar in terms of this Chapter and Schedule 1B to the Tribunal by notice in the *Gazette* if he or she is satisfied that the necessary capacity and administrative systems have been provided for by the Tribunal."

Amendment of section 79 of Act 14 of 2005

56. Section 79 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister must determine a physical or a digital or other form of electronic seal of office for the registrar, which must be placed on the registration certificate of co-operatives and in so far as it may be required in terms of any provision of this Act or otherwise as prescribed, on any other document issued by the registrar in terms of this Act."

Substitution of section 81 of Act 14 of 2005

57. The following section is hereby substituted for section 81 of the principal Act:

"Submission to registrar

81. Any documentation or information that a co-operative is required to submit to the registrar and any other functionary referred to in this Act must be submitted in such form and manner as may from time to time be prescribed."

Amendment of section 82 of Act 14 of 2005

58. Section 82 of the principal Act is hereby amended by the addition of the following subsection:

"(3) The registrar must—

- (a) on receipt of information from a person examining a document as contemplated in subsection (1), that documents have not been submitted or that incorrect documents have been submitted, contrary to the provisions of this Act, investigate such information; and
- (b) in the event that a particular document has not been submitted or an incorrect document has been submitted, take the necessary steps to ensure that the co-operative concerned submit or rectify the document concerned."

Substitution of section 84 of Act 14 of 2005

59. The following section is hereby substituted for section 84 of the principal Act:

"Investigation by registrar

84. (1) The registrar may order an investigation into or inspection of the business of a co-operative if the registrar—

- (a) has reason to believe that the co-operative [is not conducting] has conducted its affairs [in accordance with] in contravention of—
 - (i) the co-operative principles [or is contravening];
 - (ii) its constitution; or
 - (iii) a provision of this Act; or
- (b) is satisfied that circumstances exist which justify such an investigation or inspection.

(2) The registrar—

- (a) must refer the matter for resolution to the Tribunal if the results of the investigation or inspection contemplated in this section warrants further action; or
- (b) may make any recommendation he or she considers appropriate following an investigation or inspection in terms of subsection (1), including a recommendation to—
 - [(a)](i) the co-operative;
 - [(a)](ii) the Agency, if additional support for the co-operative is required;
 - [(b)](iii) the Minister [in terms of section 73]; and
 - [(c)](iv) the relevant prosecuting authority.

(3) A co-operative, member, director, officer, employee, agent or mandatory who fails to provide information to the registrar required for the investigation or inspection as contemplated in this section, is guilty of an offence."

Amendment of Chapter 12 of Act 14 of 2005

60. Chapter 12 of the principal Act is hereby amended by the substitution for the word "Advisory Board" wherever it appears in this Chapter of the word "Advisory Council".

Substitution of section 86 of Act 14 of 2005

61. The following section is hereby substituted for section 86 of the principal Act:

"Functions of Advisory [Board] Council

86. (1) The functions of the Advisory **[Board] Council** are to advise the Minister generally[,] and to make recommendations, with regard to—

(a) policy for the development of co-operatives in the Republic;

(b) the application of any of the provisions of this Act or any other law on matters affecting co-operatives;

(c) the publication of any regulations in terms of this Act that may be necessary;

(d) the provision of support programmes that—

(i) target co-operatives[, **especially those co-operatives that consist of black persons, women, youth, disabled persons or persons in the rural areas**] as determined by the Minister by notice in the Gazette; and

(ii) promote equity and greater participation by **[its] the members of a co-operative**;

[(e) the establishment of guidelines for audits of co-operatives;]

(f) any matter referred to the Advisory **[Board] Council** by the Minister, the Agency, a co-operative, proposed co-operative or member of a co-operative that relates to [promoting] any matter pertaining to co-operatives, including but not limited to, the promotion of the development of co-operatives; and

(g) any decision the Minister is required to take in terms of this Act.

(2) The Advisory Council—

(a) must advise the Minister in respect of the Tribunal, the Cooperative Development Agency, Companies and Intellectual Property Registration Office and the entity in the Department responsible for co-operatives;

(b) has a monitoring role in respect of intergovernmental structures; and

(c) must advise the Minister on—

(i) the status and functioning of the entities referred to in paragraph (a);

(ii) the status and functioning of intergovernmental structures established in accordance with section 91WW;

(iii) the status of the co-operative movement; and

(iv) mechanisms that would promote the co-operative movement."

Substitution of section 87 of Act 14 of 2005

62. The following section is hereby substituted for section 87 of the principal Act:

"Members of Advisory [Board] Council"

87. (1) The Minister must appoint as members of the Advisory **[Board] Council** not less than five but not more than 10 persons **[capable of suitable for appointment and]** representing the interests of co-operatives in the Republic.

(2) When appointing members in terms of subsection (1), the Minister must have regard to the need for the Advisory **[Board] Council**—

- (a) to have appropriate expertise; and
- (b) to represent different relevant constituencies including trade unions, business, co-operative support organisations, women, youth, disabled and academics.

(3) The Minister must designate one of the members of the Advisory **[Board] Council** as chairperson."

Insertion of Chapters 12A, 12B and 12C in Act 14 of 2005

63. The following Chapters are hereby inserted in the principal Act after Chapter 12:

**"CHAPTER 12A
CO-OPERATIVE DEVELOPMENT AGENCY**

Part 1

Establishment, legal status, functions and powers of Agency

Establishment of Co-operative Development Agency

91A. (1) The Co-operative Development Agency is hereby established as a juristic person.

(2) The Agency must exercise its powers and perform its functions in accordance with this Act and any other relevant law.

(3) The Agency is a Schedule 3 national public entity listed in terms of the Public Finance Management Act.

(4) After consultation with the relevant authorities, the Agency must establish satellite branches in every province, metropolitan municipality and district municipality in accordance with this Chapter.

Objectives of Agency

91B. The objectives of the Agency are to—

- (a) support, promote and assist with the development of the co-operatives;
- (b) provide financial and non-financial assistance to the co-operatives to enable the development of co-operatives;
- (c) provide business support services, which amongst others, include pre-registration support, business plan development, mentorship and after-care to co-operatives, as well as access to market services to the co-operatives;
- (d) provide technical and management training to the co-operatives;
- (e) assist the national registrar of co-operatives with the registration function and verification of information provided as well as confirmation of all registered co-operatives;

- (f) assist the national registrar of co-operatives with the function of monitoring and continuously updating the database of registered co-operatives;
- (g) assist co-operatives to fully comply with the compliance requirements of this Act;
- (h) provide access to information regarding all products, programmes and services available to co-operatives;
- (i) raise awareness in connection with and research into any matter affecting the effective, efficient and sustainable functioning of the co-operatives and the co-operatives organised sector;
- (j) monitor trends and patterns in the development of the co-operatives and formulate reports on them;
- (k) provide the necessary support within the Agency's capacity to enable individual co-operatives to become and remain operational; and
- (l) refer information on co-operatives that the Agency has supported in accordance with paragraph (k), to the Tribunal in the event that such support was not successful.

Functions of Agency

- 91C.** (1) The Agency, in order to achieve its objectives—
- (a) must establish competencies and capabilities in its operations including the following functional areas—
 - (i) non-financial support or co-operative business support services;
 - (ii) financial support services;
 - (iii) research and co-operative awareness;
 - (iv) credit ratings of co-operative;
 - (v) governance, co-operative and technical training and promotion; and
 - (vi) co-operative information and shared support services;
 - (b) promote, and provide support to co-operative apex organisations (only limited to non-financial support), tertiary co-operatives, secondary co-operatives and primary co-operatives;
 - (c) establish, manage and administer the Co-operative Development Fund aimed at providing financial support products to all forms of co-operatives except financial co-operatives;
 - (d) establish partnerships with community development workers, community development practitioners, community based organisations, non-governmental organisations and co-operative associations in order to deliver support services to the co-operatives;
 - (e) assist, and establish partnerships with, metropolitan municipalities, district municipalities, local municipalities and Local Houses of Traditional Leaders in respect of the implementation of the co-operative information and shared support services centres aimed at providing relevant information services to co-operatives at local level;
 - (f) carry out, or cause to be carried out, any investigation that it deems necessary or as a result of a complaint received;
 - (g) consider such recommendations, suggestions and requests concerning the co-operatives as it may receive from the Minister or any relevant source; and
 - (h) conduct or cause to be conducted, such research as it may deem necessary or as requested by the Minister.
- (2) The Agency must—

- (a) participate in the activities of international bodies whose main purpose is to develop, promote and support co-operatives;
- (b) assist co-operatives to comply with the requirements of this Act for submitting financial statements to the registrar of co-operatives for each and every financial year;
- (c) encourage growth of category A primary co-operatives and category B primary co-operatives by providing the necessary support to enable said co-operatives to comply with the auditing and accounting requirements provided for in this Act;
- (d) in consultation with the Minister, take any measure it considers necessary for the proper exercise of its powers, performance of its functions and carrying out of its duties in order to achieve the objectives of this Act; and
- (e) where applicable, co-ordinate with other agencies in support of the co-operatives.

General powers of Agency

91E. The Agency may—

- (a) determine its own staff establishment and may appoint a managing director, subject to the approval of the Minister and employees in posts on the staff establishment on such conditions, including the remuneration and allowances, as it may determine;
 - (b) in consultation with the Minister, determine the remuneration and allowances payable to its staff members or the members of any committee of the Agency;
 - (c) collect fees and invest funds;
 - (d) finance publications;
 - (e) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective and efficient exercise of its powers, performance of its functions and carrying out of its duties;
 - (f) enter into and decide upon the manner in which agreements must be entered into;
 - (g) obtain the services of any person, including any organ of state or institution, to perform any specific act or function;
 - (h) determine the location of its head office;
 - (i) open and operate its own bank accounts;
 - (j) institute or defend any legal action in its own name
 - (k) develop its own policies and procedures to effectively perform its functions;
- and
- (l) generally do anything that is incidental to the performance or exercise of any of its functions or powers.

Reporting by Agency

91F. (1) The Agency must annually submit to the Minister—

- (a) a report on the progress realised in respect of the implementation of its objectives, the exercise of its powers, the performance of its functions and the carrying out of its duties as prescribed in this Act;
- (b) any report as may be requested by the Minister or the ministerial representative on the Board;

(c) the financial status report of the Agency; and

(d) any other matter relating to co-operative development.

(2) The Minister must table the report referred to in subsection (1) in Parliament within 30 days after receipt thereof if Parliament is in session or if Parliament is not in session, within 30 days from the date of commencement of its next session.

(3) The Chief Directorate: Co-operatives in partnership with the Agency, must submit to the Minister a detailed—

(a) review report on the national status of the co-operatives, once every three years; and

(b) major review report on the national status of the co-operatives' organised sector, once every 10 years.

Part 2 **Governance of Agency**

Board of Agency

91G. (1) There is hereby established a Board of the Agency.

(2) The Board is responsible for the management and control of the affairs of the Agency.

(3) The Board is the accounting authority of the Agency as contemplated in the Public Finance Management Act.

Appointment of Board members

91H. (1) The Board consists of not less than 10 but not more than 20 non-executive members, of which two members are executive directors, appointed by the Minister.

(2) The Minister must appoint competent persons to effectively manage and guide the activities of the Agency based on their knowledge and experience.

(3) When making the appointments, the Minister must take into consideration, amongst other factors—

(a) the need for transparency and representivity within the broader demographics of the South African population;

(b) the need for the co-operatives organised sector, labour, civil society, government, business, youth, disabled persons, and women to be represented;

(c) the availability of the persons concerned to serve as members of the Board; and

(d) any nominations received in terms of subsection (5).

(4) The managing director of the Agency is an ex officio member of the Board without voting rights.

(5) (a) The Minister must invite nominations from members of the public for the appointment of the first Board of the Agency following the commencement of this Act.

(b) Once the first Board has been appointed in terms of paragraph (a), before the Minister makes the appointment, the Agency must, by

notice in the *Gazette* and in any national newspaper, invite nominations from members of the public.

(6) (a) The Minister may appoint an alternate member for every member of the Board and such an alternate member may attend and take part in all proceedings at any meeting of the Board whenever the member for whom he or she has been appointed as an alternate is absent from that meeting.

(b) The provisions of sections 91I and 91J apply, with the necessary changes, to alternate members.

(7) (a) The Minister appoints the chairperson and the deputy chairperson from among the members of the Agency appointed under subsection (2).

(b) This chairperson and the deputy chairperson are executive directors referred to in subsection (1).

(8) The deputy chairperson must act as chairperson if the chairperson is absent or for any other reason unable to exercise his or her powers or perform his or her functions, in which case the deputy chairperson must exercise and perform such powers, and functions of the chairperson.

Terms of office of members of Board

91I. (1) A member of the Board appointed in terms of section 91H holds office for such a period as the Minister may determine at the time of his or her appointment, but not exceeding a three year term.

(2) A member of the Board may be reappointed after the expiry of his or her term, but may not serve more than two consecutive terms of office.

(3) Notwithstanding subsection (1), subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may, by notice in the *Gazette* and after consultation with the Board, terminate the term of office of a member of the Board—

(a) if the member has repeatedly failed to perform his or her functions efficiently;

(b) if the member, either through illness or for any other reasons, is unable to perform the functions of office effectively; or

(c) if the member whilst holding office, has failed to comply with or contravened, any law regulating the conduct of members, including any applicable Code.

(4) Subject to the Promotion of Administrative of Justice Act, 2000 (Act No. 3 of 2000), the Minister may dissolve the Board if the Board fails to perform its functions efficiently and effectively.

(5) (a) When the Minister dissolves the Board in terms of subsection (4), the Minister must appoint an interim body for the continued governance and control of the affairs of the Agency on such conditions as the Minister may determine, until a new Board is appointed in terms of paragraph (b).

(b) The Minister must appoint new members of the Board in terms of section 91G within three months of the dissolution of the Board.

Disqualification from membership and vacation of office

91J. (1) A person may not be appointed as a member of the Board if that person—

(a) is not a South African citizen;

(b) is not permanently resident in the Republic;

- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) within the previous 10 years has been or is convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty;
- (f) has been convicted of any offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect and sentenced to imprisonment without the option of a fine; or
- (g) has, as a result of improper conduct, been removed from an office of trust.

(2) The membership of a member of the Board ceases if he or she—

- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the Board;
- (b) resigns by written notice addressed to the Board and the Minister;
- (c) is declared by the High Court to be of unsound mind, mentally ill or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
- (d) has, without the leave of the Board, been absent from more than two consecutive meetings of the Board; or
- (e) ceases to be permanently resident in the Republic.

(3) (a) If a member of the Board dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint a person to fill the vacancy for the unexpired period for which that member was appointed.

(b) Such appointment must be made within 60 days from the date on which the vacancy occurred.

Meetings

91K. (1) The Board meets as often as circumstances require, but at least four times every year, at such time and place as the Board may determine.

(2) The chairperson may at any time convene a special meeting of the Board at a time and place determined by the chairperson.

(3) The chairperson must convene a special meeting of the Board within three weeks of receipt of the written request signed by not less than three members of the Board to convene such meeting, and the meeting must take place at a time and place determined by the chairperson.

(4) A majority of the members of the Board constitutes a quorum at a meeting.

(5) (a) Every member of the Board, including the chairperson, has one vote.

(b) In the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.

Decisions

91L. (1) A decision of the majority of members present at a duly constituted meeting is a decision of the Board of the Agency.

- (2) No decision taken by or act performed under the authority of the Board is invalid only by reason of—
- (a) a vacancy on the Board; or
 - (b) the fact that any person who did not qualify to sit as a member of the Board participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present and acted at the time followed the required procedure for decisions.

Functions of Board

- 91M. The Board, in addition to the functions provided for in the Public Finance Management Act must—
- (a) provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the Agency;
 - (b) determine the operational policy of the Agency;
 - (c) comply with all applicable legislation and agreements;
 - (d) communicate openly and promptly with the Minister and any ministerial representatives;
 - (e) deal with the Minister and ministerial representatives in good faith;
 - (f) at all times act in accordance with the principles of corporate governance;
and
 - (g) provide information to the Advisory Council if so requested.

Ministerial representatives

- 91N. (1) The Minister may designate one or more officials of the Department as his or her representatives to the Board.
- (2) Ministerial representatives designated in terms of subsection (1) represent the Minister as participating observers at meetings of the Board.
- (3) The Minister or his or her designated representative or representatives may at any time call or convene a meeting of the Board in order for the Board to give account for its actions.
- (4) (a) A ministerial representative must represent the Minister diligently at meetings of and with the Board, without consideration of personal interest or gain and must keep the Minister informed of what transpired at such meetings.
- (b) A ministerial representative must act in accordance with the instructions of the Minister and may be reimbursed by the Minister for expenses in connection with his or her duties as ministerial representative, but may not receive any additional compensation or salary for such duties.

Investigations

- 91O. (1) The Minister may at any time request the Board to investigate any matter at the Board's own cost or against full or partial payment.
- (2) The Minister may at any time investigate the affairs or financial status of the Agency and may recover from the Agency reasonable costs incurred as a result of the investigation.

Managing director

91P. (1) The Board must appoint a suitably qualified person as the managing director of the Agency.

(2) The managing director must—

- (a) ensure the proper day to day management and functioning of the Agency in accordance with this Act and the Public Finance Management Act;
- (b) account and report to the Board on the functioning of the Agency; and
- (c) complete a report on the activities of the Agency for each financial year in accordance with the Public Finance Management Act and submit the report to the board for approval.

(3) The managing director must enter into a performance agreement with the Board on acceptance of his or her appointment, which agreement must include—

- (a) measurable performance objectives and targets that must be met;
- (b) specified time-frames within which those performance objectives and targets must be met;
- (c) standards and procedures for evaluating performance and intervals for evaluation; and
- (d) the consequences of substandard performance.

(4) The managing director holds office for an agreed term not exceeding five years and may be reappointed upon the expiry of that term of office for a total period not exceeding two consecutive terms.

Appointment of staff

91Q. (1) The managing director must—

- (a) in consultation with the Board, appoint managers for the Agency which appointments must, at least, include a chief operations officer and a chief financial officer; and
- (b) appoint other staff of the Agency to enable the Agency to perform its functions.

(2) The Board, in consultation with the Minister and after consultation with the Minister of Finance, must approve the remuneration, allowances, benefits and other terms and conditions of appointment of all the members of staff of the Agency.

Delegation by Board

91R. (1) The Board may delegate in writing, certain powers, except the power to prescribe rules to the committee of the Board, the managing director and any other employee of the Agency.

(2) A delegation in terms of subsection (1)—

- (a) is subject to such limitations and conditions as the Board may impose; and
- (b) does not divest the Board of the delegated power.

(3) The Board may confirm, vary or revoke any decision taken by a committee of the Board, the managing director or any other employee of the Agency as a result of a delegation in terms of subsection (1).

Establishment of committees

91S. (1) The Board may establish committees to assist the Board in the performance of its functions and it may at any time dissolve or reconstitute any such committee.

(2) (a) A committee consists of as many members as the Board considers necessary.

(b) The Board, taking into account, amongst other factors, the need for transparency and representivity within the broader demographics of the South African population, may appoint any person as a member of a committee, on such terms and conditions as the Board may determine.

(c) The Board may terminate the membership of a member of a committee if—

- (i) the member has repeatedly failed to perform his or her functions efficiently;
- (ii) the member, either through illness or for any other reason, is unable to perform the functions of the committee effectively; or
- (iii) the member has failed to comply with the code of conduct regulating the conduct of board members.

(d) If the Board does not designate a chairperson for a committee the committee may elect a chairperson from among its members.

(3) The Board must provide funding to its committees in such a way that the committees are able to perform their functions effectively.

(4) Sections 91K and 91L relating to meetings and decisions of the Board, respectively, apply with the necessary changes required by the context in respect of any committee.

Part 3

Funding and financial management of Agency

Funding of Agency

91T. (1) The Agency is funded by—

- (a) moneys appropriated for that purpose by Parliament;
- (b) interest on investments by the Agency;
- (c) all other moneys which may accrue to the Agency from any other legal source; and
- (d) donations and contributions lawfully received by the Agency.

Annual budget and strategic plan

91U. (1) The annual budget and strategic plan of the Agency must be submitted to the Minister in terms of the Public Finance Management Act.

Financial management, financial statements and annual report

91V. The financial management of the Agency as well as the preparation and submission of financial statements and annual reports must comply with the provisions of the Public Finance Management Act.

Part 4***National government oversight and executive authority*****Executive authority**

91W. (1) The Minister is the executive authority for the Agency in terms of the Public Finance Management Act and the Agency is accountable to the Minister.

(2) The Minister must—

- (a) ensure that the Agency complies with this Act, the Public Finance Management Act and any other applicable legislation;
- (b) ensure that the Agency is managed responsibly and transparently;
- (c) ensure that the Agency meets its contractual and other obligations related to the performance of its functions;
- (d) after consultation with the Agency, provide guidelines for communication between the Minister and the Agency; and
- (e) monitor and annually review the performance of the Agency.

Information

91X. The Agency must provide the Minister or the ministerial representative with access to any information as may be reasonably requested.

Dissolution of Agency

91Y. (1) The Agency may not be placed under judicial management or liquidation or dissolved except on the authority or dissolution by an Act of Parliament.

CHAPTER 12B NATIONAL CO-OPERATIVE TRAINING ACADEMY

Establishment and functions of National Co-operative Training Academy

91Z. (1) The National Co-operative Training Academy is hereby established.

(2) The state must provide the necessary resources and facilities to enable the immediate establishment of the National Co-operative Training Academy by ensuring the availability of the funds for this purpose.

(3) The National Co-operative Training Academy operates as a Entity according to the PFMA and shall have powers to establish its own policies and procedures to effectively perform its functions.

- (4) The National Co-operative Training Academy—
- (a) must provide and direct training for persons involved in the activities of the co-operatives;
 - (b) must manage and control the standards of learning and co-operatives training contents by developing a curriculum for co-operative education and training
 - (c) must register and accredit independent co-operative trainers;
 - (d) may conduct examinations or tests
 - (e) may issue Further Education Training certificates and diplomas to persons who have passed such examinations or tests;
 - (f) may issue higher diplomas and degrees to persons who have passed such examinations or tests: Provided that the legislation referred to in section 91FF(2) has been complied with.
 - (g) and the National Co-operative Training Academy must register as a higher education institution in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), and must be approved by the Minister responsible for higher education prior to the offering of any such diploma or degree;
 - (h) must deliver learning contents to service providers through manuals or trainings;
 - (i) must conduct research on co-operatives in partnership with higher education institutions; and
 - (j) must be the intellectual nerve centre in co-operative education and training.

(5) The head office of the National Co-operative Training Academy must be established in the Province of Gauteng.

Education and Training Fund

91AA. (1) The National Co-operative Training Academy has an Education and Training Fund, which consists of—

- (a) all moneys, which, immediately prior to the commencement of this Act were moneys defrayed for education and training in respect of co-operatives by the Department;
- (b) moneys appropriated by Parliament and transferred to the Department for the promotion of education and training contemplated in this Act;
- (c) international and local donor funding; and

(d) any other moneys accruing to the Education and Training Fund in terms of this Act or from any other source.

(2) The Education and Training Fund must be administered by the Chief Executive Officer.

(3) Monies in the Education and Training Fund and money or other property donated or bequeathed to the Education and Training Fund must be utilised to promote education and training under this Act.

(4) The Chief Executive Officer may invest money in the Education and Training Fund, which is not required for immediate use, in such a manner as the Minister may approve with the concurrence of the Minister of Finance.

(5) (a) The end of the financial year of the Education and Training Fund is on the 31st of March in each year.

(b) The Chief Executive Officer must—

(i) keep records of moneys received by and disbursements made from, the Education and Training Fund and of its assets, liabilities and financial transactions; and

(ii) at the end of each financial year, prepare annual financial statements reflecting moneys received by and disbursements made from, the Education and Training Fund and its assets and liabilities.

(c) The records and annual financial statements must be audited annually by the Auditor-General in accordance with the applicable law.

(7) (a) State funding will be reduced annually during the first five years after the establishment of the National Co-operative Training Academy with the view of it becoming self-sufficient.

(b) State must establish systems that would ensure that funding after the five (5) year period contemplated in this subsection will be self-generated by the National Co-operative Training Academy.

(c) After a period of five years, the National Co-operative Training Academy must be fully owned and managed by the co-operatives' organised as a collective with objectives to facilitate, support, promote the development of co-operatives and their existence as an economic sector.

Board of directors of National Co-operative Training Academy

91BB. (1) The affairs of the National Co-operative Training Academy must be governed by a board of directors consisting of representatives from the following departments and entities:

(a) the Department;

(b) the Department of Higher Education and Training;

(c) the Department of Agriculture, Forestry and Fisheries;

(d) the Department of Social Development;

(e) the Department of Labour;

(f) all major donors;

(g) the International Labour Organisation;

(h) the International Co-operative Alliance;

(i) the co-operative movement: Provided that at least 50%+1 of the members of the Board must be representatives identified by the Advisory Council; and

(j) other relevant stakeholders as may be identified by the Advisory Council.

(2) Each Minister from the Departments mentioned in subsection (1) must designate an officer to be the member of the board of directors.

Structure of National Co-operative Training Academy

91CC. (1) The National Co-operative Training Academy consists of the following centres:

- (a) the Centre for Co-operative Education;
- (b) the Centre for Management Education; and
- (c) the Centre for Research, Consultancy and Publications.

(2) The Centre for Co-operative Education must champion a national mass literacy and co-operative education campaign among emerging co-operatives in rural and urban areas.

(3) The Centre for Management Education must—

- (a) offer executive and short introductory courses; and
- (b) offer junior and senior certificates, diplomas and undergraduate degrees: Provided that such certificates, diplomas and undergraduate degrees are accredited by the relevant accreditation body in accordance with relevant legislation and that the National Co-operative Training Academy is registered and collaborates with further education and training colleges or higher education institutions, as the case may be.

(4) The Centre for Research, Consultancy and Publications must—

- (a) serve as the intellectual centre of excellence in co-operative education;
- (b) offer post-doctoral degrees by research: Provided that such degrees are accredited by the relevant accreditation body in accordance with relevant legislation and that the National Co-operative Training Academy is registered and collaborates with other higher education institutions; and
- (c) commission text books and other publications on co-operatives;

(5) The Information and Communication Technology Unit forms part of the Centre for Research, Consultancy and Publications and must—

- (a) store copies of all co-operatives study material; and
- (b) support the use of modern technology in distance learning and extension services.

(6) In addition to the centres established in terms of subsection (1), the National Co-operative Training Academy must in consultation with the relevant Member of the Executive Council and with the approval of the Department of Higher Education and Training, establish Provincial Co-operative Training Academies, with teachers, trainers and officers at provincial and district level to promote, represent and provide services on behalf of the National Co-operative Training Academy.

(7) Every Provincial Co-operative Training Academy has its own Board which reports and is accountable, to the Board of the National Co-operative Training Academy.

Appointment of chief executive officer and other staff

91DD. (1) The Board of directors contemplated in section 91BB must—

- (a) appoint a suitably academically qualified person as the chief executive officer of the National Co-operative Training Academy by inviting nominations or applications in the media through publishing an advertisement; and
- (b) in consultation with the chief executive officer appoint—

- (i) highly qualified and experienced professional and academic staff to support the chief executive officer of the National Co-operative Training Academy;
 - (ii) managers for the Academy which appointments must, at least, include a chief operations officer and a chief financial officer; and
 - (iii) accredited service providers to provide co-operative training and management training;
 - (c) in consultation with the Minister, approve the remuneration, allowances, benefits and other terms and conditions of appointment of all members of staff of the Academy
- (2) The Board may appoint, in consultation with the chief executive officer, any other staff to further the objectives of the National Co-operative Training Academy.

Annual report

91EE. The chief executive officer must, at the end of each financial year, submit the annual report of the Auditor-General and the annual report of the National Co-operative Training Academy, compiled in accordance with the Public Finance Management Act to the Minister and the Portfolio Committee on Trade and Industry for consideration.

Relationship with higher learning institutions, certification and accreditation

91FF. (1) The National Co-operative Training Academy may collaborate with any institution of higher learning, in the Republic or elsewhere, to achieve its objectives.

(2) The accreditation and recognition of the National Co-operative Training Academy's qualifications must be done in accordance with the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), the Higher Education, 1997 (Act No. 101 of 1997), and the Education and Training Act, 1979 (Act No. 90 of 1979).

(3) The Department must consult the Department of Higher Education and Training on all matters affecting the National Co-operative Training Academy and the Provincial Co-operative Training Academies.

CHAPTER 12C CO-OPERATIVES TRIBUNAL

Establishment, legal status and composition of Co-operatives Tribunal

91GG.(1) The Co-operatives Tribunal is hereby established as a juristic person which—

- (a) has jurisdiction throughout the Republic;
- (b) is independent and subject to the Constitution of the Republic of South Africa, 1996, Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), laws pertaining to Tribunals and this Act;
- (c) must exercise its powers and perform its functions in accordance with this Act; and

(d) must exercise its powers and perform its functions impartially, without fear, favour or prejudice and in as transparent a manner as is appropriate having regard to the nature of the specific function.

(2) Each organ of state must assist the Tribunal to maintain its independence and impartiality and to perform its functions effectively.

(3) In exercising its powers and performing its functions, the Tribunal may—

(a) have regard to international developments in the field of co-operative law;

(b) consult any person, organisation or institution with regard to any matter' and

(c) develop its own policies and procedures to effectively perform its functions;

(4) The Tribunal consists of a chairperson and not less than 10 other women and men appointed by the Minister, on a full or part-time basis.

Appointment of Co-operatives Tribunal

91HH. (1) The Minister must—

(a) appoint the chairperson and other members of the Tribunal; and

(b) appoint to fill any vacancy on the Tribunal.

(2) A person may not be—

(a) appointed as chairperson or member of the Tribunal unless that person satisfies the requirements, with the necessary changes required by the context of section 91J; or

(b) reappointed to a second term as chairperson of the Tribunal;

(3) The Tribunal must comprise persons with suitable qualifications and experience in economics, law, co-operative industry or public affairs.

(4) The Minister must designate a member of the Tribunal as deputy chairperson of the Tribunal.

(5) The deputy chairperson performs the functions of chairperson whenever—

(a) the office of chairperson is vacant; or

(b) the chairperson is for any other reason temporarily unable to perform those functions.

Functions of Co-operatives Tribunal

91II. The Tribunal or member of the Tribunal acting in accordance with this Act, may—

(a) adjudicate in relation to any application made in terms of this Act, and make any order provided for in this Act in respect of such an application;

(b) assist in respect to conflict or dispute resolution as directed by the Minister, requested or applied for by the Advisory Council, supervisory committee or member of a co-operative only after all internal conflict-resolution mechanisms have been exhausted. Provided that guidelines for development of internal conflict-resolution mechanisms will be published in the Government Gazette.

(c) designate or appoint inspectors or investigators to carry out inspections or investigations as directed by the Minister or requested by the registrar of co-operatives or committee of a co-operative or a member of a co-operative;

- (d) assist with respect to the process, reference and processing of the requested dissolution, winding up or liquidation of a co-operative either by the directive from the Minister or written request submitted by such co-operative or creditors of such co-operative directly to the Tribunal;
- (e) assist with the enforcement and full compliance of this Act;
- (f) assist the registrar of co-operatives in maintaining or keeping up to date the co-operative database or registration database as well as enforcing compliance with this Act by co-operatives to submit financial information as specified;
- (g) provide technical support in respect of any matter pertaining to a co-operative that has been transferred to it by the Agency in accordance with section 91B; and
- (h) refer matters pertaining to a co-operative that has been transferred to it by the Agency for judicial management in accordance with section 77 and Schedule 1B.

91JJ. The Tribunal or member of the Tribunal acting in accordance with this Act, may not—

- (a) Adjudicate on matters related to the Co-operative Banks Appeals Board or any other body with similar powers.
- (b) Receive matters referred to it by the Co-operative Banks Appeals Board or any other body with similar powers.

Appointment and composition of investigators, inspectors or inspectorate

91KK. (1) The Tribunal—

- (a) may appoint any suitable employee of the Tribunal or any other suitable person employed by the state, as the case may be, as inspectors or investigators; and
- (b) must issue each inspector or investigator with a certificate in the prescribed form stating that the person has been appointed as an inspector or investigator in terms of this Act.

(2) When an inspector or investigator performs any function of an inspector or investigator in terms of this Act, the inspector or investigator —

- (a) must be in possession of a certificate of appointment issued to that person in terms of subsection (1); and
- (b) must show that certificate to any person who—
 - (i) is affected by the inspector's or investigator's actions in terms of this Act; and
 - (ii) requests to see the certificate.

Adjudication of hearings before Tribunal

91LL. (1) The Tribunal—

- (a) must conduct its adjudication proceedings contemplated in this Act expeditiously and in accordance with the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000); and
- (b) may conduct those proceedings informally at a place determined by the Tribunal.

(2) If adjudication proceedings before the Tribunal are open to the public, the Tribunal may exclude members of the public or specific persons or categories of persons, from attending the proceedings—

- (a) if in the opinion of the Tribunal, the evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
- (b) if the proper conduct of the hearing requires it; or
- (c) for any other reason that would be justifiable in civil proceedings in a High Court.

(3) At the conclusion of adjudication proceedings, the presiding member must issue a decision together with written reasons for the decision.

Right to participate in hearing

91MM. The following persons may participate in an adjudication hearing contemplated in this Chapter, in person or through a representative and may put questions to witnesses and inspect any books, documents or items presented at the hearing—

- (a) the Agency;
- (b) the Commission;
- (c) the applicant or complainant; and
- (d) any other person who has a material interest in the hearing, unless that interest is adequately represented by another participant.

Powers of Tribunal in adjudicating hearing

91NN. The Tribunal may—

- (a) direct or summon any person to appear at any specified reasonable time and place;
- (b) question any person under oath or affirmation;
- (c) summon or order any person—
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; and
- (d) give directions prohibiting or restricting the publication of any evidence given to the Tribunal.

Rules of procedure

91OO. Subject to the requirements of the applicable sections of this Act, the Tribunal may determine any procedural matter for an adjudication hearing, with due regard to the circumstances of the case and in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

Witnesses

91PP. (1) Every person giving evidence before the Tribunal at an adjudication hearing must answer any relevant question subject to subsection (2).

(2) The law regarding a witness' privilege in a criminal case in a court of law applies equally to a person who provides information during an adjudication hearing.

(3) During an adjudication hearing, the Tribunal may order a person to answer any question or to produce any article or document, subject to subsections (2).

Appointment, composition and functions of Co-operative Conflict Resolution Commission

91QQ. (1) The Tribunal must constitute a Co-operative Conflict Resolution Commission as and when required, which must be dissolved at the discretion of the Tribunal.

(2) The Commission must consist of not less than five members.

(3) The chairperson of the Tribunal may refer any matter that has been submitted to the Tribunal, to the Commission for mediation and resolution if the chairperson is of the view that the interests of justice, the co-operative concerned and the members of the co-operative concerned would be served by such referral.

(4) Any party who does not accept the finding of the Commission may, within a period of 30 days after such finding, request in writing that the matter and the finding be referred to the Tribunal for consideration and final decision.

(5) Any party who does not accept the decision of the Tribunal may, within a period of 60 days after such decision, appeal to any Court.

Right to information

91RR. (1) The Tribunal, as well as an investigator, inspector or inspectorate as contemplated in section 91JJ, has the right of access at all times to all records, books and documents of the co-operative and is entitled to require from the directors or officers of the co-operative any information and explanations necessary for the performance of the Tribunal's, investigator's, inspector's or inspectorate's functions.

(2) A co-operative, director or officer who fails to comply with subsection (1) is guilty of an offence.

Summons

91SS. (1) At any time during an investigation being conducted, the Tribunal or the Commission, as the case may be, may issue a summons to any person who is believed to be able to furnish any information on the subject of the investigation or to have possession or control of any book, document or other object that has a bearing on that subject to—

(a) appear before the Tribunal, Commission, an inspector or investigator, to be questioned at a time and place specified in the summons; or
(b) deliver or produce to the Tribunal, Commission, an inspector or investigator, any book, document or other object referred to in paragraph (a), at a time and place specified in the summons.

(2) A summons contemplated in subsection (1)—

- (a) must be signed by the Chairperson of the Tribunal or Commission, as the case may be, or by an employee of the Tribunal or Commission designated by the Chairperson concerned; and
- (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrates' court.

(3) An inspector or investigator before whom a person is summoned to appear or to whom a person is required to deliver any book, document or other object, may—

- (a) interrogate and administer an oath to or accept an affirmation from, the person named in the summons; and
- (b) retain any such book, document or other object for examination, for a period not exceeding two months or such longer period as the court, on good cause shown, may allow.

(4) A person questioned by the Tribunal, Commission, an inspector or investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to the Tribunal, Commission, an inspector or investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 92(2)(a) and only to the extent that the answer or statement is relevant to prove the offence charged.

Authority to enter and search under warrant

91TT. (1) A judge of the High Court or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate, if, from information on oath or affirmation, there are reasonable grounds to believe that—

- (a) a contravention of this Act has taken place, is taking place or is likely to take place on or in those premises; or
- (b) that anything connected with an investigation in terms of this Act is in the possession of or under the control of, a person who is in the premises.

(2) A warrant to enter and search may be issued at any time and must specifically—

- (a) identify the premises that may be entered and searched; and
- (b) authorise an investigator, inspector or a police officer to enter and search the premises to question any person or inspect any books, documents or items found in the searched premises.

(3) A warrant to enter and search is valid until one of the following events occurs—

- (a) the warrant is executed;
- (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for issuing it has lapsed; or

(d) the expiry of one month after the date it was issued.

(4) A warrant to enter and search may be executed only during the day, unless the judge or magistrate who issued it, authorises that it may be executed at night at a time that is reasonable in the circumstances.

(5) A person authorised by a warrant issued in terms of subsection (2) may enter and search premises named in that warrant.

(6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—

(a) if the owner, or person in control, of the premises to be searched is present—

(i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and

(ii) hand a copy of the warrant to that person or to the person named in it;

or

(b) if none of the persons contemplated in paragraph (a) are present, affix a copy of the warrant to the premises in a prominent and visible place and must return within a reasonable time to check if the persons contemplated in paragraph (a) have not returned or take any necessary and lawful steps to secure the presence of such a person.

Powers to enter and search

91UU. (1) A person who is authorised under section 91SS to enter and search premises may—

(a) enter the premises;

(b) search the premises;

(c) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an article or document that has a bearing on the investigation;

(d) examine any article or document that is on or in those premises that has a bearing on the investigation;

(e) request information about any article or document from the owner, or person in control, of the premises or from any person who has control of the article or document or from any other person who may have the information;

(f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

(g) use any computer system on the premises or require assistance of any person on the premises to use that computer system, to—

(i) search any data contained in or available to that computer system; or

(ii) reproduce any record from that data;

(h) seize any output from that computer for examination and copying; and

(i) attach and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation.

(2) Section 91OO apply to—

(a) any person questioned by an inspector or police officer in terms of this section; and

(b) to any answer given or statement made to an inspector or police officer in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 91RR may be accompanied and assisted by a police officer.

Conduct of entry and search

91VV. (1) A person who enters and searches any premises under section 91SS and 91TT must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 91UU(1)(c), only a female inspector or police officer may search a female person and only a male inspector or police officer may search a male person.

(3) A person who enters and searches premises under section 91SS, before questioning anyone—

(a) must advise that person of the right to be assisted at the time by an advocate or attorney; and

(b) allow that person reasonable time to exercise the right contemplated in paragraph (a).

(4) A person who removes anything from premises being searched must—

(a) issue a receipt for it to the owner or person in control, of the premises; and

(b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) Subject to subsection (6) during a search, a person may only refuse to permit the inspection or removal of an article or document on the ground that it contains privileged information.

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

(7) If necessary and proportionate to the act justifying the use of reasonable force, before using such force, a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

(8) The Commission may compensate anyone who suffers damage because of a forced entry during a search.

Compromise between co-operative and creditors

91WW. (1) This section applies to every co-operative.

(2) The board of a co-operative or the liquidator of such a co-operative if it is being wound up, may propose an arrangement or a compromise of its financial obligations to all its creditors or to all the members of any class of its creditors, by delivering a copy of the proposal and notice of meeting to consider the proposal, to—

(a) every creditor of the co-operative or every member of the relevant class of creditors whose name or address is known to or can reasonably be obtained by the co-operative; and

(b) the Tribunal.

(3) A proposal contemplated in subsection (2) must contain all the information reasonably required to facilitate creditors in deciding whether or not to accept or reject the proposal and must be divided into three Parts, as follows:

- (a) Part A - Background, which must include at least—
- (i) a complete list of all the material assets of the co-operative and an indication as to which assets are held as security by creditors as of the date of the proposal;
 - (ii) a complete list of the creditors of the co-operative as of the date of the proposal, an indication as to which creditors would qualify as secured, statutory preferent or concurrent in terms of the laws of insolvency and an indication which of the creditors have proved their claims;
 - (iii) the probable benefits, if any, that would be received by creditors, in their specific classes, if the co-operative were to be placed in liquidation; and
 - (iv) whether the proposal includes a proposal made informally by a creditor of the co-operative.
- (b) Part B - Proposals, which must include at least—
- (i) the nature and duration of any proposed debt moratorium;
 - (ii) the extent to which the co-operative is to be released from the payment of its debts and the extent to which any debt is proposed to be converted to equity in the co-operative or another co-operative;
 - (iii) the treatment of contracts and ongoing role of the co-operative;
 - (iv) the property of the co-operative that is proposed to be available to pay creditors' claims;
 - (v) the order of preference in which the proceeds of property of the co-operative will be applied to pay creditors if the proposal is adopted; and
 - (vi) the benefits of adopting the proposal as opposed to the benefits that would be received by creditors if the co-operative were to be placed in liquidation.
- (c) Part C - Assumptions and conditions, which must include at least—
- (i) a statement of the conditions that must be satisfied, if any, for the proposal to—
 - (aa) come into operation; and
 - (bb) be fully implemented;
 - (ii) the effect, if any, that the proposal contemplates on the number of employees and their terms and conditions of employment; and
 - (iii) a projected—
 - (aa) balance sheet for the co-operative; and
 - (bb) statement of envisaged income and expenses for the ensuing three years,prepared on the assumption that the proposal is accepted.
- (4) The projected balance sheet and statement required by subsection (3)(c)(iii)—
- (a) must include a notice of any significant assumptions on which the projections are based; and
 - (b) may include alternative projections based on varying assumptions and contingencies.
- (5) A proposal must conclude with a certificate by an authorised director or the officer of the co-operative stating that any—

- (a) factual information provided appears to be accurate, complete and up to the date; and
(b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.

(6) A proposal contemplated in this section will have been adopted by the creditors of the co-operative or the members of a relevant class of creditors, if it is supported by a majority in number, representing at least 75% in value of the creditors or class, as the case may be, present and voting in person or by proxy, at a meeting called for that purpose.

(7) If a proposal is adopted as contemplated in subsection (6)–

- (a) the co-operative may apply to the court for an order approving the proposal; and
(b) the court, on an application in terms of paragraph (a) may approve the compromise as set out in the adopted proposal, if it considers it just and equitable to do so, having regard to–
(i) the number of creditors of any affected class of creditors, who were present or represented at the meeting and who voted in favour of the proposal; and
(ii) in the case of a compromise in respect of a co-operative being wound up, the report as contemplated in Schedule 1A.

(8) A copy of an order of the court approving a compromise–

- (a) must be filed with the registrar by the co-operative within five working days;
(b) must be attached to each copy of the co-operative's constitution that is kept at its registered office; and
(c) is final and binding on all of the co-operative's creditors or all of members of the relevant class of creditors, as the case may be, as of the date on which it is filed.

Amendment of section 92 of Act 14 of 2005

64. Section 92 of the principal Act is hereby amended by –

- (a) the substitution for subsection (3) for the following subsection:
"(3) Any person who contravenes or who fails to comply with sections 12, 19, 21, 22, 38, [and] 39, 50, 53 and item 12 of Schedule 1A is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months, or to both a fine and such imprisonment."; and
(b) the addition of the following subsection:
"(4) Despite anything to the contrary contained in any other law, a Magistrate Court has jurisdiction to impose any penalty provided for in subsection (3)."

Insertion of sections 94A and 94B in Act 14 of 2005

65. The following sections are hereby inserted in the principal Act after section 94:

"Reporting, monitoring, evaluation and assessment

94A. The Minister must, by notice in the *Gazette* and within six months after commencement of this Act, taking into account national and relevant provincial norms and standards, publish a framework—

- (a) providing for the minimum norms and standards in respect of the procedures for and the frequency of, monitoring, evaluation and assessment of—
 - (i) all structures established or recognised in accordance with this Act;
 - (ii) the status of the co-operative movement; and
 - (iii) the various categories of co-operatives contemplated in this Act and, in the case of primary co-operatives, of the levels thereof; and
 - (b) establishing the necessary mechanisms, processes, procedures and indicators required for the effective implementation thereof,
- to report on, monitor, evaluate, assess and determine the impact of the exercise of powers, the performance of functions, the execution of duties and the operational efficiency of such structures and co-operatives.

Chief Directorate: Co-operatives

94B. The entity within the Department responsible for co-operatives known as the Chief Directorate: Co-operatives must, in respect of co-operatives—

- (a) formulate, implement and update—
 - (i) a policy framework;
 - (ii) a regulatory framework; and
 - (iii) an administrative framework;
- (b) implement the framework for monitoring and evaluation as contemplated in section 94A;
- (c) report to the Council any matter that should be considered by the Council;
- (d) establish the structures contemplated in this Act and provide the Council with the financial, human, technical, training, infrastructural and other support that is necessary for its effective functioning; and
- (e) in general, administer the provisions of this Act."

Amendment of section 97 of Act 14 of 2005

- 66.** Section 97 of the principal Act is hereby amended by –
- (a) the substitution for subsection (2) for the following subsection:
 - "(2) The provisions of this Act—
 - (a) apply to a co-operative referred to in subsection (1); and
 - (b) are subject to a transitional period of two years from the date of commencement of this Act to update their constitutions in accordance with the provisions of this Act".
 - (b) the substitution for subsection (3) for the following subsection:
 - "(3) A co-operative referred to in subsection (1) must comply with the provisions of this Act from the date of commencement of this Act."
 - (c) the addition of the following subsections:
 - "(7) The Minister must, by notice in the *Gazette*, within 3 months after the commencement of the Co-operatives Amendment Act publish—
 - (a) model constitutions, model business plans, a framework for process planning; or
 - (b) other forms that he or she may consider necessary.

that may be used by co-operatives.

(8) The Minister must publish the notice contemplated in section 62(a) within 90 days after the commencement of this Act.

(9) The Minister must, before the commencement of the Co-operatives Amendment Act, appoint the chairperson and other members of the Tribunal as contemplated in section 91GG (1)."

Amendment of Item 2 of Part 1 of Schedule 1 to Act 14 of 2005

67. Item 2 of Part 1 of Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) "limited", "Ltd".

Substitution of Item 6 of Part 1 of Schedule 1 to Act 14 of 2005

68. The following item is hereby substituted for item 6 of Part 1 of Schedule 1 to the Principal Act:

"[Exclusion] Application of other legislation

6. (1) The provisions of the Share Block Control Act, 1980 (Act No. 59 of 1980)---

(a) do not apply to a housing co-operative registered in terms of this Act in respect of every individual unit owned by the housing co-operative concerned that is used by a member by means of a rental agreement; and

(b) apply to a housing co-operative registered in terms of this Act in respect of every individual unit of the housing co-operative concerned that has been transferred in ownership to a member.

(2) The provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), apply to any unit owned by the housing co-operative or transferred in ownership to a member if the provisions of the Sectional Titles Act have been complied with."

Amendment of Item 2 of Part 2 of Schedule 1 of Act 14 of 2005

69. Item 2 of Part 2 of Schedule 1 to the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(b) "limited", "Ltd"

Amendment of Item 6 of Part 2 of Schedule 1 of Act 14 of 2005

Application of labour legislation

70. The following item is hereby substituted for item 6 of Part 2 of Schedule 1 to the Principal Act:

(1) An employee of a worker co-operative, whether a member or non-member is deemed to be an employee as defined in terms of the Labour Relations Act (Act No. 66 of 1995) and Basic Conditions of Employment Act (Act No.75 of 1997).

(2) All worker co-operatives shall therefore comply with both Acts mentioned in (1) above.

(3) Despite (1) and (2) above; co-operatives have a right to apply for a variation

from the Minister of Labour or exemption from the respective bargaining council if such compliance would create legal anomalies or where it is unaffordable to the co-operative or it is inappropriate to its operations.

Amendment of Part 3 of Schedule 1 of Act 14 of 2005

71. Part 3 of Schedule 1 to the principal Act is hereby amended by the substitution for the words "financial services co-operative" and "financial services co-operatives" wherever they appear in this Part, of the following words:

"financial co-operative" or "financial co-operatives", respectively.

Insertion of item 1A in part 3 of Schedule 1 of Act 14 of 2005

72. The following item is hereby inserted in Part 3 of Schedule 1 to the principal Act after item 1:

"Name

1A. The name of a financial co-operative must include the following words:

(a) "financial co-operative" or "financial co-op"; and

(b) "limited", "Ltd", "

Substitution of item 4 of part 3 of Schedule 1 to Act 14 of 2005

73. The following item is hereby substituted for item 4 of part 3 of schedule 1 to the principal Act:

"[Medical Schemes Act] Registration in terms of Medical Schemes Act, 1998 (Act No. 131 of 1998)

4. A financial [services] co-operative providing a medical benefit to its members is required to register in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998).".

Substitution of item 5 of part 3 of Schedule 1 to Act 14 of 2005

74. The following item is hereby substituted for item 5 of part 3 of Schedule 1 to the principal Act:

"[Friendly Societies Act] Registration in terms of Friendly Societies Act, 1956 (Act No. 25 of 1956)

5. A financial [services] co-operative providing funeral benefits to its members is not required to register in terms of the Friendly Societies Act, 1956 (Act No. 25 of 1956).".

Substitution of item 6 of part 3 of Schedule 1 of Act 14 of 2005

75. The following item is hereby substituted for item 6 of Part 3 of Schedule 1 to the principal Act:

"Recommendation letter issued by regulator in terms of Banks Act, 1990 (Act No. 94 of 1990)

6A. The registrar may, in consultation with the Registrar of Banks, the Registrars of Long-term or Short-term Insurance, or the Registrar of Medical Schemes, as the case may be, direct that all co-operatives, to whom this part applies, or any category of co-operative to whom this part applies, other than a co-operative bank, must provide a recommendation letter from the regulator as contemplated in the Banks Act, 1990 (Act No. 94 of 1990), in compliance with any requirement for exemption from any provision of the Banks Act, 1990 (Act No. 94 of 1990), the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or Short-term Insurance Act, 1998 (Act No. 53 of 1998), or the Medical Schemes Act, 1998 (Act No. 131 of 1998)."

Substitution of item 8 of Part 3 of Schedule 1 to Act 14 of 2005

76. The following item is hereby substituted for item 8 of Part 3 Of Schedule 1 of the principal Act:

"Definitions

8. For the purposes of this part 'financial service' means any financial or banking service a co-operative may provide to its members, and includes the provision of long-term and short-term insurance, as envisaged in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), and the business of a medical scheme, as envisaged in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998), and funeral services, as envisaged in the Friendly Societies Act, 1956 (Act No. 25 of 1956)."

Substitution of Item 2 of Part 4 of Schedule 1 of Act 14 of 2005

77. The following item is hereby substituted for item 2 of Part 4 Schedule 1 to the principal Act:

"Name

2. (1) The name of an agricultural co-operative must comply with the provisions of section 10.

(2) The name of an agricultural co-operative must include the following words "limited" or "Ltd"."

Addition of Part 5 of Schedule 1 of Act 14 of 2005

78. The following part is hereby added in the principal Act after Part 4 of Schedule 1:

**"Part 5
Social co-operatives**

"Application of this Part

1. (1) This Part applies to social co-operatives which must comply with—
(a) the requirements contemplated in this Part; and
(b) all other relevant provisions of this Act.

Name

2. The name of a social co-operative must include the following words:
(a) "social co-operative" or "social co-op"; and
(b) "limited" "Ltd",

Requirements of constitution

3. In addition to any other requirements of this Act, the constitution of a social co-operative must specify the nature of the social service the co-operative aims to provide its members.

Surplus

4. A social co-operative may—
(a) set aside 100 percent of its surplus to an indivisible reserve; and
(b) capitalise all donations and grants,
in order to enjoy the benefits of public benefit organisations."

Termination of membership

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

(2) Before terminating the membership of a member, the board of directors must give such member—

(a) notice that termination is contemplated;
(b) written reasons for the proposed termination which, in the case of a member who has served a period of probation, must relate to the conduct or capacity of the member to carry out his or her duties, or to the operational requirements of the co-operative; and
(c) a right to be heard.

(3) A member whose membership is terminated by the board of directors has a right to appeal to a general meeting within the time limit set out in the constitution.

(4) A termination of the membership of a member by the board of directors is confirmed on appeal if the members, at a duly called general meeting, do not reverse the decision of the board of directors.

(5) If a general meeting is called to consider the appeal of a member whose membership is terminated and a quorum of members is not present, the decision of the board of directors cannot be confirmed."

Definitions

6. For the purposes of this part social co-operative means a co-operative whose main objective is to provide social services to its members such as the elderly, children and the sick.

Insertion of Schedules 1A and 1B in Act 14 of 2005

79. The following Schedules are hereby inserted in the principal Act after Schedule 1:

"SCHEDULE 1A ARRANGEMENTS IN RESPECT OF WINDING-UP OR DEREGISTRATION OF CO-OPERATIVES

Suspension of certain proceedings pending decision of application for winding-up order

1. At any time after application is made to a competent court for a co-operative to be wound up, any action for the recovery of an amount from the co-operative or in connection with an asset of the co-operative, or any execution of a judgment in any such action, may on the application of the co-operative or any other interested person be suspended by the court in which that action is under consideration or by which that judgment was given pending the decision of such application.

Provisional winding-up order

2. (1) If a court in which an application in terms of section 72 is under consideration in respect of a co-operative issues a provisional winding-up order in respect of such a co-operative it must appoint a provisional liquidator for such co-operative or direct the registrar to appoint a provisional liquidator.

(2) A provisional liquidator appointed under sub-item (1) must hold office for as long as the court considers it necessary, but not after the date of commencement of the winding-up of the co-operative in the event of the co-operative being wound up.

(3) The provisions of items 12(1), 14, 16(1), (3) and (4), 17, 18(1), and 24 must apply with the changes required by the context in respect of a provisional liquidator appointed under sub-item (1): Provided that costs referred to in item 14(2) and the remuneration referred to in item 16(1) must be paid by the co-operative concerned.

Functions of provisional liquidator

3. (1) A provisional liquidator appointed under item 2 must—
(a) assume the management of the co-operative concerned and recover and take into his or her possession all the assets of the co-operative;

- (b) continue as far as may be possible to carry out the objectives of the co-operative; and
- (c) investigate any matter the court which issued the provisional liquidation order required him or her to investigate and report to the court on his or her findings.

(2) A provisional liquidator may subject to the provisions of this Act do anything reasonably necessary for the effective performance of his or her duties and may in particular exercise any power mentioned in paragraphs (a), (b), (c), (f) and (g) of item 25(1).

(3) Unless the registrar deems it necessary in the interests of the creditors or members of the co-operative a provisional liquidator must not have the power to liquidate any assets of the co-operative.

(4) A provisional liquidator must, at the request of the registrar and within a period determined by the registrar, compile and submit to the registrar an inventory of all assets and liabilities of the co-operative as at the date of his or her appointment.

Effects of provisional winding-up order

4. During the period for which a provisional winding-up order is in force in respect of any co-operative—

- (a) the functions of the board of directors of the co-operative must be suspended save in so far as the continuation thereof has been approved by the registrar or the provisional liquidator;
- (b) no judgment in any action against the co-operative for the recovery of an amount or the delivery of any thing must be executed; and
- (c) the issue, transfer or cancellation of shares during such period in the co-operative must be void.

Commencement of winding-up

5. The winding-up of a co-operative must be deemed to commence—

- (a) in the case of a voluntary winding-up, at the time when the special resolution by the co-operative authorising the winding-up is passed;
- (b) in the case of a winding-up by an order of the court, at the time when a final order that the co-operative be wound up is issued by the court.

Effects of winding-up on status of co-operative and on board of directors

6. (1) A co-operative being wound up continues to be a juristic person, but must as from the commencement of its winding-up cease to carry out its objectives except in so far as it is necessary for the purposes of its winding-up.

(2) The functions of the board of directors of a co-operative being wound up terminate at the commencement of its winding-up except in so far as the continuation thereof has been approved by the registrar or liquidator.

Persons responsible for performance of duties of co-operatives being wound-up

7. The persons who immediately prior to the commencement of the winding-up of a co-operative hold office as a director, manager or secretary of the co-operative must jointly and severally be responsible for the performance of a duty to be performed by a co-operative in terms of this Chapter.

Effects of winding-up on legal proceedings

8. After the commencement of the winding-up of a co-operative—
- (a) no civil proceedings to which the co-operative is a party must be instituted or proceeded with until a liquidator has been appointed under item 13(1)(a);
 - and
 - (b) any attachment or execution put into force against an asset of the co-operative under a judgement given by a court before the commencement of the winding-up is void.

Issue, transfer or cancellation of membership shares in co-operative being wound up

9. The issue, transfer or cancellation of membership shares in a co-operative being wound up is void.

Effects of winding-up on assets of co-operative

10. Unless the court giving a final liquidation order or the registrar otherwise directs, the persons referred to in item 7 must as from the commencement of the winding-up of a co-operative up to the appointment of a liquidator jointly and severally be responsible for the custody of all the assets of the co-operative under the co-operative's control.

Notice of voluntary winding-up to be given to registrar

11. A co-operative must within 14 days after a special resolution referred to in section 71A was passed by the co-operative send a certified copy of such resolution to the registrar together with a sworn or solemn statement by the person who acted as the chairperson of the general meeting at which that special resolution was passed—

- (a) that such meeting was held on a date mentioned in the statement;
- (b) that he or she has satisfied himself or herself that proper notice of the meeting and the object thereof was given to the members of the co-operative; and
- (c) that such special resolution was passed by the requisite majority.

Inventory of assets and liabilities to be submitted to registrar by co-operative

12. (1) A co-operative being wound up must draw up an inventory of all the assets and liabilities of the co-operative as at the date of commencement of the winding-up and submit such inventory to the registrar within 30 days of such date.

(2) The provisions of sub-item (1) must not apply to a co-operative in respect of which a liquidator is appointed within 30 days of the commencement of the winding-up.

(3) If a co-operative fails to comply with a provision of sub-item (1) every person referred to in item 7 is guilty of an offence.

Appointment of liquidators

13. (1) (a) The registrar must, in accordance with the principles of fairness and transparency, appoint one or more suitable and appropriately qualified natural persons to be liquidators in respect of a co-operative being wound up.

(b) If a liquidator ceases to hold office the registrar must, if such liquidator was the only liquidator, or may, if such liquidator was one of a plurality of liquidators, appoint any person to fill the vacancy.

(2) The registrar may appoint any person as the temporary liquidator of a co-operative being wound up until a liquidator is appointed under sub-item (1)(a) or a vacancy is filled under sub-item (1)(b).

(3) In case of a voluntary winding up by the Tribunal or registrar, the registrar must, if a person is nominated at the first meeting of creditors and members, appoint such person as nominated, unless if the liquidator has justified reason to alter the nomination.

(4) The registrar must issue letters of appointment to the appointed liquidator after that liquidator has complied with item 14.

Giving of security by liquidator

14. (1) A liquidator must not be deemed to be appointed until he or she has given security to the satisfaction of the registrar for the proper performance of his or her functions as liquidator.

(2) The cost of giving such security to an amount which the registrar considers reasonable, must form part of the costs of liquidation of the co-operative concerned.

(3) The registrar may on written request by a liquidator consent to a decrease in the security given by such liquidator.

Notice of appointment of liquidator

15. A liquidator or liquidators appointed under item 13(1)(a) must after his, her or their appointment forthwith publish a notice in the Gazette and in a newspaper circulating in the area in which the registered office of the co-operative concerned is situated in which his or her name and address or their names and addresses are given and his, her or their appointment is made known.

Remuneration of liquidator

16. (1) A liquidator is entitled to the prescribed remuneration for his or her services: Provided that if more than one liquidator is appointed the remuneration must be distributed among them on such basis as may be approved by the registrar.

(2) Unless the registrar otherwise directs the remuneration of a liquidator must not be paid other than in accordance with a liquidation account.

(3) The registrar may decrease the remuneration of a liquidator or disallow such remuneration if in his or her opinion there is good cause for doing so.

(4) No person who employs or is a fellow employee or in the ordinary employment of a liquidator will be entitled, except with the approval of the registrar, to receive any remuneration out of the assets of the co-operative for services rendered in connection with the functions of the liquidator and no liquidator is entitled either by himself or herself or his or her partner to receive out of the assets of the co-operative remuneration for his or her services except the remuneration to which he or she is entitled under this Act.

Plurality of liquidators, liability and disagreement

17. (1) If two or more liquidators have been appointed they must act jointly in performing their functions as liquidators and must jointly and severally be liable for every act performed by them jointly.

(2) If such liquidators disagree on any matter relating to the co-operative of which they are the liquidators one or more or all of them may refer the matter to the registrar, who may thereupon settle the issue or give directions as to the procedure to be followed in settling such issue.

Control of registrar over liquidators

18. (1) A liquidator must perform his or her functions subject to the control and directions of the registrar.

(2) The registrar may at any time require a liquidator to answer any inquiry in connection with the winding-up in which such liquidator is engaged and may examine such liquidator on oath concerning the wind-up.

(3) The registrar may at any time investigate or seize the books and other documents relating to the winding-up of a co-operative.

(4) Any expenses incurred by the registrar in carrying out any provision of this item must form part of the costs of liquidation of the co-operative concerned.

Removal from office of liquidator

19. The registrar may at any time remove a liquidator from office if in his or her opinion there is good cause for doing so.

Circumstances under which winding-up may be carried out without liquidator

20. If the registrar is of the opinion that the value of the assets of a co-operative being wound up is less than R20 000 or such other amount as the Minister may by notice in the *Gazette* determine, he or she may order the winding-up of that co-operative to be carried out, notwithstanding anything to the contrary contained in any law, in such manner and by such person as may be determined by him or her.

Inventory of assets and liabilities to be submitted to registrar by liquidator

21. (1) A liquidator referred to in item 13(1)(a) must draw up an inventory of all assets and liabilities of the co-operative being wound up as at the date of his or her appointment and submit such inventory to the registrar within 30 days of his or her appointment.

(2) The provisions of sub-item (1) must not apply to a liquidator of a co-operative in respect of which a provisional or temporary liquidator was appointed, if such provisional or temporary liquidator drew up and submitted such an inventory to the registrar.

General duty of liquidator

22. The liquidator of a co-operative must subject to the provisions of this Act forthwith recover and take into his or her possession all the assets of the co-operative, realise those assets and apply the proceeds thereof in accordance with the provisions of this Act.

Banking account and investments

23. (1) The liquidator of a co-operative—

- (a) must open with a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), a current account in the name of the co-operative and must deposit therein to the credit of the co-operative all the money received by him or her on the co-operative's behalf as soon as may be possible but not later than seven days of the receipt thereof;
- (b) may, with the written consent of the registrar, open with such a banking institution, a savings account in the name of such co-operative, and may transfer thereto money deposited in the account referred to in paragraph (a) which is not immediately required;
- (c) may, with the written consent of the registrar, place money deposited in the account referred to in paragraph (a) and not immediately required on interest-bearing deposit with such a banking institution; and
- (d) must not withdraw any money in a savings account referred to in paragraph (b) or on interest-bearing deposit referred to in paragraph (c) other than by way of a transfer to the said current account.

(2) The liquidator of a co-operative must notify the registrar of—

- (a) the banking institution and the branch with which he or she has opened an account referred to in paragraph (a) or (b) of sub-item (1) or with which he or she has placed a deposit referred to in paragraph (c);
- (b) the number of that account or the reference number under which that deposit has been placed; and
- (c) any transfer of money in such an account or so placed in deposit to any other banking institution or branch of such a banking institution.

(3) A banking institution referred to in sub-item (2) must on the registrar's request forthwith furnish him or her with a statement showing deposits paid into and withdrawals made from an account referred to in paragraph (a), (b) or (c) of sub-item (1).

(4) The registrar and any surety for a liquidator will have the same right to information in regard to an account referred to in paragraph (a) or (b) of sub-item (1) or a deposit referred to in paragraph (c) of that sub-item as the liquidator himself or herself possesses and may examine all documents in relation thereto, whether in the possession of the liquidator or a banking institution.

(5) The registrar may after notice to the liquidator in writing order a banking institution with which an account referred to in paragraph (a) or (b) of sub-item (1) has been opened or where a deposit referred to in paragraph (c) of that sub-item has been placed not to allow any withdrawal from any such account or of any such deposit except with the approval of the registrar.

(6) All cheques or orders drawn on an account referred to in sub-item (1)(a) must contain the name of the payee and the cause of payment and must be drawn to order and be signed by the liquidator or his or her duly authorised agent.

Register to be kept by liquidator

24. (1) Immediately after his or her appointment a liquidator must open a register in which he or she must enter a statement of all money and property and all books, accounts and other documents received by him or her on behalf of the co-operative.

(2) The registrar may at any time order a liquidator to submit to him or her any such register, book, account or other document or to make any such register, book, account or other document available for inspection by an interested person.

Powers of liquidator

25. (1) A liquidator may subject to the provisions of this Act do anything reasonably necessary for the effective performance of his or her duties, and may in particular—

- (a) with the approval of the registrar institute, defend or take any action or other legal proceeding of a civil nature in the name and on behalf of the co-operative;
- (b) with the approval of the registrar obtain legal advice on any question of law affecting the winding-up of the co-operative;
- (c) carry on any part of the business of the co-operative in so far as may be necessary for the beneficial winding-up thereof;
- (d) with the approval of the registrar agree to any reasonable offer of composition made to the co-operative by any debtor and accept payment of any part of a debt due to the co-operative in settlement thereof;
- (e) after taking into account the rights of creditors and interests of the members of the co-operative and with the approval of the registrar write off any debts;
- (f) submit to the determination of arbitrators any dispute concerning the co-operative or a claim by the co-operative; and
- (g) in accordance with relevant law terminate contracts to which the co-operative is a party.

(2) A liquidator must not dispose of immovable property of a co-operative except with the approval of the registrar.

Realisation of movable assets in possession of creditors as security

26. (1) A creditor of a co-operative being wound up holding a movable asset as security for his or her claim against the co-operative must within 30 days of publication of the notice referred to in item 15 notify the liquidator of such co-operative of his or her possession of such asset, the nature of such asset and the grounds of his or her preference to such asset.

(2) If such asset consists of securities or a bill of exchange the creditor may after he or she has given such notice realise such asset in terms of sub-item (4).

(3) If such asset does not consist of securities or a bill of exchange the liquidator may take over such asset from the creditor at a value agreed upon between the liquidator and the creditor, or at the full amount of the creditor's claim and if the liquidator does not so take over such asset, the creditor may realise such asset in terms of sub-item (4).

(4) A creditor may realise an asset referred to in sub-item (2) or (3) in the following manner, namely—

- (a) if it consists of a thing ordinarily sold through a stockbroker the creditor may forthwith cause it to be sold by a stockbroker approved by the liquidator;
- (b) if it consists of a thing which in the opinion of the liquidator can profitably be sold at a public auction, the creditor may cause it to be sold by public auction through an auctioneer approved by the liquidator; or
- (c) if it consists of a thing which in the opinion of the liquidator cannot profitably be sold by public auction, the creditor may cause it to be realised in a manner approved by the liquidator.

(5) As soon as a creditor has realised an asset in terms of sub-item (4) he or she must pay the net proceeds thereof and submit all supporting documents relating to the realisation of such asset to the liquidator.

(6) If the asset concerned has not been realised within 90 days of the publication of the notice referred to in item 15 the creditor must deliver such asset to the liquidator.

Assets acquired by co-operative under credit agreement

27. A movable asset delivered to a co-operative under a credit agreement may after the commencement of the winding-up of the co-operative be delivered to the creditor under such contract and thereupon the creditor is deemed to be holding that asset as security for his or her claim and the provisions of item 26 will apply.

Disposition not for value

28. (1) Any disposition of property made by a co-operative not for value may on application by the liquidator of the co-operative be declared void by a competent court if the property was disposed of—

- (a) more than two years before the commencement of the winding-up of the co-operative and it is proved that immediately after the disposition was made the liabilities of the co-operative exceeded the value of its assets; and
- (b) within two years before the commencement of the winding-up of the co-operative and the person to whom the property was disposed of is unable to prove that immediately after the disposition was made the value of the co-

operative's assets exceeded its liabilities: Provided that if it is proved that the liabilities of the co-operative at any time after the disposition was made exceeded the value of its assets by less than the value of the property disposed of, the disposition may be declared void only to the extent of such excess.

(2) A disposition of property not made for value which was declared void under sub-item (1) or which was not completed by the co-operative will not give rise to any claim in competition with the co-operative's creditors.

(3) If the court declares any disposition of property void under sub-item (1) the court may summarily issue an order directing that the property disposed of be delivered to the liquidator or that an amount equal to the value of the relevant property as at the date of the disposition thereof be paid to the liquidator.

Voidable preferences

29. (1) Any disposition of property made by a co-operative within 180 days before the commencement of its winding-up and which has had the effect of preferring any one or more of its creditors above another may on application by the liquidator be declared void by a competent court if immediately after such disposition was made the liabilities of the co-operative exceeded the value of its assets, unless the person to whom the property was disposed of proves that the disposition was made in the ordinary course of business and that it was not intended thereby to prefer a creditor above another.

(2) Any disposition of property by a co-operative made at a time when its liabilities exceeded the value of its assets and with the intention of preferring any one or more of its creditors above another may at any time after the commencement of the winding-up of the co-operative on application by the liquidator be declared void by a competent court.

(3) If the court declares any disposition of property void under sub-item (1) or (2) the court may summarily issue an order directing that the property disposed of be delivered to the liquidator or that an amount equal to the value of the relevant property as at the date of the disposition thereof be paid to the liquidator.

Collusive dealings to prejudice creditors or to prefer certain creditors above others

30. (1) Any collusion to dispose of property of a co-operative with an effect prejudicing the co-operative's creditors or preferring a creditor above another may at any time after the commencement of the winding-up of such a co-operative on application by the liquidator be declared void by a competent court.

(2) Any person being a party to any collusion declared void by the court under sub-item (1) may summarily be ordered by the court to make good to the co-operative any decrease in the value of the assets of the co-operative caused by such collusion and if such person is a creditor of the co-operative he or she will forfeit his or her claim against the co-operative.

Voidable set-off

31. Any set-off of debts between a co-operative and another person within 180 days before the commencement of the co-operative's winding-up and which has had the effect of preferring such person as creditor above other creditors of the co-operative may on application by the liquidator be declared void by a competent court if at the time when such set-off was effected the liabilities of the co-operative exceeded the value of its assets, unless such person proves that the debts which were set off arose in the ordinary course of business between him or her and the co-operative.

Interested person may make application to court on behalf of liquidator

32. If the liquidator is requested by any interested person to make application to the court under item 28, 29, 30 or 31 and the liquidator omits to make such application within 30 days as from the date of the request such person may upon his or her indemnifying the liquidator against all costs in the action make the relevant application on behalf of the liquidator.

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

33. (1) Any person who has a claim against a co-operative being wound up, excluding a claim against a members' fund, must within 90 days after the date of publication of the notice referred to in item 15 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 or her claim against a members' fund to proceed he or she must inform the liquidator in writing thereof.

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

(3) Any person aggrieved by a decision taken by a liquidator under sub-item (2) in connection with his or her claim may within 30 days after he or she was notified of such decision appeal to the registrar against such decision and the registrar may after consideration of the grounds of the appeal and the liquidator's reasons for his or her decision confirm the decision or set the decision aside and order the liquidator to admit the claim or to admit it to the extent determined by the registrar.

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

(b) The provisions of sub-items (2) and (3) apply with the changes required by the context in respect of a claim referred to in paragraph (a).

(5) The provisions of this item must not prevent a creditor from proving a claim against a co-operative in any court, but no person must institute an action to prove a claim against a co-operative being wound up or proceed with action that has been suspended in terms of item 8, unless he or she has lodged his or her claim with the liquidator within the period mentioned in sub-item (1) or with the consent of the registrar, within the further period mentioned in sub-item (4), or has otherwise given notice to the liquidator in writing of the action or intended

action within a period of 120 days after the date of publication of the notice referred to in item 15.

Submission of certain accounts to registrar

34. (1) The liquidator must within 180 days after the date of publication of the notice referred to in item 15 draw up the following accounts, certify them and submit them in duplicate to the registrar, namely—

- (a) a liquidation account;
- (b) a trading account, if the liquidator has carried on a business of the co-operative;
- (c) a distribution account, if the proceeds of the co-operative's assets exceed the sum of the amounts to be paid out of such proceeds in terms of items 36(1) and (2) and 37 (a), (b), (c), (d) and (e); and
- (d) a contribution account, if the said proceeds are less than the sum of the said amounts and there are contributories.

(2) The accounts referred to in sub-item (1) must be accompanied by all supporting documents available to the liquidator.

(3) If the said accounts are not the final accounts the liquidator must within such period as the registrar may determine draw up further accounts and submit them to the registrar in duplicate.

(4) If the liquidator is unable to submit an account or documents mentioned in sub-item (1), (2) or (3) to the liquidator within the required period he or she must before the termination of the period concerned submit to the registrar a written explanation of the reasons for his or her inability, requesting extension and the registrar may thereupon grant an extension of time to the liquidator for the submission of the relevant account or documents.

Liquidation account

35. (1) A liquidation account must contain an accurate record—

- (a) of all money received and of all money disbursed by the liquidator in the course of business which he or she carries on behalf of the co-operative;
- (b) of the expected or real costs of liquidation;
- (c) of every claim against the co-operative proved or admitted in terms of item 33;
- (d) of the amount standing to the credit of each member in the members' fund of the co-operative;
- (e) if such a claim is a secured claim, of the property which serves as security for the claim or if the property has already been realised, the amount of the proceeds thereof;
- (f) in the case of a second or later liquidation account, of the amount paid on every claim in terms of a previous liquidation account; and
- (g) in the case of a liquidation account which is not the final liquidation account—
 - (i) of all assets to be realised;
 - (ii) of all debts due, outstanding and to be recovered; and
 - (iii) of the reasons why such assets have not yet been realised or such debts have not yet been recovered.

(2) A liquidation account must subject to the provisions of items 36, 37, 38, 39 and 40 provide for the application of the proceeds of the assets of the co-operative.

Application of proceeds of assets which served as security

36. (1) The proceeds of any asset which served as security for a claim admitted or proved in terms of item 33 must, after deducting therefrom the liquidator's expenses with respect to such asset and such pro rata portion of the costs of liquidation as may be determined by the liquidator, first be applied in paying such claim.

(2) If there is more than one such claim the relevant claims must be paid in the order of their preference.

(3) If the portion of the said proceeds which may be applied in paying any such claim or claims is less than the amount of such claim the creditor concerned must be an ordinary creditor in respect of the unpaid portion of his or her claim.

Application of proceeds after payment of secured claims

37. Subject to the provisions of item 36 the proceeds of the assets of a co-operative being wound up must be applied as follows, namely–

(a) first pay expenses incurred by the liquidator in connection with the winding-up and the other costs of liquidation;

(b) thereafter pay any amounts due by the co-operative with respect to matters referred to in section 98A(1)(b) or section 99(1)(a) to (e) of the Insolvency Act, 1936 (Act No. 24 of 1936), which have been admitted or proved in terms of item 33 or if the balance of the said proceeds is insufficient to pay the said amounts in full, by paying a proportionate share of each;

(c) thereafter pay outstanding salaries and wages of full-time employees of the co-operative which have been admitted or proved in terms of item 33 for a period not exceeding two months prior to the commencement of the winding-up of the co-operative or if the balance of the said proceeds is insufficient to pay the said salaries and wages in full, by paying a proportionate share of each;

(d) thereafter pay income tax for which the co-operative is liable;

(e) thereafter pay all other claims admitted or proved in terms of item 33, including any unpaid portions of secured claims contemplated in item 36(3) and any credit amounts in the members' fund or, if the balance of the said proceeds is insufficient to satisfy the said claims, portions of claims and credit amounts in full, by paying a proportionate share of each; and

(f) thereafter any residue must be applied in accordance with the distribution account.

Tacit hypothecs

38. (1) A tacit hypothec, other than a landlord's legal hypothec, must not confer any preference when a co-operative is being wound up.

(2) A landlord's legal hypothec must confer a preference with regard to property which is subject to that hypothec for any rent calculated in

respect of any period immediately prior to and up to the commencement of the winding-up but not exceeding—

- (a) three months, if the rent is payable monthly or at shorter intervals than one month;
- (b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months;
- (c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months; and
- (d) 15 months in any other case.

Certain mortgage bonds not to confer preference

39. (1) A mortgage bond, other than a kustingbrief, registered in any office for the registration of deeds against immovable property of a co-operative for the purpose of securing payment of—

- (a) a debt not previously secured which arose more than 60 days prior to the lodging of the relevant bond for registration in such office; or
- (b) a debt incurred in novation of or substitution for a debt referred to in paragraph (a), must not confer any preference with regard to such property or the proceeds thereof if the co-operative is wound up within 180 days after the lodging of such bond.

(2) A general mortgage bond, including a general clause in a mortgage bond hypothecating particular immovable property, must not confer any preference with regard to the property of a co-operative being wound up or the proceeds thereof.

Ranking of mortgage bonds for future debts

40. Priority under any mortgage bond registered in any office for the registration of deeds against immovable property of a co-operative for the purpose of securing payment of future debts will depend on the date of registration of that mortgage bond and not on the date upon which any such debt arises.

Trading account

41. A trading account must contain an accurate record of—

- (a) the value of the stock on hand at the commencement of the winding-up;
- (b) the value of the stock on hand on the last day of the period in respect of which the account is made up; and
- (c) the daily totals of receipts and payments in connection with the business.

Distribution account

42. (1) A distribution account must subject to the provisions of item 43 provide for a residue referred to in item 37(f) to be applied according to the provisions of this item.

(2) The residue referred to in sub-item (1) must first be applied in paying back the paid-up share capital of the co-operative to the shareholders of the co-operative.

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

(4) If such residue exceeds the paid-up share capital the balance remaining after the paid-up share capital has been paid back must, subject to the provisions of sub-item (8), be allocated to the members of the co-operative—

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

(5) The patronage proportion mentioned in sub-item (4)(a) must—

- (a) in the case of an agricultural co-operative or a special farmers' co-operative, be determined with reference to either the period mentioned in the constitution of the co-operative which preceded the commencement of the winding-up of the co-operative or the period for which the co-operative has existed, whichever period is the shorter; and

- (b) in the case of a trading co-operative, be determined with reference to either the period specified in the constitution of the co-operative which preceded the commencement of the winding-up of the co-operative or the period for which the co-operative has existed, whichever period is the shorter: Provided that the period mentioned in the constitution of the co-operative must not be less than five years.

(6) For the purposes of sub-items (4) and (5)—

- (a) the value of the transactions conducted by a former member with or through such co-operative during the appropriate period referred to in sub-item (5) may be added to the value of the transactions of a member who is entitled to an allocation under sub-item (4), provided—

- (i) the former member or if he or she is deceased, his or her executor, has submitted his or her written consent to that effect to the co-operative within 90 days after such former member ceased to be a member of the co-operative; and
- (ii) the constitution of the co-operative so provides;
- (b) a co-operative incorporated in consequence of a conversion under section 66 is deemed to have existed as from the date of incorporation of the previous co-operative so converted and the value of the transactions conducted by a member of the first-mentioned co-operative during the appropriate period with or through the previous co-operative as a member may be added to the value of the transactions conducted by him with or through the first-mentioned co-operative; and
- (c) a co-operative incorporated in consequence of an amalgamation of two or more co-operatives under section 57 is deemed to have existed as from the date of incorporation of the most recent of those co-operatives and the value of the transactions conducted by a member of the amalgamated co-operative during the appropriate period with or through any of the previous co-operatives of which he or she was then a member may be added to the value of the transactions conducted by him with or through the amalgamated co-operative.

(7) The registrar may notwithstanding the provisions of sub-items (4), (5) and (6) direct the liquidator of a trading co-operative to allocate the balance remaining after the paid-up share capital has been paid back, to the members of the co-operative on any basis determined by the registrar.

(8) If the constitution of a co-operative provides that an amount must be paid to any particular person or for any particular purpose in the event of the co-operative being wound up, the balance referred to in sub-item (4) must first be applied for the payment of such an amount.

(9) For the purposes of—

- (a) sub-items (2) and (3) a person to whom an amount is due by the co-operative by virtue of the provisions of section 24 is deemed to be a shareholder of the co-operative; and
- (b) sub-items (2), (3) and (4) an amount referred to in paragraph (a) of this sub-item is deemed to form part of the paid-up share capital of the co-operative.

Disposal of small residues

43. If a residue referred to in item 37(f) is so small that the payment thereof to the persons referred to in item 42, is in the opinion of the registrar not justified and the provisions of that item the registrar may direct the liquidator to dispose of such residue, notwithstanding, in any manner determined by the registrar.

Contribution account

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

(2) A contribution account must in respect of each contributory indicate the ground on which he or she is liable for the payment of contribution, the amount for which he or she is liable and the contribution to be paid by him in terms of that contribution account and, in the case of a second or later contribution account, the contribution recovered from him in terms of a previous contribution account.

Inspection of liquidation, distribution or contribution account by interested persons

45. (1) Every liquidation, distribution or contribution account or a copy thereof must be submitted by the liquidator to the registrar, the Directorate Co-operatives and the magistrate office in the district where the registered office of the co-operative is situated, for such period as may be determined by the registrar, for inspection by interested persons.

(2) The liquidator must give notice to interested persons in the Gazette and in a newspaper circulating in the area in which the registered office of the co-operative is situated of the period for which and the place or places where the liquidation, distribution or contribution account will be available for inspection and that objection against such account may be lodged with the registrar before a date to be stated in the notice, which must be a date not less than seven days after the end of the said period.

(3) The magistrate of the office where an account is available for inspection must affix a notice in a public place in or at his or her office in which it is mentioned that the account concerned is available in his or her office for inspection by interested persons during the relevant period and must upon the expiry of such period issue a certificate that the relevant account was available for inspection during the relevant period and transmit the certificate and account to the registrar.

Objections against liquidation, distribution or contribution account

46. (1) Any person who has an interest in the winding-up of a co-operative may before the date stated in the notice referred to in sub-item (2) of item 45 lodge an objection with the registrar against any entry in an account made available for inspection in terms of sub-item (1) of that item.

(2) An objection referred to in sub-item (1) must be contained in an affidavit or a solemn declaration in which the grounds of objection are fully set forth.

(3) The registrar may uphold, partially uphold or reject an objection referred to in sub-item (1).

Amendment of liquidation, distribution or contribution account

47. (1) If the registrar upholds or partially upholds an objection against a liquidation, distribution or contribution account under item 46(3), or if he or she is of the opinion that any such account is incorrect in any respect, the registrar must order the liquidator to amend the relevant account in such manner as may be determined by the registrar.

(2) If the registrar is of the opinion that the interests of any person are materially prejudiced by an amendment of a liquidation, distribution or contribution account under sub-item (1), the provisions of items 45 and 46 and this item must be applicable to the amended account unless the said person submits a written statement to the registrar that he or she has no objection against such amendment.

Appeal to court against registrar's decisions

48. (1) Any person whose objection against a liquidation, distribution or contribution account has been rejected or partially upheld under item 46(3) may within 30 days after he or she was notified of the registrar's decision with regard to his or her objection appeal against that decision by way of application on notice of motion to any competent court.

(2) A liquidator may within 30 days after he or she was ordered by the registrar under item 47(1) to amend a liquidation, distribution or contribution account appeal against that decision by way of application on notice of motion to any competent court.

(3) The court to which appeal is made under sub-item (1) or (2) must inquire into and consider the matter and must confirm, vary or set aside the decision or order of the registrar, or give such other decision or order as in its opinion the registrar ought to have given and may make such order as to costs as it may deem fit.

Confirmation of liquidation, distribution or contribution account

49. If the registrar is satisfied that a liquidation, distribution or contribution account has been made available for inspection in accordance with the requirements of this Act, that any objections against it have been finalised and that the necessary amendments (if any) have been effected thereto, he or she must confirm such account.

Payments in terms of liquidation or distribution account and recovery of contribution

50. (1) The liquidator must as soon as may be practicable after—
(a) a liquidation or distribution account was confirmed in terms of item 49, make all payments to be made in accordance therewith; and
(b) a contribution account was so confirmed, recover the contributions to be paid in accordance therewith.

(2) Any payment in terms of a liquidation or distribution account must be made by way of a cheque payable to the person entitled to such payment or his or her order and drawn on an account contemplated in item 23(1)(a).

(3) The liquidator must submit to the registrar proof of every payment made by him or her in terms of a liquidation or distribution account.

Disposal of unclaimed payments

51. If a cheque by which any payment is made in terms of a liquidation or distribution account, is not cashed or deposited within 90 days after it was issued, the liquidator must, unless the registrar otherwise directs, stop payment of the cheque and forthwith deposit the amount concerned in the guardian's fund referred to in section 86 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), to be credited to the said person.

Recovery of contribution

52. (1) If any contributory liable to pay contribution in terms of a contribution account fails to pay the amount of such contribution to the liquidator within 30 days after a letter of demand in which particulars of such contribution are set out was sent to him or her by registered post to his or her last-known residential or business address, the magistrate of the district in which the registered office of the co-operative is situated must upon written request by the liquidator issue a writ of execution against the property of such contributory.

(2) Any such writ must be executed against the movable property of such contributory and if sufficient movable property is not found to satisfy the writ, then against his or her immovable property.

(3) A writ of execution issued under sub-item (1) must be deemed to have been issued pursuant to a judgment of a magistrates' court.

Summoning and examination of persons concerning affairs of co-operative being wound up

53. (1) The magistrate of the district in which the registered office of a co-operative being wound up is situated may, on application by the registrar, the liquidator of the co-operative or any other person who has an interest in the winding-up of such co-operative, summon before him or her any person known or suspected to have in his or her possession any asset of the co-operative or believed to be indebted to the co-operative, or any person whom the magistrate deems capable of giving information concerning the affairs, transactions or assets of the co-operative.

(2) Such magistrate may examine on oath or affirmation any person summoned under sub-item (1) or authorise the registrar, the liquidator or any such other interested person to examine such person or to cause such person to be examined, concerning any matter referred to in that sub-item, either orally or on written interrogatories and may reduce his or her answers to writing and require him to sign them.

(3) Such magistrate may require any such person to produce any book or other document in his or her custody or under his or her control relating to the co-operative, but without prejudice with regard to any right which he or she or any other person may have to such book or document.

(4) If any person summoned under sub-item (1) fails to appear before the magistrate concerned at the appointed time, such magistrate may cause him or her to be apprehended and brought before him for examination.

Release of liquidator

54. The liquidator of a co-operative may at any time after dissolution of the co-operative in terms of item 56 apply to the registrar for his or her release, who may grant such release if he or she deems it expedient.

Disposal of books and documents

55. After six months from the date of release of the liquidator the books and documents of the co-operative and those relating to the winding-up of the co-operative may be destroyed, unless the registrar otherwise directs.

Co-operative to dissolve if struck off register

56. A co-operative must dissolve if the name and other particulars of such co-operative are struck off the register of co-operatives in terms of item 57.

Circumstances under which co-operative must be struck off register

57. A co-operative must be struck off the register of co-operatives by the registrar—

- (a) when the co-operative has been wound up to the satisfaction of the registrar;
- (b) when the co-operative has been incorporated as a public or private company in terms of section 62; or
- (c) when the co-operative has been incorporated as a close corporation in terms of section 62;

Provided that the registrar must consult the Tribunal before the co-operative is struck off the register.

Striking off register of dormant co-operative to be preceded by special steps

58. (1) If the registrar has reasonable cause to believe that a co-operative is not carrying on business or is not in operation he or she must send to the co-operative by registered post a letter enquiring whether it is carrying on business or is in operation.

(2) If the registrar does not within 30 days after sending the letter receive any reply thereto or receives a reply to the effect that the co-operative is not carrying on business or is not in operation, he or she must—

(a) publish on the website of Companies and Intellectual Property Registration Office; and

(b) send to the co-operative by registered post, a notice that after the expiration of 60 days from the date of the notice the co-operative mentioned therein will, unless good cause to the contrary is shown, be struck off the register of co-operatives.

(3) After the expiration of the period referred to in sub-item (2) or upon receipt from the co-operative of a written statement signed by at least two directors thereof to the effect that the co-operative has ceased to carry on business or is not in operation and has no assets or liabilities, the registrar may, unless good cause to the contrary is shown, strike the co-operative off the said register.

(4) A letter or notice to be sent to a co-operative in terms of this item must be sent to the co-operative at its registered office, its postal address and provided the registrar has a record of their addresses, to the care of every director and auditor of the co-operative and to any other person as the registrar may deem necessary.

Notice in Gazette of co-operative struck off register

59. The registrar must give notice on the website of Companies Intellectual Property Registration Office of every co-operative struck off the register of co-operatives under item 57.

Effects of dissolution on directors, officers and members of co-operative

60. The dissolution of a co-operative will not affect the liability of a director, officer or member of the co-operative and such liability (if any) must subject to the law relating to prescription continue to exist and may be enforced as if the co-operative had not been dissolved.

Tribunal may restore incorporation of co-operative

61. (1) Any person aggrieved by a co-operative having been struck off the register of co-operatives may within one year after it has been so struck off, by way of application to the Tribunal for an instruction to the registrar, to have the entry in respect of the said co-operative restored in such register.

(2) The Tribunal must inquire into and consider the matter and must reject the application or instruct the registrar to restore the entry in such register in respect of that co-operative.

(3) If the Tribunal gives an instruction that the entry in such register be restored in respect of such co-operative, the co-operative is deemed to continued to exist as if it had not been struck off such register and the instruction of the Tribunal may contain such directions so as to place the co-operative and other persons as far as may be possible in the same position as if the co-operative had not been struck off such register.

(4) If the Tribunal gives an instruction that the entry in such register be restored in respect of such co-operative, the co-operative must—

- (a) fully comply with the provisions of this Act, including any amendment thereto; and
- (b) pay the prescribed fees for its restoration.

(5) Notwithstanding the provisions of this item, an aggrieved person who was a member of the co-operative at the time of its deregistration may request the registrar to have the entry in respect of the said co-operative restored in such register, in which event the registrar after having inquired into and considered the matter, may reject the application or restore the entry in such register in respect of that co-operative.

SCHEDULE 1B ARRANGEMENTS IN RESPECT OF JUDICIAL MANAGEMENT.

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

1. (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 registrar or the tribunal.

(3) When an application for the winding-up of a co-operative is made in terms of section 72 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

2. (1) A court may, on an application made under item 1, 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 must contain—

- (a) directives that the co-operative named therein must 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 must from the date of the order be released thereof; and
- (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

3. (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 must 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; and
- (b) the registrar must without delay appoint a provisional judicial manager, who must give such security for the proper performance of his or her duties in his or her capacity as such as the registrar may direct and who must, subject to the provisions of sub-item (2), hold office until discharged by the court as provided in item 7(3)(a).

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

Effect of provisional judicial management order

4. (1) When a provisional judicial management order is granted—
- (a) no shares in the co-operative or amount of money from a members' fund must 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
- (b) the constitution of the co-operative will remain in force except to the extent it is 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 constitution is not in the interests of the members or creditors during the provisional judicial management, and he or she notifies the provisional judicial manager in writing that such provision must be suspended.

(2) The registrar may at any time terminate the suspension referred to in sub-item (1)(b) and notify the provisional judicial manager in writing thereof.

Functions of provisional judicial manager

5. A provisional judicial manager appointed under item 3(1)(b) or (2) must—

- (a) assume the management and control of the co-operative, recover and take into his or her possession all the assets of the co-operative;
- (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 item 6; and
- (c) prepare and lay before the meetings convened under paragraph (b) a report containing—
 - (i) an account of the general state of affairs of the co-operative; ...
 - (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;
 - (iii) a statement of the assets and liabilities of the co-operative;
 - (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 will 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 item 5(b)

6. (1) (a) Any meeting convened under item 5(b) must 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) must be convened—
 - (i) in the case of a meeting of the members of the co-operative concerned, in the manner prescribed in the constitution 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 item 5(c), and the desirability or not of placing the co-operative finally under judicial management, must be considered, taking into account the prospects of the co-operative becoming a successful concern.

(3) The chairperson of any such meeting must 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 sub-item (2).

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

7. (1) Any return day fixed under item 2(1) must 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 item 5(c);
- (c) the report referred to in item 6(3); and
- (d) a report of the registrar if he or she does not preside at the meeting referred to in item 6(1)—
 - (i) 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;
 - (ii) the court may discharge the provisional order; or
 - (iii) make any other order may deem fit.

(3) A final judicial management order must 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; and
- (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 must without delay appoint a final judicial manager, who must give such security for the proper performance of his or her duties in his or her capacity as such as the registrar may direct and who must hold office until he or she is discharged in terms of paragraph (b) or until the judicial management order is cancelled in terms of items 9(i) and 13 of Schedule 1B.

(b) The registrar may, at any time, dismiss a final judicial manager from his or her office and appoint another person in his or her place if there are sound reasons for doing so and after having followed the due process.

(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

8. The provisions of item 4 applies with the changes required by the context when a final judicial management order is granted.

Functions of final judicial manager

9. A final judicial manager must, subject to the provisions of the constitution 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 or she 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 provided 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;
- (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;
- (g) lodge with the registrar copies of all the documents submitted to the meetings as provided for in paragraphs (e) and (f);
- (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 item 1(1);
- (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; and
- (j) if at any time he or she 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.

Application of assets during judicial management

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

(2) Any money of the co-operative becoming available to the judicial manager must be applied by him or her 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.

Position of auditor in judicial management

11. 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-appointment of an auditor and the rights and duties of an auditor must 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

12. In every case in which a co-operative is placed under judicial management the provisions of items 28, 29, 30, 31 and 53 of Schedule 1A of this Act must 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

13. (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 must be released from his or her functions as the judicial manager.

(2) In cancelling any such order the court must 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 32(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 is 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 58.

Remuneration of provisional and final judicial manager

14. The registrar must 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 or her opinion there is good cause for doing so."

Substitution of long title of Act 14 of 2005

80. The following long title is hereby substituted for the long title of the principal Act:

"To provide for the definition, purpose and application of the Act; to provide for the registration, constitution and powers of co-operatives; to provide for the requirements regarding the registered offices of co-operatives, as well as record keeping; to provide for membership, general meetings and governance of co-operatives; to provide for the capital structures and the audit of co-operatives; to provide for the amalgamation, division and conversion of co-operatives; to provide for the winding-up and deregistration of co-operatives, to provide for judicial management; to provide for the functions of the registrar of co-operatives; to provide for the establishment of the Co-operatives Advisory Council and its functions, the Co-operative Development Agency, the Co-operative Tribunal, Companies and Intellectual Property Registration Office and the Directorate: Co-operatives as the entity in the Department of Trade and Industry responsible for co-operatives; to provide for the establishment of the National Co-operative Training Academy and Provincial Co-operative Training Academies; to provide for special provisions relating to certain kinds of co-operatives; to provide for the repeal of Act 91 of 1981; and to provide for matters connected therewith."

Substitution of the Preamble of Act 14 of 2005

81. The following preamble is hereby substituted for the Preamble of the principal Act:

"PREAMBLE

WHEREAS the Republic of South Africa acknowledges the need for the registration of co-operatives, in accordance with—

- the Constitution;
- international conventions and treaties;
- national, provincial and local government transversal policy and statutory-regulatory frameworks; and

as well as the need for the development of a viable, autonomous, self-reliant and self-sustaining co-operative movement to promote entrepreneurship, create employment and successful enterprises, eradicate poverty and improve the socio-economic well-being of the members of co-operatives;

AND WHEREAS the Constitution and national legislation enjoins government to be fundamentally developmental in orientation, in which co-operatives development must—

- adopt the co-operative international principles recognised and implemented in South Africa;
- adopt the Millennium Development Goals, including sustainable social and economic development;
- promote the establishment of public private partnerships;
- support and participate in government initiatives relating to rural development, land reform and agrarian transformation; and
- address the developmental needs arising from the socio-economic environment of South Africa;

AND WHEREAS the Constitution and national legislation enjoins the three spheres of government be accountable and responsible to support and promote the development and effective functioning of co-operatives in order to bring about a vibrant co-operative movement in South Africa."

AND WHEREAS this Act is aligned to the ILO Recommendation 193 of 2002, which was also ratified by the South African government; co-operative values and principles as outlined in the Co-operative Statement of Identity as adopted by the International Co-operative Alliance (ICA) in 1995.

- Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. Co-operative members are expected to believe in the ethical values of honesty, openness, social responsibility and caring for others."

Co-operative principles guides the way in which co-operatives put their values into practice, which entail the following:

1st Principle: Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3rd Principle: Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle: Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6th Principle: Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community

- Co-operatives work for the sustainable development of their communities through policies approved by their members.

AND WHEREAS all co-operatives are obligated to contribute towards community development in line with the 7th principle.”

Substitution of Table of Contents of Act 14 of 2005

82. The following Table of Contents is hereby substituted for the Table of Contents of the principal Act:

<u>Section</u>	“Arrangement Of Sections
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CHAPTER 1
DEFINITIONS, PURPOSE AND APPLICATION OF ACT

1. Definition and interpretation
2. Purpose of Act
3. Compliance with co-operative principles
4. Forms and kinds of co-operatives
5. Application of Act
- 5A. Application of Co-operatives Banks Act

CHAPTER 2
REGISTRATION, CONSTITUTION, POWERS OF CO-OPERATIVES AND REGISTERED
OFFICE AND RECORDKEEPING BY CO-OPERATIVE

Part 1

Application to register and name

6. Application to register co-operative
7. Registration of cooperative
8. Effect of registration
9. Pre-incorporation contract
10. Name of co-operative
11. Directive from registrar to change name
12. Unlawful use of word "co-operative", "CP Ltd" and "CP Unltd"

Part 2

Constitution and functions of co-operative

13. Constitution of co-operative
14. **[Provisions for all co-operatives]** Minimum requirements for all co-operative constitutions
- 14A. Associate members
15. Provisions where members are required to hold shares
- 15A. Categories of primary co-operatives
16. Provisions for secondary co-operatives and tertiary co-operatives (note we need to do something here)
- 16A. Tertiary co-operatives
- 16B. Co-operative apex organisation
17. Consequences of invalidity
18. Amendment of constitution
19. **[Functions of co-operatives]** Restrictions on functions of co-operatives

Part 3

Registered office and record keeping by co-operative

20. Registered office of co-operative
21. Record keeping by co-operative
22. Access to information

CHAPTER 3
MEMBERSHIP OF CO-OPERATIVES

23. Liability of members
24. Withdrawal of membership
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Short title and commencement of Act

83. This Act is called the Co-operatives Amendment Act, 2010, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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. of) (The English text is the official
text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B - 2010]

040610nb

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, so as to ensure compliance with the principles for intergovernmental relations and to provide for the intergovernmental relations within the co-operatives sector; and to provide for matters connected therewith.

BE IT THEREFORE 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

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

- (a) must appoint the personnel as required to every satellite office after consultation with the provincial Department of Economic Development, the metropolitan municipality or the district municipality, as the case may be;**
or
(b) in consultation with the Member of the Executive Council responsible for economic development or the Municipal Council whichever the case may be, may, delegate all or some of the functions of the satellite offices to a provincial Department of 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.”

Insertion of Chapters 12D in Act 14 of 2005

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

**"CHAPTER 12D
INTERGOVERNMENTAL RELATIONS**

Applicability of intergovernmental relations framework policies and legislation

91WW. 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;
 - (i) the Co-operative Dispute Resolution Commission;
 - (j) structures established in accordance with a provision of this Act;
 - (k) structures established in accordance with a provision of any other national law; and
 - (l) structures established in accordance with provincial law,
- must be interpreted in accordance with national and the applicable provincial transversal, policies and legislation regulating intergovernmental relations.

Intergovernmental structures

91XX. (1) All intergovernmental structures contemplated in subsection (2)—

- (a) functioning at the commencement of this Act; 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 government 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 government and traditional affairs may, by notice in the Gazette, declare provisions of this Act applicable to any structure contemplated in this section.

(4) Intergovernmental structures established as contemplated in this Act, must, in addition to their functions contemplated in this Act, comply with the national framework contemplated in section 91CCC, and the applicable provincial, transversal policies and legislation regulating intergovernmental structures.

Functions of intergovernmental structures

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

- (a) promote co-operative governance;
- (b) ensure the co-ordination of planning, budgeting, provisioning of services and support to, and monitoring and evaluation in respect of, co-operatives;
- (c) advise the Minister and the various Members of the Executive Council responsible for economic development on any matter contemplated;
- (d) submit copies of the approved minutes of all meetings to the Minister, various Members of the Executive Council responsible for economic development and the entities contemplated in section 91UU, represented in such structure; and
- (e) perform any functions and duties as may be determined by the Minister by notice in the Gazette.

Administrative and procedural arrangements

91ZZ. Every structure established as contemplated in this section must comply with the framework for administrative and procedural arrangements contemplated in section 91CCC.

Establishment of National Interdepartmental Co-ordination Committee on Co-operatives and Inter-Provincial Co-ordination Committee on Co-operatives

91AAA. (1) The National Interdepartmental Co-ordination Committee on Co-operatives and the Inter-Provincial Co-ordination Committee on Co-operatives are hereby established.

(2) The National Interdepartmental Co-ordination Committee on Co-operatives must co-ordinate all co-operatives development programmes developed by sectoral national departments.

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

(4) 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

91BBB. (1) A Provincial Interdepartmental and Municipal Co-ordinating Structure must be established in every province by the provincial Department of Economic Development concerned.

(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 concerned;
- (b) co-ordinate the co-operative development and support activities of all provincial government departments dealing with co-operatives;
- (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 on the activities of the provincial Departments of Economic Development to the Department;
- (f) support the provincial chapters of the Agency and the Provincial Co-operative Training Academies; and
- (g) co-ordinate with all municipalities as regards the promotion of, and the provision of support for, co-operatives, and submit reports in this regard as contemplated in this section.

Dispute and conflict resolution

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

Framework for intergovernmental relations

91DDD. (1) The Minister must—

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

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(2) Every intergovernmental structure recognised or established in accordance with this Act must comply with the framework contemplated in subsection 1."

Short title and commencement

3. This Act is called the Co-operatives Second Amendment Act, 2010 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.
